

Deusto Estudios Cooperativos

Revista del Instituto de Estudios Cooperativos
de la Facultad de Derecho de la Universidad de Deusto

N.º 23 (2023)

doi: <https://doi.org/10.18543/dec232023>

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doi: <https://doi.org/10.18543/dec.2888>

Submission date: 28 April 2023 • Approval date: 10 December 2023 • E-published: January 2024

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Cooperative Dispute Resolution in Finland

Resolución cooperativa de disputas en Finlandia

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Abstract: Like other organisations, cooperatives encounter internal disputes in their lifecycle. The article examines the mechanisms available for cooperatives to resolve internal conflicts in the context of Finnish legislation and court practice. While the share of cooperatives is significant in Finland’s economy, the legal literature on cooperative dispute resolution is sparse. The article focuses on the Cooperative Act of 2013 dispute resolution provisions. The article traces the historical development of cooperative dispute resolution provisions in Finnish legislation and scrutinises how cooperative bylaws handle dispute resolution. While the 2013 Cooperative Act expanded the use of arbitration for resolving cooperative disputes, there remains a gap in understanding the practical implications due to the shortage of reported cases. The study reveals the emphasis the Cooperative Act puts on resolving cooperative disputes in arbitration and the preference for arbitration by cooperatives with a substantial market share.

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Keywords: cooperatives, legislation, court practice, dispute resolution, arbitration, Finland.

Resumen: Al igual que otras organizaciones, las cooperativas enfrentan disputas internas en su ciclo de vida. El artículo examina los mecanismos disponibles para que las cooperativas resuelvan conflictos internos en el contexto de la legislación y la práctica judicial finlandesas. Si bien la proporción de cooperativas es significativa en la economía de Finlandia, la literatura jurídica sobre la resolución cooperativa de disputas es escasa. El artículo se centra en las disposiciones de resolución de disputas de la Ley de Cooperativas de 2013. El artículo rastrea el desarrollo histórico de las disposiciones cooperativas de resolución de disputas en la legislación finlandesa y analiza cómo los estatutos cooperativos manejan la resolución de disputas. Si bien la Ley de Cooperativas de 2013 amplió el uso del arbitraje para resolver disputas cooperativas, sigue habiendo una brecha en la comprensión de las implicaciones prácticas debido a la escasez de casos reportados. El estudio revela el énfasis que la Ley de Cooperativas pone en la resolución de disputas cooperativas mediante arbitraje y la preferencia por el arbitraje por parte de las cooperativas con una participación sustancial en el mercado.

Palabras clave: cooperativas, legislación, práctica judicial, resolución de disputas, arbitraje, Finlandia.

1. Introduction

Cooperatives, like any other organisational form, throughout their life-cycle face disputes. Conflicts can originate from relations with external parties or internally. The present article focuses on the mechanisms available for cooperatives to resolve internal disputes that may arise between a cooperative and its members, board members, auditors, or any other actors involved in its activity.²

The scope of the article is limited to Finnish regulations and court practice. Even though cooperatives are a noticeable part of the Finnish economy and society,³ and Finnish scholars have been showing growing interest towards cooperatives,⁴ legal literature does not thoroughly discuss cooperative dispute resolution in Finland. This knowledge gap is even more evident when compared with legal scholarship on investor-owned company dispute resolution in Finland, as sections two and three of the present article demonstrate.

The values and principles of the International Cooperative Alliance do not specifically address dispute resolution. However, legal scholarship suggests that the unique nature of cooperative relations requires cooperatives and their members to seek alternative dispute resolution methods because good personal relations between members and cooperatives are essential for their success.⁵ Arbitration specialists also note the unique cooperative nature of dispute resolution in arbitration compared to litigation.⁶ The present article thus looks deeper into the role of arbitration as one of the most popular forms of alternative dispute resolution.

² Hereinafter, the term “cooperative disputes” will be used to refer to internal cooperative disputes.

³ For example, cooperatives hold the average market share of 75% across eight agricultural sectors in Finland. See: ALHO, E.: *Essays on investment behavior in agricultural producer cooperatives*, University of Helsinki, Helsinki, 2019, p. 12.

⁴ See: PÖNKÄ, V.: “Are Cooperative Societies Transforming into Cooperative Companies? Reflections on the Finnish Cooperatives Act”, *European Business Law Review*, vol. 30 issue 1, 2019, pp. 77–100; PÖYHÖNEN, S., *Omistajaoikeudet ja omistaja-arvo osuuskunnissa* [Ownership rights and shareholder value in cooperatives], Talentum, Hämeenlinna, 2011, pp. 37–41; JUSSILA, I., KALMI, P. & TROBERG, E.: *Selvitys osuustoimintatutkimuksesta maailmalla ja Suomessa* [Survey of cooperative research in the world and in Finland], Painorauma Oy, Rauma, 2008, p. 4.

