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The Binding Force of Cooperative Principles in Portuguese Law: Definition, Implementation, and Jurisprudential Enforcement

Abstract

This article examines the legal and conceptual foundations of cooperative principles, demonstrating that cooperatives are far more than “mere enterprises.” While cooperatives engage in economic activity, their identity is defined by a distinctive normative and ethical framework embodied in the Statement on the Cooperative Identity, adopted by the International Cooperative Alliance (ICA) in 1995. The seven cooperative principles – voluntary and open membership, democratic member control, member economic participation, autonomy and independence, education and training, cooperation among cooperatives, and concern for community – constitute the core of the cooperative model and have been legally incorporated into Portuguese law through Article 3 CC.

Tracing the historical evolution of Portuguese cooperative legislation, from the Law on Cooperative Societies of 1867 to Decree-Law No. 454/80 and its subsequent amendments, the article highlights how the legislator progressively recognized the binding force of cooperative principles, transforming them from moral guidelines into enforceable legal norms.

The theoretical analysis is complemented by the discussion of a landmark judicial decision – Judgment of the Guimarães Court of Appeal, 25 May 2016 (*Case No. 860/13.5TJVNFG1*) – in which the court declared void a statutory provision imposing an excessive admission fee (€150,000), holding it contrary to the principle of voluntary and open membership. This case illustrates the jurisprudential affirmation of the binding nature of cooperative principles, demonstrating that statutory autonomy within cooperatives is limited by their legal and ethical foundations.

Ultimately, the article concludes that compliance with cooperative principles constitutes a *conditio sine qua non* for the lawful operation and legitimacy of cooperatives. These

principles, possessing both ethical and normative force, define the cooperative's social function, ensure its democratic governance, and safeguard its identity within the Portuguese legal system.

Keywords: cooperative principles; cooperative identity; International Cooperative Alliance (ICA); Portuguese Cooperative Code; cooperative law; voluntary and open membership; democratic governance; social function of cooperatives; normative force; legal nature of cooperatives; Guimarães Court of Appeal judgment; Statement on the Cooperative Identity

Article

Cooperatives are more than “mere enterprises.”

This statement may give rise to ambiguity and therefore warrants careful analysis. From a grammatical perspective, the term “enterprise” is a common noun defined as a business or organization engaged in commercial, industrial, or professional activities. While this definition captures an essential dimension of the cooperative model, it does not fully encompass its distinctive nature.

In pursuing their objectives, cooperatives are guided by seven fundamental principles that constitute the foundation and essence of the cooperative model. These principles articulate the genuine meaning and purpose of cooperatives, comprehensively embodying their cooperative identity (Meira, 2018, p. 2).

Formulated by the International Cooperative Alliance (ICA) in Manchester in 1995 and incorporated into Portuguese law through Article 3 of the Cooperative Code,¹ these principles enshrine not only the ethical and democratic commitments of cooperatives but also their social and economic mission within the communities in which they operate.

The current formulation of the cooperative principles stems from the Statement on the Cooperative Identity, in which seven fundamental principles were defined: 1 – Voluntary and Open Membership; 2 – Democratic Member Control; 3 – Member Economic Participation; 4 – Autonomy and

¹ Although the first version of the Portuguese Cooperative Code (“CC”), enacted in 1980, already included a provision referring to the cooperative principles, it was only in 1996, through the first amendment to the CC, that the legislator revised this provision in accordance with the International Cooperative Alliance’s Statement on the Cooperative Identity, thereby establishing the formulation of the principles as they are known today.

Independence; 5 – Education, Training, and Information; 6 – Cooperation among Cooperatives; and 7 – Concern for Community.

In brief, the principle of Voluntary and Open Membership ensures that any individual may become a member of a cooperative without discrimination and that each member retains the freedom to withdraw at any time. The principle of Democratic Member Control guarantees equality in participation, encouraging active involvement in shaping cooperative policies and enshrining, in primary cooperatives, the rule of “one member, one vote” as the ultimate expression of democracy. The principle of Member Economic Participation entails a fair contribution to the cooperative’s capital, its democratic control, and the equitable distribution of results in proportion to each member’s participation in the cooperative’s activities. The principle of Autonomy and Independence underscores the importance of maintaining the cooperative’s self-determination, even when it enters into partnerships with public or private entities. The principle of Education, Training, and Information seeks to equip members, employees, and the broader community with the knowledge and skills necessary to foster the development and sustainability of the cooperative project. Cooperation among Cooperatives encourages collaboration between cooperatives, promoting synergies and strengthening the cooperative movement. Finally, the principle of Concern for Community reflects cooperatives’ commitment to sustainable development and the well-being of the communities in which they operate, reaffirming their social and solidarity-oriented mission (Meira & Ramos, 2018; Namorado, 2018).

