

LEGAL CHARACTERISTICS OF COOPERATIVES IN TURKISH LAW

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Mustafa Yasan

Faculty of Law, Balikesir University, Turkey

ORCID iD: Mustafa Yasan

 <https://orcid.org/0000-0003-0741-9720>

Abstract. *In the realm of Turkish Law, the legislative framework governing cooperatives is bifurcated into two principal statutes: the Second Chapter (Book) of the Turkish Code of Commerce, which envisages general provisions pertaining to commercial companies, and the Cooperatives Code as a subject-specific legislative act. The incorporation of particular provisions concerning cooperatives within the Cooperatives Code has engendered a nuanced discourse regarding their legal persona. Central to this discourse is the determination of whether cooperatives are to be classified amongst commercial companies, thereby rendering them merchants, or whether they diverge from traditional commercial corporations due to their distinctive relationship with associations and foundations, thus generating debates and judicial deliberations on whether cooperatives ought to be categorized as a unique form of enterprise, divergent from conventional corporate structures. This academic interest and debate are not merely theoretical but have found expression in judicial pronouncements as well. A critical point of distinction for cooperatives, setting them apart from other commercial companies, is the foundational objective they profess. Unlike the quintessential commercial aim of profit maximization and distribution among constituents, cooperatives are predicated upon the attainment of legal benefits under more favourable conditions, facilitated through a framework of mutual aid and solidarity. This salient feature raises pertinent questions about the intrinsic nature of cooperatives and calls for a re-evaluation of their place within the matrix of commercial law.*

Key words: *Turkish law, cooperatives, Turkish company law, Turkish commercial law, comparative company law, comparative cooperative law.*

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Corresponding author: Mustafa Yasan LL.D., Full Professor, Faculty of Law, Balikesir University, Turkey;
e-mail: avmyasan@yahoo.com

1. INTRODUCTION

The discursive debates surrounding the legal classification of cooperatives, underpinned by the imperative of aligning these debates with public interest whilst facilitating a sustainable and efficient market framework, persist in scholarly and legislative circles following the enactment of the Cooperatives Code No. 1163 (CoC)¹ in 1969, which was exclusive to the domain of cooperative law within the Turkish legal system. This discourse is notably enriched by the nuanced examination of the cooperative's constitutive elements: the associational dimension epitomized by the partners, the amalgamation of monetary and non-monetary capital contributions, the foundational charter articulated through the articles of association, and the economic rationale motivating the unification of the partners. These aspects ostensibly approximate the cooperative framework to traditional commercial corporate structures. Conversely, the distinct ethos underpinning cooperatives, notably the absence of a profit-maximization motive with consequent profit distribution among partners, alongside the establishment of cooperatives with the aim of facilitating economic advantages through reciprocal support and solidarity among partners in a capacity superior to conventional market mechanisms, propounds a theoretical divergence which challenges the conventional classification of cooperatives as commercial companies or, by extension, corporate entities. This divergent perspective on the cooperative ethos further complicates the inclusion of cooperatives within the commercial legal category, thereby exempting them from the regulatory framework typically applicable to commercial companies, including, *inter alia*, the imposition of bankruptcy sanctions. Accordingly, the present discourse endeavours to elucidate the legal regime governing cooperatives within the Turkish jurisdiction, with a particular emphasis on the oversight mechanisms, thereby extending an academic contribution towards the comparative law scholarship on cooperatives, and aiming to furnish foreign legal practitioners and cooperative stakeholders with a nuanced understanding of this legal paradigm.

2. FUNDAMENTAL ASPECTS OF COOPERATIVE LAW UNDER TURKISH JURISPRUDENCE

2.1. Sources of Legal Framework pertaining to Cooperatives

The legal framework governing cooperatives in the Turkish legal system is derived from two principal sources. The foremost is the Cooperatives Code No. 1163 (CoC, 1969), which serves as a specialized statute for cooperatives. Additionally, the Turkish Code of Commerce (TCC, 2011)² provides a set of norms, within a distinct section, dedicated to the regulation of commercial companies which, by extension, applies to cooperatives.