⁵ HENRÿ, H.: *Guidelines for Cooperative Legislation*, 3rd ed., ILO, Geneva, 2012, pp. 16–17; OTTOLENGHI, S.: *Solving Disputes by Arbitration in Cooperative Societies* in CSAKI, C. & KISLEV, Y. (eds.): *Agricultural Cooperatives In Transition*, Routledge, New York 1993, p. 101.

⁶ BORN, G. B.: *International Commercial Arbitration*, 3rd edition, Kluwer Law International, Alphen aan den Rijn, 2020, p. 1620.

Regulations of other countries also provide examples of the role of arbitration in cooperative dispute resolution. The Nigerian Cooperative Societies Act submits to binding arbitration not only cooperative disputes but also commercial disputes between different cooperatives.⁷ Similarly, the Delhi Co-operative Societies Act of 2003 submits the vast majority of cooperative disputes⁸ to the binding arbitration procedure and denies any jurisdiction of national courts over cooperative disputes.⁹ Following Ottolenghi, arbitration is the preferred method of dispute resolution for cooperatives in Israel.¹⁰ The Israeli Cooperative Societies Ordinance and Cooperative Societies Regulations do not provide for compulsory arbitration but require cooperative bylaws to have a dispute resolution provision and name arbitration as an example.¹¹

The article traces the development of cooperative dispute resolution in Finnish legislation over the last century and identifies provisions that require further improvement. It shows the distinctive approach towards alternative dispute resolution of Finnish cooperatives that self-identify as holding a substantial market share in respective markets. It also provides a comprehensive analysis of all the published court practice in Finland on cooperative disputes to show the approaches of the Supreme Court of Finland and lower courts in interpreting the cooperative legislation. The article is structured so that the second section analyses the previous and current Finnish regulations on resolving cooperative disputes, while the third part analyses the published practice of Finnish courts on cooperative disputes.

2. Regulation of cooperative disputes

The present section considers the development of dispute resolution provisions for cooperative disputes in Finnish legislation. It first provides an overview of how the relevant provisions have developed throughout the history of cooperative legislation in Finland. Then it analyses the regulations of the current Cooperative Act. Finally, it provides an overview of how the bylaws of various Finnish cooperatives address dispute resolution.

⁷ Section 49 of the Nigerian Cooperative Societies Act. See also: YEBISI, E. T.: "Resolution of disputes in co-operative societies", *International Journal of Law*, vol. 3 issue 6, 2017, pp. 99-103, p. 100.

⁸ Exception is made to employment-related disputes.

⁹ See chapter VIII of the Delhi Co-operative Societies Act, 2003.

¹⁰ OTTOLENGHI, S.: *Solving Disputes by Arbitration in Cooperative Societies* in CSAKI, C. & KISLEV Y. (eds.): *Agricultural Cooperatives In Transition*, Routledge, New York, 1993.

¹¹ *Ibid*

2.1. *History of regulation in Finland*

The first cooperative act in Finland traces back to 1901. This act was relatively short, consisted of only 36 sections, and expectedly did not contain any regulations on cooperative dispute resolution.

In 1954, a new Cooperative Act replaced the Act of 1901. This act was substantially more detailed¹² and also contained a dispute resolution provision. The last section of the act, section 165, provided that an agreement to submit disputes to arbitration contained in cooperative bylaws has the power of an arbitration agreement. Huttunen highlights the short reach of the provision.¹³ The section limited the scope of the arbitration agreement to disputes between a cooperative, on the one hand, and a cooperative member, a member of the board of directors and some other parties, on the other hand. In practice, it meant that if the dispute resolution provision of the bylaws was very concise and only provided for "arbitration" without specifying any further details, it would only be binding to those parties expressly named in the law. The arbitration clause would also not cover cooperative disputes where the cooperative is not one of the parties. However, suppose a cooperative wanted to refer more disputes to arbitration, it could do so by elaborating all the details and including the additional parties in the dispute resolution clause of the bylaws.

Dispute resolution provisions received further development in the Finnish Cooperative Act of 2001. The act added new rules on jurisdiction over cooperative disputes and, among others, extended the binding force of an arbitration agreement in cooperative bylaws to new parties. The most significant set of changes to the cooperative dispute resolution rules introduced the 2013 Cooperative Act.

2.2. *Finnish Cooperative Act of 2013*

The Finnish Cooperative Act of 2013 presents a new chapter dedicated to cooperative dispute resolution - Chapter 26. Out of the

¹² Pönkä describes it as "one of the most modern and comprehensive cooperative laws in the world" at the time. See: PÖNKÄ, V.: "Are Cooperative Societies Transforming into Cooperative Companies? Reflections on the Finnish Cooperatives Act", *European Business Law Review*, vol. 30 issue 1, 2019, pp. 77-99, p. 82.

¹³ HUTTUNEN, A.: "Osuuskunnan päätöksen moittiminen sääntömääräisessä välimiesmenettelyssä" [Challenging a Cooperative's Decision in Mandatory Bylaw Arbitration Proceedings], *Defensor Legis*, 1969, p. 122.