In addition to the principles, a universal definition of a cooperative was also established by the Statement on the Cooperative Identity: “A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.” This definition reinforces the initial argument that cooperatives are indeed enterprises, yet endowed with a set of distinctive characteristics that make them unique. Voluntary membership, joint ownership, democratic management, and the pursuit of members’ common aspirations immediately establish a specific model that differentiates cooperatives from other legal forms of organization. However, this definition alone is insufficient to define cooperatives comprehensively.

Referring once again to the Statement on the Cooperative Identity, it is clear that, in addition to defining what a cooperative is, the document also sets out the aforementioned principles, describing them as the guiding

principles through which cooperatives put their values into practice. As Deolinda Meira (2020) observes, “...a cooperative possesses a DNA founded on its own rationality, on structural principles and characteristics, and on normative and ethical references that are entirely consistent with the value of solidarity. Thus, the cooperative fulfills a social function, evidenced by the primacy of the individual and social objectives over capital; by democratic governance by its members; by the alignment of members’ interests with the general interest; by the defense and application of the values of solidarity and responsibility; and by the reinvestment of surplus funds in long-term development goals or in the provision of services of interest to members or of general interest.”²

The origins of these principles date back to 1844, when a group of weavers founded the cooperative that would come to shape modern cooperativism – the Rochdale Society of Equitable Pioneers. It would be a mistake, however, to assume that the principles recognized by the International Cooperative Alliance (ICA) in 1995 are a faithful reproduction of the rules established in nineteenth-century Rochdale. The current formulation of the cooperative principles is the outcome of a long and thoughtful process of evolution, refined through the accumulated knowledge and experience of numerous cooperatives and their members (Namorado, 2018).

These principles are, therefore, inseparable from the definition of a cooperative.

With regard to the Portuguese legal system, the understanding of cooperativism and the legal organization of cooperatives has undergone several transformations throughout history. A brief retrospective reveals that the earliest legislative instruments regulating cooperatives – then referred to as *sociedades cooperativas* (cooperative societies) – namely *Lei das Sociedades Cooperativas, de 2 de julho de 1867* (Law on Cooperative Societies of 2 July of 1867) and *Código Comercial de 1888* (Commercial Code of 1888), overlooked the principles as an essential element of their legal nature.³ These legal texts, particularly the Commercial Code of 1888, assigned to cooperatives a predominantly entrepreneurial character, aligning them with other commercial companies existing at that time.

For more than a century, the prevailing view regarded the cooperative form as an atypical type of commercial company, a perspective that persisted until the enactment of Decree-Law No. 454/80 of 9 October, which

² Translation by the author of this article.

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established the first version of the CC and, consequently, introduced a holistic vision of the cooperative sector.

To address cooperative principles, therefore, is to address cooperative law itself.

As a distinct branch of law, cooperative law represents the particularization of an organizational structure founded upon a unique axiological framework that is intrinsic to its legal qualification. The emergence of cooperative law thus marked a definitive departure – both conceptually and literally – from the profit-oriented commercial companies enshrined in the Commercial Code.