2.1.1. *The Cooperatives Code*

Enacted as Law No. 1163 in 1969, the Cooperatives Code (hereinafter: the CoC) represents a dedicated legislative act, uniquely focusing on cooperatives within the panorama of Turkish commercial law. Markedly, cooperatives are distinguished as the sole type of commercial companies that are regulated under their specific legislative framework. This demarcation ensued from the abrogation of the former provisions

¹ The Cooperatives Code, *Official Gazette TR*, 13195/1969

² The Turkish Code of Commerce, *Official Gazette TR*, 27846/2011

encapsulated in the obsolete Turkish Commercial Code No. 6762 (1956).³ The legislative intent to underscore the significance of cooperatives precipitated the enactment of the CoC (Aykan, 2007:10; Coşkun, 2023:49; Aydın, 2024:38). The CoC comprehensively addresses various aspects of cooperative entities, including, but not limited to, their definitional essence, processes of formation, organizational structures, oversight mechanisms, both legal and penal accountability of governing bodies, supra-organizational hierarchies, and protocols for dissolution and liquidation (Özmen, 2012:19; Çevik, 1990:179; Üstün *et al.*, 2017:30; Bozgeyik, *et al.*, 2025:5). Comprising 118 provisions, inclusive of transient and supplementary clauses, the CoC has been amended on 28 occasions thus far. Among these legislative revisions, the amendments introduced via Law No. 7339, which came into effect on 26 October 2021, merit specific attention. These amendments, by reconstituting the audit system for cooperatives, introduced a tripartite mechanism for the scrutiny of cooperative operations, signifying a pivotal enhancement in the regulation and oversight of cooperative entities (Poroy, *et al.*, 2017:1749).

2.1.2. *The Turkish Code of Commerce*

The Turkish Code of Commerce (hereinafter: the TCC), promulgated in 2012, marks a significant legislative reform within the Republic of Türkiye, catalysed by its candidature for the European Union membership. This legal instrument, designated as Law No. 6102, represents the third iteration of commercial legislation within the modern jurisprudential framework of Turkish law. The TCC is meticulously structured into six primary divisions, referred to as 'books', which are further delineated by initial and concluding stipulations. Notably, the TCC's segmentation includes a chapter expressly dedicated to commercial enterprises, denoted as "Commercial Companies". This particular chapter is divided into two distinct subsections: one encompassing overarching regulations applicable to all forms of commercial companies, and the other comprising specific legislative provisions pertinent to various categories of commercial companies. Within the ambit of generic regulations applicable to commercial companies, there is a provision on cooperatives (Pinar, 2014:142). Specifically, Article 124/1 of the TCC enumerates cooperatives alongside other commercial company forms, thus acknowledging their eligibility for undergoing structural transformations, such as mergers, segregations, and modifications of company type. The scaffold of general regulations, encapsulated in Articles 124 through 210 of the TCC, extends its applicability to cooperatives, in congruence with other commercial companies. Yet, it is imperative to note that such applicability is contingent upon a non-conflict clause, which stipulates that the general provisions of the TCC are operational insofar as they do not contravene the specialized legislative enactments pertinent to cooperatives, epitomized by the Cooperative Code (CoC). This legal nuance underscores the necessity for harmonizing the TCC's broader commercial regulations with the specific legislative provisions governing cooperatives.

2.2. Establishment, Governance Structures, and Dissolution of Cooperatives

2.2.1. *Establishment of Cooperatives*

Like other forms of legal entities participating in commerce, cooperatives acquire legal personality (standing) through registration in the commercial register, subsequent to the