11 sections of this chapter, only two are dedicated to dispute resolution in courts, while the remaining address resolution of cooperative disputes in arbitration. As seen from the comparison with the dispute resolution provisions of the previous Cooperative Acts, the current act introduces the most extensive set of special dispute resolution provisions while at the same time developing the principles and ideas brought up by the previous legislation. However, as discussed below, many changes introduced to the act were, to varying extents, copied from the 2006 Finnish Act on Limited Liability Companies.¹⁴

The present article leaves aside the special rules on litigation for cooperative disputes and aims to look into alternative dispute resolution mechanisms. In short, the Cooperative Act provides two exceptions from the general rules of court procedure. A) the Act establishes an exception from the general rule of territorial court jurisdiction. The general rule is that a claimant can initiate proceedings at the place where the respondent is domiciled.¹⁵ Following the Act, disputes that concern the application of the Cooperative Act can also be brought to the district court at the place where the cooperative has a registered office. B) The Act established specific categories of cooperative disputes that need to be dealt with urgently by the courts.

The Cooperative Act provides two important rules supporting the use of arbitration for cooperative disputes: 1) it cements the binding nature of an arbitration agreement in cooperative bylaws, and 2) it refers specific categories of cooperative disputes to binding arbitration.

2.2.1. ARBITRATION AGREEMENTS IN COOPERATIVE BYLAWS

1) First, the Act provides that an arbitration agreement placed in cooperative bylaws is binding. The law highlights that such an arbitration agreement applies to disputes between any of the following parties: the cooperative, members, board, supervisory board, members of the board and supervisory board, managing director, auditor, and operational auditor. As mentioned before, the Cooperative Act's drafters primarily copied the dispute resolution provisions from the Limited Liability Companies Act. The only difference is that the Cooperative Act includes a performance auditor as one of the parties to the arbitration agreement. When joining the cooperative, new members become bound by the arbitration clause contained in the bylaws.

¹⁴ <https://www.finlex.fi/fi/laki/ajantasa/2006/20060624>. Unofficial translation available at: https://www.finlex.fi/en/laki/kaannokset/2009/en20091599_20100547.pdf

¹⁵ Finnish Code of Judicial Procedure, Chapter 10, Section 1.

At the same time, this rule does not mention the holders of cooperative shares and holders of investor shares. Under Finnish law, different legal status exists for cooperative members, holders of cooperative shares or investor shares. Such shares, for example, under Chapter 4 Section 3(1) of the Cooperative Act, do not give their holders a right to vote at a cooperative's general meeting. As such, the latter two could be holders of shares but not members of a cooperative. As a result, if the arbitration clause does not explicitly name holders of cooperative shares and holders of investor shares as parties to the arbitration agreement, it might not be binding for them. This is the direct consequence of consent being the foundation of an arbitration agreement.¹⁶ Drafters of cooperative bylaws should include the missing parties in the text of the arbitration clause to exclude the situation where different forums (arbitration and litigation) will have authority over different aspects of a cooperative dispute. Such parallel proceedings create a risk of resulting in conflicting decisions.¹⁷ It is still possible, however, that an arbitral tribunal would consider a non-signatory (holder of investor shares) as a party to the arbitration agreement,¹⁸ thus preventing the spreading of a dispute over multiple forums.

Compared with its predecessors, the 2013 Cooperative Act does not limit the scope of the arbitration clause to only disputes where one of the parties is a cooperative. An arbitration agreement in cooperative bylaws is binding for any combination of disputing parties—for example, a dispute between members of a cooperative and board members. Following the justifications behind the current Cooperative Act, the drafters intentionally included such disputes in the new provisions.¹⁹

This provision aligns with the general rules of arbitration in Finland that consider arbitration clauses in bylaws valid. Section 4 of the Finnish Arbitration Act provides that "Arbitration clauses [in] the bylaws [or] in the articles of association of a limited-liability company or of another company [shall] have the same effect as arbitration agreements."

¹⁶ GAILLARD, E. & SAVAGE, J. (eds): *Fouchard Gaillard Goldman on International Commercial Arbitration*, Kluwer Law International, Alphen aan den Rijn, 1999, pp. 253-254.

¹⁷ EMANUELE, C. F. & MOLFA, M.: *Selected Issues in International Arbitration: The Italian Perspective*, Thomson Reuters, London, 2014, p. 117.

¹⁸ TOWNSEND, J. M.: *Extending an Arbitration Clause to a Non-Signatory Claimant or Non-Signatory Defendant: Does it Make a Difference?* in HANOTIAU, B. & SCHWARTZ, E. (eds): *Multiparty Arbitration*, International Chamber of Commerce, Paris, 2010, pp. 111-118, p. 117.