Within this context, the enactment of Decree-Law No. 454/80 of 9 October 1980, for the first time (in the wording of Article 3), codified the cooperative principles in Portuguese law, thereby granting them the legal authority that continues to be recognized today. At that time, the principles were divided into ten paragraphs and were as follows: “a) The number of members and the share capital are variable; b) Admission to or withdrawal from the cooperative constitutes a free and voluntary act; c) The admission or exclusion of members may not be subject to restrictions or discrimination based on ancestry, sex, race, language, nationality, religion, political or ideological beliefs, education, economic situation, or social condition; d) The governing bodies shall be elected by democratic methods, in accordance with the procedure prescribed in the statutes, and subject to the principle of full equality in the rights and duties of all members; e) The voting right in first-degree cooperatives shall be based on the principle of one member, one vote, regardless of the amount of share capital held. However, supplementary legislation applicable to the various cooperative branches may, with respect to multipurpose cooperatives, provide for other forms of assigning voting rights; f) The attribution of voting rights in higher-degree cooperatives shall be determined on a democratic basis, in the form which, having obtained the majority approval of the members, is deemed most appropriate; g) The payment of interest to members of cooperatives shall be limited to their participation in the share capital or in the mandatory deposits established under the statutes, and the payment of interest on investment securities issued by cooperatives shall be determined by the general assembly; h) Surpluses may, if so decided by the general assembly, be distributed proportionally according to the economic transactions carried out by members with the cooperative, or according to the work and services provided by them; i) Cooperatives shall promote cooperative education among their members, workers, and the general public, as well as

the dissemination of cooperative principles and methods, namely through the creation and use of special funds for that purpose; j) In order to better pursue their objectives, cooperatives shall give preference to establishing relations with other cooperatives.”⁴

Beyond their formal recognition, the Portuguese legislator consolidated the relationship between these principles and the definition of a cooperative through the wording of Article 2 of the aforementioned Decree-Law,⁵ which defines cooperatives as “...legal persons, freely established, with variable capital and composition, which, through the cooperation and mutual assistance of their members and in observance of the cooperative principles, aim, on a non-profit basis, to satisfy the economic, social, or cultural needs of those members, and may also, on a complementary basis, carry out transactions with third parties.”⁶ This wording has undergone minor amendments over time. The current version derives from Article 2 of Law No. 119/2015 of 31 August, as amended by Law No. 66/2017 of 9 August, which provides the following definition: “Cooperatives are autonomous legal persons, freely established, with variable capital and composition, which, through the cooperation and mutual assistance of their members, and in observance of the cooperative principles, aim, without profit, to satisfy their members’ economic, social, or cultural needs and aspirations.”⁷ As this definition makes clear, adherence to cooperative principles is mandatory in the pursuit of the cooperative’s social purpose. Such a requirement grants the principles binding force, making them fully enforceable against the cooperative itself, its members, and even third parties.

In light of this framework, it is important to emphasize that cooperative principles should not be understood as mere recommendations or arbitrary “ideological guidelines.” Rather, they define what cooperatives are and distinguish them from other forms of corporate entities.

Under Portuguese law, the binding nature of the cooperative principles in the conduct of a cooperative’s activities is undeniable. Any disregard for these principles constitutes a violation of the cooperative model and may lead to the entity’s involuntary dissolution. This is explicitly provided for in Article 112(1)(h) CC,⁸ which lists as a cause for dissolution: “A final judicial decision determining that the cooperative does not comply with the

⁴ Translation by the author of this article.

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⁶ Translation by the author of this article.

⁷ Translation by the author of this article.

⁸ Law No. 119/2015 of 31 August, as amended by Law No. 66/2017 of 9 August

cooperative principles in its operations.”⁹ Accordingly, the law reinforces the imperative of compliance with these principles, under penalty of judicial dissolution of the entity pursuant to Article 113(6) CC, even without the members’ express will. Therefore, it is accurate to affirm that compliance with these principles constitutes a *conditio sine qua non* for the lawful and proper functioning of a cooperative.

The arguments outlined above are both irrefutable and legally well-founded. It is unequivocal, in light of Portuguese legislation, that the cooperative principles possess binding legal force, operating as concrete normative standards governing the legal organization and functioning of cooperatives. In this regard, it is pertinent to present a judicial decision in the form of an appellate judgment, which adds a jurisprudential dimension to the discussion developed herein.

The decision in question is the Judgment of 25 May 2016, Case No. 860/13.5TJVNF.G1, delivered by the Guimarães Court of Appeal.¹⁰ The case originated from a complaint lodged by a group of employees of an educational cooperative who were prevented from applying for membership due to a statutory requirement that they considered contrary to the provisions of the CC – specifically, the principle of voluntary and open membership enshrined in Article 3 of that legal instrument.¹¹

A central issue in the case concerned the admission fee (*joia de admissão*) required of new members. The admission fee is an ancillary, non-refundable monetary contribution that may be optionally imposed, consisting of a single payment – made either in full or in installments – at the time of a member’s entry. According to Article 90(2) CC, the amount collected from such fees must be allocated to the cooperative’s mandatory reserves, in accordance with the applicable legal conditions.¹²

Furthermore, the CC establishes that the possibility of an admission fee must be expressly stipulated in the cooperative’s statutes, meaning that its imposition falls within the exclusive competence of the general assembly.¹³ However, the determination of this amount cannot be arbitrary or create discriminatory conditions for prospective members. Admission fees must therefore be justified according to two fundamental criteria: (i) proportionality, in relation to the cooperative’s patrimonial dimension – particularly

⁹ Translation by the author of this article.