³ The Former Turkish Code of Commerce, *Official Gazette TR*, 9353/1956

fulfilment of specific foundational formalities. Prior to this registration, preparatory steps are imperative, chiefly among these being the formulation of the cooperative charter. The legitimacy of this charter is contingent upon adherence to the mandated notarization, a criterion satisfied through its execution before, and consequent endorsement by, an authorized representative of the commercial registry office (Poroy, *et al*, 2017:1786). The omission of any mandatory elements within the charter precipitates its substantive invalidity (Eriş, 1998:257; Bilgili, *et al*, 2018:507). Following the successful notarization of the cooperative charter, in consonance with stipulated formal requirements, the acquisition of sanction from the Ministry of Commerce becomes requisite. This authorization is uniformly obligatory across all cooperative forms, without differentiation. The Ministry's review is confined to verifying compliance with compulsory statutory provisions, excluding any assessment of suitability (Deryal, 2013:882; Coşkun, 2023:91; Üstün, *et al*, 2017:58). The consummation of these prerequisites culminates in the registration at the commercial registry, corresponding to the cooperative's disclosed seat, as enunciated in its charter, signifying the cooperative's formal constitution and the concomitant acquisition of legal personality (Tekil, 1994:122; Eriş, 1998:265; Coşkun, 2023:91; Üstün, *et al*, 2017:64). Subsequent to this registration, a publication in the Turkish Commerce Registry Gazette is mandated. Nonetheless, this publication is not required for establishment purposes but has a declarative purpose, publicizing the completed establishment and registry to external parties, thereby differentiating it from the constitutive effect of registration (Yüce, 2023:561; Coşkun, 2023:94).

2.2.2. Structure and Organisation of Cooperatives

Within the legal framework governing cooperatives, it is imperative to recognize the existence of three essential bodies mandated by law. These bodies are constituted as: 1) the General Assembly, serving as the principle decision-making and volitional body of the cooperative; 2) the Board of Directors, which undertakes the management and representation responsibilities of the cooperative; and 3) the Auditors or Audit Board, tasked with conducting internal audits on behalf of the cooperative partners (Poroy, *et al*, 2017:1919; Bilgili, *et al*, 2018:519). The absence of any one of these pivotal bodies precipitates significant detrimental outcomes for the cooperative. Primarily, the absence infringes upon the cooperative's legal capacity for action. Given that cooperatives are recognized as legal entities, the full constitution of these legally obligatory bodies is indispensable for the attainment of legal capacity for action (Tekil, 1994:123, 132). Failing this, a cooperative finds itself stripped of its legal capacity to engage in activities, which is a fundamental operational hindrance. Moreover, deficiency in maintaining the statutory composition of these bodies may serve as a ground for the cooperative's dissolution (Yüce, 2023:586). In judicial contexts, the absence of a mandatory body constitutes a legitimate reason for potential termination of the cooperative. Should the judiciary ascertain that this deficiency has not been remedied within a stipulated period, it reserves the right to decree the dissolution of the cooperative. This framework underlines the critical importance of adherence to the statutory requirements regarding the formation and maintenance of the cooperative's governing bodies, emphasizing their role not only in the operational viability of the cooperative but also in maintaining its legal standing and continuity.

2.2.3. Termination of Cooperatives

The cessation of a cooperative's legal existence may transpire for several reasons, as elucidated within the cooperative's articles of association and mandated by pertinent legal frameworks. These grounds for dissolution encompass, but are not limited to:

1. the materialization of a circumstance delineated in the cooperative's articles of association warranting termination;
2. a resolution adopted by the cooperative's general assembly to dissolve the entity, predicated upon a supermajority vote;
3. an adjudication of bankruptcy pertinent to the cooperative;
4. a judicial decree mandating dissolution in cases where the cooperative is ascertained to have contravened public order or the stipulations enshrined in its articles of association;
5. a failure by the cooperative's general assembly to convene for a successive triennium;
6. an assertion by the Ministry of Trade regarding either the non-fulfilment or impracticality of realizing the cooperative's specified objectives as delineated in its articles of association;
7. incidence of amalgamation or division where the cooperative emerges as the transferee entity;
8. acquisition of the cooperative by a public legal entity, contingent upon a decision by the general assembly (Poroy, *et al.*, 2017:1983; Bilgili, *et al.*, 2018:524; Deryal, 2013:922, 923; Yüce, 2023:586; Aykan, 2007:29; Eriş, 1998:1211).