¹⁹ <https://suomenlaki.almatalent.fi/#/Bill/HE/50d284ce///2022-11-11>

The approach of Finnish law complies with the view accepted in most jurisdictions —arbitration clauses in constitutive documents of an entity are valid and enforceable.²⁰

2.2.2. MANDATORY ARBITRATION IN REDEMPTION DISPUTES

2) Disputes regarding the right of redemption and the price of share redemption in a merger, division, or reorganisation of a cooperative into a joint-stock company (“squeeze out disputes”) need to be resolved in arbitration.²¹ Parties need to refer to arbitration in this case even if the dispute resolution clause of the bylaws is missing or only provides for litigation. In the present case, it is the law and not an arbitration agreement that makes alternative dispute resolution binding for the parties.

Following the Cooperative Act, the holder of the cooperative share has the right to demand redemption in case of a cooperative’s merger, division or reorganisation. However, according to Mähönen and Villa, up to 2021, no redemption procedures in arbitration were based on the Cooperative Act.²²

The arbitration procedure of these disputes generally follows the rules of the Finnish Arbitration Act, however, with exceptions. Most notable are the exceptions in the a) appointment of arbitrators, b) costs of arbitration, and 3) appealing an award. The justifications to the draft text of the Cooperative Act clarify that the section on mandatory arbitration over redemption disputes mainly copies the similar provisions of the Finnish Limited Liability Companies Act.²³

a) Appointment of arbitrators. The Cooperative Act provides that the Redemption Committee of the Finnish Chamber of Commerce selects and appoints arbitrators for the dispute. The Committee also performs a similar function in disputes regarding the redemption of shares in Finnish limited liability companies.²⁴ This rule highlights the exceptional nature of proceedings in cooperative redemption disputes because, in arbitration, it is typically the parties who decide on the procedure for appointing the arbitrators. The autonomy of the parties in

²⁰ BORN, G. B: *International Commercial Arbitration*, 3rd edition, Kluwer Law International, Alphen aan den Rijn, 2020, p. 1620.

²¹ Section 4 of Chapter 26 of the Cooperative Act.

²² MÄHÖNEN, J. & VILLA, S.: *Osuuskunta* [Cooperative], Alma Talent, Helsinki, 2021, p. 396.

²³ <https://suomenlaki.almatalent.fi/#/Bill/HE/50d284ce///2022-11-11>

²⁴ Finnish Limited Liability Companies Act, Chapter 18, section 4.

agreeing on the procedure to be followed in appointing arbitrators is one of the defining characteristics of arbitration.²⁵

b) Costs of arbitration. Section 6 of Chapter 26 of the Cooperative Act provides that the redeemer is responsible for the costs of arbitration unless arbitrators consider it otherwise. In these categories of disputes, the potential dispute is between a cooperative and a member. Thus, it is the cooperative that acts as a redeemer and will be responsible for the costs of arbitration by default. This distribution of costs differs from the Finnish Arbitration Act's rules, which provide that the default rule is that the parties bear the costs of arbitration jointly and severally.²⁶

c) Appeal against the award. Following the Cooperative Act, a party can bring the appeal to the arbitral award within 60 days after the award was made.²⁷ This procedure differs from what the Finnish Arbitration Act establishes for all other disputes resolved in arbitration, which provides that a party may initiate the setting aside procedure for an arbitral award within three months from the date of receiving a copy of the award.²⁸ Setting aside procedure differs from an appeal because it is mainly limited to procedural violations as grounds for recourse against the award.²⁹ On a global scale, the right to bring an appeal to a court against an arbitral award is an exception from accepted practice. However, in some other jurisdictions, the legislation provides a right to appeal an arbitral award out of domestic arbitration proceedings in a court.³⁰

Finally, Section 11 of Chapter 26 of the Cooperative Act requires that the arbitral tribunal "without undue delay" notify the registration authority if the decision concerns a matter important to the trade register. In other respects of the arbitration procedure, the process will follow the Finnish Arbitration Act rules, which apply to arbitration with a seat in Finland.³¹

²⁵ WAINCYMER, J. M.: *Procedure and Evidence in International Arbitration*, Kluwer Law International, 2012, p. 256; BORN, G. B.: *International Commercial Arbitration*, 3rd edition, Kluwer Law International, Alphen aan den Rijn, 2020, p. 1858.

²⁶ Section 46 of the Finnish Arbitration Act.

²⁷ Section 8 of the Finnish Cooperative Act

²⁸ Section 41 of the Finnish Arbitration Act.

²⁹ This approach goes in line with the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards which Finland has ratified in 1962.

³⁰ For example, Singapore, New Zealand, Hong Kong, and Australia. See: THIRGOOD, R.: "Appeals in Arbitration: 'To Be or Not to Be'", *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* (edited by BREKOUKAKIS, S.), vol. 87 issue 3, 2021, pp. 423-440, pp. 434-435.

³¹ Section 1 of the Finnish Arbitration Act.

Except for the differences discussed above,³² cooperative dispute resolution follows the same rules as apply to the other arbitration disputes in Finland.