¹⁰ Ac. TRG, 25.05.2016, Proc. n.º 860/13.5TJVNF.G1, Rel.ª Maria Amália Santos

¹¹ 1.st Principle of Article 3 CC.

¹² Articles 96 and 97 CC.

¹³ Article 38(g) CC.

its share capital – and (ii) necessity, as a means to offset the administrative and operational costs associated with the admission and integration of new members. Thus, the admission fee serves as a non-refundable contribution by members, intended to cover the costs of their admission and, in part, to compensate for the contributions previously made by existing members to the cooperative's common assets (Meira & Ramos, 2018).

The requirements of proportionality and necessity in setting the amount of the admission fee serve precisely to safeguard the cooperative principle of voluntary and open membership, preventing cooperatives from arbitrarily fixing a fee that functions as a deterrent – or, in some cases, as an insurmountable barrier – to entry (Meira & Ramos, 2018).

In the case under consideration, the cooperative (defendant in the proceedings) had exponentially increased the amount of the admission fee in its statutes, without any plausible justification, setting it at the amount of €150.000,00 (one hundred and fifty thousand euros). The establishment of such a disproportionate amount is, undeniably, contrary to the cooperative principle of voluntary and open membership, regardless of whether it was intended to discourage prospective members from applying for admission. The judges' reasoning followed precisely this line of interpretation. The Guimarães Court of Appeal stated in its ruling that:

“I – The statutory provision of the defendant requiring the payment of an admission fee of €150.000,00 for new members of the cooperative, without any objective justification, namely financial necessity, violates Article 3 CC, which enshrines the principle of voluntary and open membership of new cooperators.

II – Moreover, the amount of the fee is disproportionate in relation to the minimum value of the subscribed capital shares of €500,00, which also infringes the principle of equity between existing and new members.

III – This is therefore a statutory provision that violates imperative legal norms, which determines its nullity.”¹⁴

This decision thus reinforces the binding and enforceable nature of the cooperative principles within the Portuguese legal system, illustrating how their violation – particularly of the principle of voluntary and open membership – constitutes not only a breach of cooperative ethics but also an infringement of positive law.

In addition to declaring the statutory provision setting the admission fee void, the court ordered the reinstatement of the previous provision, or

¹⁴ Translation by the author of this article.

alternatively, that the fee be capped at €1,000.00 (one thousand euros). This significantly reduced the amount and restored the ability of prospective members to apply for admission to the cooperative.

Thus, the Judgment of the Guimarães Court of Appeal provides, from a practical standpoint, a clear demonstration of the centrality of cooperative principles in the activities of these entities under Portuguese cooperative law. A violation of these principles constitutes not only a deviation from the cooperative identity but also a legal infraction capable of rendering acts void or even justifying the dissolution of the entity.

The Judgment of the Guimarães Court of Appeal, 25 May 2016 (*Case No. 860/13.5TJVNF.G1*), is paradigmatic in illustrating the normative force of cooperative principles. By declaring void the statutory provision setting the admission fee at €150,000.00, the court recognized that such an amount constituted an unjustified and disproportionate economic barrier, contrary to the principle of voluntary and open membership. In ordering the reinstatement of a reasonable fee, the decision reinforces the understanding that the statutory autonomy of cooperatives is not unlimited and must always conform to the principles and values that define their legal nature.

In summary, cooperatives, as economic organizations with a social orientation, must maintain a balance between economic efficiency and cooperative justice. Adherence to the principles of the International Cooperative Alliance, as incorporated into the CC, is essential to the legitimacy and continued existence of these entities. Accordingly, the jurisprudence examined here represents a significant contribution to the consolidation of Portuguese cooperative law, unequivocally affirming that compliance with cooperative principles is an inalienable requirement of the cooperative's identity and legal validity.

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