Subsequent to the occurrence of one or more of these termination grounds, barring the exceptions of merger and division, the cooperative in question shall transition into the phase of liquidation. This liquidation phase entails the systematic collection of receivables, settlement of liabilities, and, should assets remain, their conversion into monetary form. The residuum of this process, denominated as the liquidation surplus, is then disbursed amongst the partners (Eriş, 1998:1250; Deryal, 2013:926). Upon the culmination of the liquidation phase, the appointees responsible for overseeing the liquidation process shall petition for the expunction of the cooperative's registration from the trade registry. Should the trade registry directorate adjudge the petition as compliant with lawful criteria, it will proceed to annul the cooperative's registration, thereby divesting the cooperative of its legal personality. Concurrently, upon deregistration, the cooperative is deemed legally dissolved (Tekil, 1994:153).

3. COOPERATIVES AS SPECIAL TYPES OF COMMERCIAL COMPANIES

3.1. An Analytical Discourse on Doctrinal and Judicial Deliberations

The legal conundrum surrounding the classification of cooperatives within the Turkish legal system has sparked considerable debate amongst scholars and jurists, particularly in the aftermath of the promulgation of the Cooperative Companies Code (CoC) in 1969. This legislative development, which followed the abrogation of specific provisions pertaining to cooperatives in the former TCC, has propelled an intensified doctrinal inquiry into the essence of cooperatives as commercial companies (Tekinalp, 1972:24; Kahyaoğlu, *et al.*, 2017:712; Tekil, 1994:91; Çevik, 1990:80; Coşkun, 2023:35; Aydın, 2024:41). The crux of this scholarly debate hinges on the transformation enacted by the repeal of the cooperative-specific statutes in

the former TCC, subsequent to the enactment of the CoC. This legislative evolution has propelled a significant faction of the legal academia to posit that cooperatives have transcended the traditional commercial company framework, rendering the conventional classification of cooperatives as commercial companies untenable (Kahyaoğlu, *et al.*, 2017:713). This perspective is further buttressed by the argument that the foundational objective of cooperatives, namely the pursuit of mutual aid as opposed to profit maximization, precludes their categorization alongside profit-oriented commercial corporations. Thus, cooperatives are perceived as entities of a distinct nature, characterized by their social orientation and collective integrity. Conversely, despite the legislative migration of cooperative-specific statutes to the CoC, the former TCC's enumeration of cooperatives among other commercial companies has led to divergent interpretations within legal circles (Poroy, *et al.*, 2017:1771; Aydın, 2024:41). This discrepancy raises pivotal questions regarding whether the legislature's inclusion of cooperatives within the commercial company taxonomy was a deliberate decision or merely a product of inadvertence (Pinar, 2014:142). The doctrinal discordance on this issue is mirrored in the jurisprudential landscape, as evidenced by the diverging stances adopted by various chambers of the Court of Cassation. While certain benches have upheld the characterization of cooperatives as commercial companies, thereby subjecting them to the legal regime applicable to merchants, others have diverged by denying cooperatives the traditional attributes of commercial companies, or even deeming them as entities outside the commercial company spectrum altogether.