2.3. *Bylaw regulations on dispute resolution in Finnish cooperatives*

At the same time, cooperatives, in their bylaws, are free to tailor dispute resolution rules to their needs. However, the study of cooperative bylaws suggests that not all cooperatives choose to do so. Following the analysis of selected cooperative bylaws available online,³³ over 90% do not have any dispute resolution provision. In practice, it means that all the cooperative disputes, except those subject to mandatory arbitration, will be resolved within the Finnish court system.

The situation, however, changes drastically when analysing cooperative bylaws of organisations that occupy a substantial portion of their respective markets (over 30%)³⁴. In the 2022 study, out of 134 Finnish cooperatives that took part in the analysis, 57 identified themselves as having a market share of 30% or more.³⁵ When analysing the bylaws of those cooperatives, 85% of them provided for resolving all cooperative disputes in arbitration.³⁶ Less than 10% had no dispute resolution provision in the bylaws. Finally, one cooperative provided for either party to a cooperative dispute to choose between arbitration and litigation.³⁷ As a result, there is a substantial difference between coopera-

³² And a few other features, such as a special two-week period for the notification of an arbitral award.

³³ The search for “cooperative bylaws” (osuuskunnan säännöt) was used in the Google search engine and the first 25 bylaws were analysed.

³⁴ ZHENG, Y.: *Zheng, Yi, A Survey on Finnish Co-Operatives: Business Performance, Challenges, and the Sustainable Mindset*. Available at SSRN: <https://ssrn.com/abstract=4453019> or <http://dx.doi.org/10.2139/ssrn.4453019>.

³⁵ The estimation of the market share is provided by cooperatives themselves in answering a questionnaire.

³⁶ However, a substantial part of those 57 cooperatives are members of Finnish OP-group or S-group of cooperatives and all have very similar bylaws. https://www.vesiosuuskuntasuoni.net/Osuuskunnan_saannot_2011.pdf

³⁷ Se, for example: PÖNKÄ, V.: *Osakeyhtiölain 18 luvun muutostarpeesta* [Need for Amendment of Chapter 18 of the Finnish Companies Act] in VAHTERA, V. & RANTASAARI, K. (eds.): *Yhtiö, velka, velvoite: Juhlajulkaisu Seppo Villa 60 vuotta* [Company, Debt, Obligation: Commemorative Publication for Seppo Villa’s 60th Birthday], Alma Talent, Helsinki, 2021, pp. 395-414; TIMONEN, P.: *Korkein oikeus osakeyhtiölainsäädännön kehittäjänä - kaksi esimerkkiä kahdelta viime vuosikymmeneltä* [The Supreme Court as a Developer of Company Law - Two Examples from the Past Two Decades] in MÄHÖNEN, J. et al.: *Juhlajulkaisu Risto Nuolimaa 1948-2/6-2018* [Commemorative Publication for

tives that self-identify as holding a market share of over 30% and the remaining cooperatives in adopting arbitration as a method of resolution for cooperative disputes.

To sum up, regulations on cooperative disputes have been gradually developing in Finnish legislation. However, the most extensive set of changes was brought by the 2013 Cooperative Act, which was at the same time primarily copied from the Finnish Act on Limited Liability Companies. The positive development of the current act is the inclusion in the arbitration agreement of all disputes between different actors in cooperative governance, not limited to only disputes where the cooperative is one side to the dispute. However, room for improvement remains as the legislation could also include non-member holders of cooperative shares and cooperative investment shares as parties to the agreement. The study also showed that including an arbitration agreement in cooperative bylaws is typical for cooperatives that self-identify as having a 30% or more market share. At the same time, this could not be said with confidence about other Finnish cooperatives.

3. Cooperative disputes in Finnish court practice

There is little legal research on cooperative dispute resolution in Finland, neither in English language publications nor in Finnish language publications. Partly, the reason could be that there are only a few published cases of Finnish courts that either directly resolve cooperative disputes or take part in them through setting aside or recognition and enforcement proceedings for arbitral awards. At the same time, the disputes of limited liability companies in Finland have been studied more thoroughly.³⁸ However, since the provisions of the Cooperative Act on compulsory arbitration in redemption disputes have mainly been copied from the Limited Liability Companies Act, scholarly

Risto Nuolima 1948-2/6-2018], Suomalainen lakimiesyhdistys, Helsinki, 2018; AUTIO, A.-L.: *The Main Problems in Access to Court Regarding the Dispute Resolution of Finnish Companies* in ERVO, L. & NYLUND, A. (eds.): *The Future of Civil Litigation*, Springer International Publishing, Cham, 2014, pp. 213-229. RISKI, L.: *Osakeyhtiöoikeudellisten riitojen ratkaiseminen välimiesmenettelyssä* [Resolving Shareholders' Disputes through Arbitration in Company Law], Helsingin yliopisto, Helsinki, 2004; KUPARINEN, R.: *Välimiesmenettelyn aloittaminen vähemmistöosakkeiden lunastusriidoissa* [Initiating Arbitration in Disputes concerning Redemption of Minority Shares], Helsingin yliopisto, Helsinki, 2008; KIVIMÄKI, U.: *Välimiesmenettely osakeyhtiöoikeudellisissa riidoissa* [Arbitration in Company Law Disputes], Turun yliopisto, Turku, 1989.

³⁸ Finlex.fi

literature on the latter provisions can be used to interpret the meaning of the analogous provisions in the Cooperative Act. The present section aims to rectify this lack of knowledge by comprehensively analysing all the published cases involving cooperative regulations in Finland.

To accomplish this task, the legal databases Finlex³⁹ and Edilex⁴⁰ were used to identify the published decisions of Finnish courts from 01 January 1920 to 12 April 2023. The search resulted in only 18 disputes that mention the Cooperative Act,⁴¹ of which 4 cases were resolved in the Supreme Court of Finland. The most recent Supreme Court case published within these parameters dates to November 2010 — a commercial dispute resolved before the 2013 Cooperatives Act took force.⁴² On top of that, the case does not deal with a cooperative dispute but only mentions the Cooperative Act as an example. Out of the four Supreme Court cases, only one involves cooperatives; other decisions mention the Cooperative Act in minor notes when drawing analogies with, for example, the Limited Liability Companies Act. To compare, the number of Supreme Court cases for the same period that mention the Limited Liability Companies Act is 316.

The search for “cooperative bylaws” in the Supreme Court case law resulted in 1 case. The search for “coop*”⁴³ resulted in 117 cases. However, most cases only mentioned the word “cooperative” and did not deal with cooperative disputes. Out of those 117, only six were cooperative disputes - cases requiring the application of the Cooperative Act or cooperative bylaws. Chart 1 shows the number of published Supreme Court cases for each decade and the distribution of various categories of disputes. This chart only indicates the cases reported by the Supreme Court, not the cases that the court resolved. As a result, the proportion of different categories involving cooperatives in the practice of the Finnish Supreme Court could be different from what one can see in the chart.

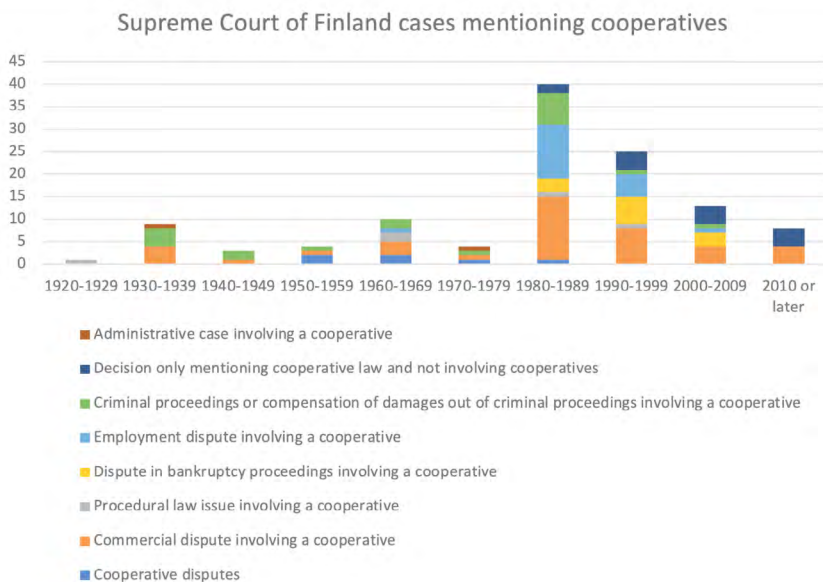
³⁹ Edilex.fi

⁴⁰ The search term used is “osuuskuntalaki”.

⁴¹ [https://www.edilex.fi/kko/ennakkopaatokset/20100081?offset=1&perpage=20&phrase=osuuskuntalaki&sort=relevance&typelds\[\]=32&typelds\[\]=33&typelds\[\]=5&searchKey=484496&quickSearch=true](https://www.edilex.fi/kko/ennakkopaatokset/20100081?offset=1&perpage=20&phrase=osuuskuntalaki&sort=relevance&typelds[]=32&typelds[]=33&typelds[]=5&searchKey=484496&quickSearch=true)

⁴² The search term “osuuskun*” was used.

⁴³ Engagement court boards consisted of non-professional adjudicators (engagement court board members). Engagement courts were abolished during the 1993 judicial reform in Finland. However, layman board members are still part of the Finnish judicial system and take part in decision-making of district courts. Consequently, decisions made in these cases are relevant for the contemporary resolution of cooperative disputes in Finland. See: chapters 2 and 3 of the Finnish Code of Judicial Procedure.



3.1. Supreme Court cases

Out of these cases, a few are described in more detail below because they provide insights into cooperative dispute resolution beyond what is available from the text of the legislation.