The contentions surrounding the categorization and legal recognition of various entities under the Turkish Commercial Code (TCC) No. 6102, have sought resolution through its legislative articulations. Notably, Article 124/1 of the TCC delineates the typologies of commercial companies following the doctrine of *numerus clausus*, thereby identifying collective companies, limited partnerships, joint-stock companies, limited liability companies, and cooperatives as constituent commercial companies. The legislative rationale subsequent to the commencement of the Code of Commerce underscored the incorporation of cooperatives within the commercial company paradigm, thereby signalling an end to the pre-existing debates. This assimilation accentuated the legislative intent in the revised TCC, with a pronounced emphasis on cooperatives as commercial companies. Moreover, the legislative framework elaborating on the structural transformations of commercial companies distinctly outlines the conditions and methodologies applicable to such changes, extending these provisions to encompass cooperatives (Yüce, 2023:553). The statute permits the amalgamation of cooperatives with either other cooperatives or capital companies, facilitating their participation as either the acquiring or the acquired entity. In the context of mergers involving collective companies and limited partnerships, cooperatives are expressly permitted to assume the role of the acquiring entity. Notwithstanding these legislative advancements, a *lacuna* persisted in judicial interpretation, as evidenced by disparate rulings emanating from various chambers of the Court of Cassation. This discord sowed seeds of ambiguity and uncertainty regarding the legal standing of cooperatives, culminating in a definitive decision on Unification of Jurisprudence by the Grand General Assembly of the Court of Cassation. In its landmark ruling dated 12 November 2021 (file no. 2020/2 E and decision no. 2021/3 K), it unequivocally affirmed that cooperatives are to be recognized as commercial companies and, consequently, as legal entities of merchants. This judicial affirmation, albeit arriving approximately 9.5 years post-enactment of Article 124/1 of the TCC, casts a spotlight on the nuances of jurisprudential interpretation within the Court of Cassation. It raises pivotal

queries and apprehensions regarding the efficacy of jurisprudential mechanisms in synchronizing legislative intent with judicial elucidation.

3.2. Evaluations and Suggestions in terms of *de lege ferenda*

Upon an analytical examination and proffering recommendations *de lege ferenda*, it emerges unequivocally that cooperatives, despite embodying the quintessence of a commercial company, manifest unique divergences from their commercial counterparts. Delineated expressly within the lexicon of the CoC, this specificity stems from the inherent peculiarities that characterize cooperatives as a distinct genre within the commercial corporate sphere (Demir, 2006:15; Özmen, 2012:13; Aykan, 2007:18). Notably, while traditional commercial companies are categorized into personal and capital companies, cooperatives transcend this conventional dichotomy. They are neither categorized expressly as capital companies nor personal companies but are acknowledged as a *sui generis* category of commercial company (Yazıcı, 2021:22; Poroy, *et al*, 2017:1751). This exclusion from the traditional categorization derives from the singular objective that underpins cooperatives (Deryal, 2013:876; Tekinalp, 1972:14; Tekil, 1994:86; Bozgeyik, *et al*, 2025:5, 6; Özmen, 2012:17; Aykan, 2007:16; Çevik, 1990:131; Aydın, 2024:30; Üstün, *et al*, 2017:14). Analogous to their commercial brethren, cooperatives are instituted with an economic intent. However, the *raison d'être* of cooperatives is not the generation and distribution of profit but rather the attainment of economic advantages through the ethos of mutual aid and solidarity. Such a distinctive economic orientation markedly segregates cooperatives from other commercial companies and, by extension, from non-commercial organizations such as associations and foundations predicated on a moral or non-economic compass (Üstün, *et al*, 2017:13; Bozgeyik, *et al*, 2025: 6).

Within the legal matrices of the TCC and the CoC, cooperatives maintain a distinction as neither capital nor personal companies (Poroy, *et al*, 2017:1753; Tekinalp, 1972:13; Çevik, 1990: 85, 86). This demarcation predicates the formulation of specific provisions tailored explicitly for cooperatives, notwithstanding their partial reflection of characteristics akin to both personal and capital companies contingent upon their operational context. For instance, cooperative partners may, through explicit clauses in the cooperative's charter, undertake unlimited liability reminiscent of personal companies. Conversely, the abandonment of self-governance, akin to capital companies, and the compulsory institution of a board of directors represent a jurisprudential evolution towards formal governance structures within cooperatives. These observations underscore the necessity for a nuanced legislative approach that acknowledges the unique positioning of cooperatives within the commercial legal landscape, thereby necessitating bespoke legal provisions that accommodate their distinct operational ethos while ensuring regulation that aligns with their commercial objectives (Bilgili, *et al*, 2018: 506; Özmen, 2012:17; Demir, 2006:15).

In light of the unequivocal enumeration of cooperatives among commercial companies within the TCC, the debates that started with CoC should come to an end. There is no ambiguity in asserting that cooperatives fall within the ambit of commercial companies; consequentially, they are categorically recognized as juridical persons engaged in commerce. This classification subjects cooperatives to specific legal provisions traditionally applicable to merchants, including the potential for bankruptcy proceedings. These specific legal provisions have a dual-faceted impact, constituting both the detriments and benefits intrinsic to merchant status, contingent upon prevailing circumstances. Moreover, the

objective of cooperatives, which diverges from the profit-making and profit-sharing motives characteristic of traditional commercial enterprises, coupled with their governance by a distinct statutory framework and the preservation of internal audit mechanisms within their regulatory audit systems, does not negate their categorization as commercial companies (Haberal, *et al*, 2020:1542; Ertugay, 2024:441). Therefore, the essence of cooperatives' legal identity remains unaltered as commercial companies. After the enactment of the TCC, it took the Turkish Court of Cassation a protracted period of 9.5 years to confirm this explicit statutory provision in its jurisprudence. This fact merits profound contemplation.

4. CONCLUSION

The inherent disparities between cooperatives and conventional commercial companies are incontrovertible. Nonetheless, these disparities do not preclude the recognition of cooperatives' legal characteristics within the ambit of commercial enterprises and mercantile identities. It is of significance to note that the primary goal of cooperatives deviates from the conventional profit-making and profit-sharing objectives. This deviation categorizes cooperatives as a distinct class of commercial company, embodying neither purely personal nor capitalistic attributes. The pronounced influence of public interest and, consequently, heightened public regulation within the legal framework governing cooperatives demarcates them from traditional commercial companies, thus assigning them a unique legal standing. This unique standing necessitates the application of distinct regulatory measures ranging from audits to mergers, splits, and transformations, diverging from those applicable to conventional commercial enterprises. The ongoing discourse and divergent perspectives concerning the legal characterization of cooperatives, coupled with administrative authorities' scepticism regarding their classification as commercial enterprises and merchants, call for thorough consideration despite the Court of Cassation's decisive stance nearly a decade ago, as expressly highlighted by the legislator in the TCC.

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ZAKONODAVNI OKVIR I KARAKTERISTIKE ZADRUGA U TURSKOM PRAVU

U turskom pravu, zakonodavni okvir koji reguliše zadruga (engl. cooperatives) sadržan je u dva ključna zakonska teksta: Turski zakonik o trgovini (knjiga 2), koji sadrži opšte propise koji regulišu privredna društva, i poseban Zakon o zadrugama čije odredbe isključivo uređuju pravni status zadruga. Zakon o zadrugama podstakao je nove rasprave u pogledu pravnog identiteta zadruga. Centralno pitanje odnosi se na klasifikaciju zadruga: da li ih treba svrstati među trgovačka društva (čime dobijaju svojstva trgovaca), ili pak zadruga odstupaju od tradicionalnog koncepta trgovačkog društva zbog svog posebnog odnosa sa udruženjima i fondacijama, što vodi do novih rasprava o tome da li zadruga treba odrediti kao jedinstveni oblik udruživanja koji se razlikuje od konvencionalnih korporativnih struktura. Ova tematika je bila predmet akademsko-teorijskih rasprava ali i sudskih odluka. Ključno obeležje koje izdvaja zadruga od drugih privrednih društava je prvenstveno svrha njihovog osnivanja. Za razliku od privrednih društava čiji je primarni cilj maksimizacije profita i njegova distribucija članovima društva, primarni cilj zadrugarstva je ostvarivanje zakonskih beneficija pod povoljnijim uslovima, koje su omogućene kroz okvir uzajamne pomoći i solidarnosti. Ova značajna karakteristika pokreće relevantna pitanja o suštinskoj prirodi zadruga i nalaže da se ponovo sagleda njihovo mesto u sistemu trgovinskog prava.

Ključne reči: *tursko pravo, zadruga, tursko kompanijsko pravo, tursko trgovinsko pravo, uporedno kompanijsko pravo, uporedno zadružno pravo.*