One of the few published cases involving cooperatives that the Supreme Court of Finland dealt with is KKO:1996:81. This case is also relevant for the study because it deals with procedural questions in disputes involving cooperatives. In the dispute between a cooperative bank and its customers, a cooperative's supervisory board member acted as a member of an engagement court's board that took part in dispute resolution alongside a judge.⁴⁴ The court of the first instance and the court of appeal found no conflict of interest. However, the Supreme Court quashed the lower courts' decisions and ruled that there was a conflict of interest. Procedural principles require that the adjudicator is independent and impartial. Independence requires an ab-

⁴⁴ BROWN, C.: "The evolution and application of rules concerning independence of the "International Judiciary", *The Law & Practice of International Courts and Tribunals.*, vol. 2 issue 1, 2003, p. 75.

sence of an external source of control or influence that could prevent one from acting autonomously.⁴⁵ The judges highlighted that a cooperative supervisory board member does not have a conflict of interest in a dispute involving the cooperative unless the subject matter of the case falls within the competence of the supervisory board. The Supreme Court found that the duties of the supervisory board members included the responsibility for the matters disputed in the case. However, two out of five Supreme Court judges deciding on the case disagreed and wrote a dissenting opinion that a member of a cooperative supervisory board typically does not even become aware of the type of contracts that was the subject matter of the dispute.

The Supreme Court of Finland, in the case KKO:1996:80, faced the same procedural questions—the independence of court board members (layperson non-professional adjudicators acting alongside a professional judge) who are simultaneously board members of a company that takes part in the dispute. This case, however, did not involve cooperatives. The Supreme Court only used the analogy to compare the position of cooperative board members to the position of board members in a limited liability company to establish the limits to the independence of court board members in a dispute.

The first reported case where the Supreme Court dealt with the procedural independence of cooperative board members is KKO:1988:46.⁴⁶ The question arose because a cooperative supervisory board member was serving as a municipal court board member in a case between a cooperative and one of the cooperative's employees over a termination of the employment contract. The municipal court that heard the case decided against the employee and denied damages for termination of the employment contract. The Court of Appeals later quashed the decision of the court of the first instance. The court found that the member of the cooperative's supervisory board should not have been able to act as a member of the board of the municipal court in a dispute involving a cooperative. The Supreme Court of Finland, however, disagreed. It found that following the cooperative by-laws, the primary function of the supervisory board was to oversee the management of the cooperative's affairs, while deciding on personnel matters was not included in its responsibilities. As a result, a cooperative supervisory board member could perform her duties in the board of the municipal court in a case that handled the employment dispute

⁴⁵ <https://www.edilex.fi/kko/ennakkopaatokset/19880046?>

⁴⁶ <https://www.edilex.fi/kko/ennakkopaatokset/19660072t?>

involving the cooperative. As seen from the cases described above, the Supreme Court has consistently upheld the position that a court board member's participation in the activities of a cooperative supervisory board does not automatically make one dependent. In such disputes, the subject matter of the case needs to be evaluated in comparison with the supervisory board's responsibilities.

A few cases reported by the Supreme Court clarify the use of arbitration in resolving cooperative disputes. In case KKO:1966-II-80, which is only reported in its resolute part, the Supreme Court considered the question of the scope of an arbitration agreement in cooperative bylaws. The dispute resolution clause in cooperative bylaws provided that all disputes between the cooperative and its members should be resolved by arbitration. The question arose if the clause also covers the invalidity of decisions made at cooperative meetings. The Supreme Court decided that such decisions also fall within the scope of the arbitration agreement.

Another case⁴⁷ involved the issue of the arbitrability of disputes relating to the termination of cooperative membership. Following the cooperative bylaws, disputes relating to the termination of cooperative membership should have been resolved in arbitration. Following the termination of membership, a member challenged the authority of arbitrators to decide on matters of termination of cooperative membership. The Supreme Court concluded that following such an arbitration agreement, arbitrators are authorised to decide on the termination of membership. Unless an arbitral award is later set aside, it can be enforced.

Finally, in the case KKO:1929-II-504,⁴⁸ the Supreme Court dealt with the provision of cooperative bylaws that prescribed that the challenge to the cooperative board decision on the cooperative membership termination needs to be brought to the general meeting of a cooperative. This case was resolved under the 1901 Cooperative Act, which contained no dispute resolution provisions. The provision in the bylaws thus established a multi-tiered dispute resolution mechanism - before submitting a dispute to a court, a party needed to go through the procedure at the general meeting. The Supreme Court thus recognised the validity of the multi-tiered clause and denied jurisdiction over the challenge. The court did not clarify if it would have assumed jurisdiction after the member went through the appeal in the general

⁴⁷ <https://www.edilex.fi/kko/ennakkopaatokset/19290504t?>

⁴⁸ KKO:1981-II-100, available at: <https://www.edilex.fi/kko/ennakkopaatokset/19810100t?>

meeting of a cooperative. However, since dispute resolution by the general meeting does not have the qualities of binding arbitration, it can only be considered a non-binding alternative dispute resolution mechanism, authorising a party to resort to a court if unsatisfied with the decision.

In other cases, the Supreme Court dealt with cooperative law questions, but these disputes are of no interest to the present article. The disputes involved the questions of a transfer of cooperative membership from a bankrupt member to another entity,⁴⁹ a claim to force a cooperative to accept a new member,⁵⁰ questioning the validity of a decision made at a cooperative meeting,⁵¹ and challenging the decision of a cooperative meeting to dismiss a member.⁵²

3.2. *Cases of lower courts*

The search for the reported lower courts' cases provides even more modest results. The database Edilex contains 774 decisions that mention the word "cooperat*"⁵³ among all Finnish courts. The biggest category in the published cases relates to questions of tax law. The search was further narrowed to include only matters of "civil law"⁵⁴, "business"⁵⁵ cases, and "procedural law"⁵⁶, thus excluding the categories of tax, labour, environmental, criminal, and public law. The resulting 109 cases were analysed, focusing on cases where Finnish courts dealt with cooperative disputes or the questions of procedural law specific to cooperative dispute resolution. However, among those, no decisions are available after the 2013 Cooperative Act took force.

The questions resolved by the courts under the previous Cooperative Acts included whether a cooperative can tacitly accept membership of a company that used cooperative services,⁵⁷ invalidation of

⁴⁹ KKO:1971-II-3, available at: <https://www.edilex.fi/kko/ennakkopaatokset/19710003t?>

⁵⁰ KKO:1961-II-33, available at: <https://www.edilex.fi/kko/ennakkopaatokset/19610033t?>, and KKO:1958-II-4.

⁵¹ KKO:1958-II-71.

⁵² osuuskun*

⁵³ Siviilioikeus

⁵⁴ Yritystoiminta

⁵⁵ Possessioikeus

⁵⁶ Case 405 of 04.05.2011¹ decided by the Rovaniemi Court of Appeal, available at: <https://tinyurl.com/2ctu2nct>

⁵⁷ Case 314 of 04.04.1997, decided by the Rovaniemi Court of Appeal.

cooperative meeting decisions,⁵⁸ and deciding on the payment of a membership fee.⁵⁹

The Rovaniemi Court of Appeal issued the only notable decision in case 289 of 28.03.2011. The court rendered an arbitration clause between a cooperative and a member invalid. The cooperative bylaws contained an arbitration agreement. At the time, the Cooperative Act of 2001 already recognised the validity of arbitration clauses. By joining the cooperative, the member was also bound by the arbitration clause contained in the bylaws. However, because the cooperative was the only electricity provider in the area, and due to the “costs of the arbitration procedure”, the court decided that the arbitration clause would weaken the cooperative member’s opportunity to access an effective judicial remedy and declared it invalid.

To sum up, the analysis of the practice shows that, unfortunately, there are no relevant cases by the Supreme Court of Finland after the current Cooperative Act was adopted. That does not allow us to trace how the change in regulation has affected cooperative dispute resolution in Finland.

The lack of court enforcement orders or decisions in setting aside cases over arbitral awards rendered in cooperative disputes in Finland allows us to make some assumptions: either there are no such disputes, or the parties are compliant with the awards that arbitrators make in such disputes, refrain from challenging the awards, and perform them voluntarily, thus avoiding the publicity of awards as a resort of recourse to a court. In the latter case, even a confidential award would have become public if it required actions of the registering authority. As for mandatory arbitration proceedings over cooperative redemption disputes, one could assume that such awards are not reported due to the confidentiality of arbitration proceedings. However, that is not the case because the law requires registering all awards out of compulsory arbitration redemption disputes with the Trade Register at the Finnish Patent and Registration Office.⁶⁰ After registration, such an award becomes public. As a result, there could have been unreported confidential cooperative disputes resolved in arbitration, but there were no awards on “squeeze out” disputes in Finland.

⁵⁸ Case 719 of 26.04.1991, the Eastern Finland Court.

⁵⁹ Chapter 26, section 7 of the Cooperative Act.

⁶⁰ Chapter 26, section 7 of the Cooperative Act.

4. Conclusion

To conclude, the 2013 Finnish Cooperative Act takes a few more steps towards resolving cooperative disputes in arbitration. It widens the scope of default arbitration agreements in cooperative bylaws and makes arbitration agreements binding for more potential parties. At the same time, it introduces mandatory arbitration for cooperative share redemption disputes. However, following the publicly available information, this procedure was never used in the first eight years since the Cooperative Act's enactment.

Overall, there is no reported practice of the Supreme Court or lower courts on the 2013 Cooperative Act. However, the interpretation of the law in some of the previous decisions affecting cooperative dispute resolution still applies to the current regulations.

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