

ACTUAL LEGAL ISSUES OF ORGANIC PRODUCTION IN UKRAINE

V.Yu. URKEVUCH, *doctor of legal science, decent,*
National university «Yaroslav the Wise Law Academy of Ukraine»

In the article the analysis of the category «organic production» is made, its features are reviewed and outlined perspectives of legal regulation of the mentioned production in Ukraine.

Agricultural production, organic production, organic agricultural production, ecological safety of agriculture.

One of the measures of the ecological safety of modern agriculture is the introduction of organic production, which would make it possible not only to grow ecologically clean agricultural products, but also would provide a careful use of natural resources. Introduction of organic production for Ukraine shall be the perspective direction of management, as the world market of organic production is growing. Today in Ukraine there are more over than 100 farms that operate within the area of more than 260 hectares on the principles of organic farming and are certified in accordance with the applicable international standards. The volume of the global market of organic products is now estimated at more over than 40 billion dollars per year [2]. Hence, the study of legal issues of organic production management in Ukraine is of great theoretical and practical significance and great importance.

Some issues of legal regulation of relations in the sphere of organic production were investigated in the scientific literature [1, 3, 4, 8, 12], but its concepts should be clarified and legal features should be provided. The abovementioned evidences of novelty and relevance of the theme of this scientific article.

The purpose of this article is the guidance of the «organic production» category definition, clarifying its legal attributes and outlining of

prospects for legal regulation of organic production management relations in Ukraine.

Passing to the main statement it should be noted that the concept of organic production (organic agriculture) is defined as by scientists, so in the special normative documents. In 1999, the Commission called *Codex Alimentarius*, created by the World Health Organization has adopted The Requirements of production, processing, labeling and marketing of organic agricultural products, which contains the following definition: organic production is the integral production management system which considers and improves the condition of agroecosystems, including biological diversity, biological cycles and soil biological nature, requires the use of advanced management techniques, including regional conditions, management systems, adopted to these conditions. The placed goal should be achieved in order of use of where possible biological and mechanical means for performing any function within the system as opposed to use of synthetic materials [1, p. 227]. To the opinion of N. A. Berlach there is a non-compliance in this definition, because agriculture is not limited by production management. Production in this aspect – is the widespread phenomenon that already includes quality management as an integral part. In addition, the researcher continues, this definition is too detailed that includes technological features of organic production, which should be the prerogative of separate Standard or Regulation [1, p. 228].

The Directive No. 834/2007 defines organic agriculture as following: this is the order of agriculture management operation which combines the best environmental products and high level of biodiversity, conservation of natural resources, the application of high standards of animal treatment to the full provision of consumer products manufactured with the use of natural material and machinery. As it is mentioned in the special literature, this definition more correctly defines the phenomenon, however, taking into account the complex nature of the analyzed normative act, it has not included all features that could characterize the organic agriculture. In particular, this should be the prohibition of GMOs use and demand of proper certification. Even if the product would meet all the beneficial attributes (production technology, the requirements on the content, methods of processing, etc.), but would not pass the respective certification, in legal terms organic products could not be called so [1, p. 228].

«Organic agriculture – is a special kind of economic management, which is characterized by concern for all components of the environment in order of introduction restrictions or prohibitions of use of substances or agromethods that negatively affect the environment, spoil or pollute the environment, increase the risks in the food chain» [9]. To the opinion of N. A. Berlach, in this case the organic production is too idealized, as any type of economic activity has a negative impact on the environment, and moreover increases the risks in the food chain [1, p. 228, 229].

There is another definition: organic production – is a system of food production that uses methods based on the principles of use of renewable resources, energy conservation, protection and conservation of soil and water, taking into account requirements of the welfare of livestock, the non-use of artificial fertilizers or synthetic chemicals [1, p. 229]. Also, organic production is proposed to be considered as the method of agricultural production according to what protection of plants is provided by preparations of natural origin with use of organic fertilizers. It is prohibited to use pesticides to control weeds, pests and plant diseases. In the livestock production it is not allowed to use growth stimulators, hormones and antibiotics. For the treatment of animals prevention means and homeopathic medicines are used [5].

In addition to the abovementioned the definition of «organic farming» also exists defined as agricultural practice without use of synthetic pesticides and fertilizers. However, it should be considered more as its characteristic feature but not the definition of the agricultural production management system [11, c. 56]. Research Group of Organic Agriculture U.S. Department of Agriculture (USDA) in 1980 has proposed the following interpretation: «Organic farming – is the system of agricultural production that prohibits or significantly limits the combined use of synthetic fertilizers, pesticides, growth regulators and food additives to animal feeds» [6, p. 257]. As K. B. Sakadzhy has mentioned, such system (to the extent as it is possible) is maximally based on crop rotations, use of vegetation trash, manure and composts, legumes and vegetable fertilizers, organic production wastes, mineral raw materials, mechanical soil cultivation and biological methods of pest control to enhance fertility and improvement of soil structure, providing nutrition of plants and various weeds and pests control [10, p. 160].

Returning to the clarifying the nature of organic production it should be noted that according to the definition of the International Federation of Organic agriculture movement (IFOAM), organic production – is the

agriculture system that contributes to the conservation of environment, socially and economically supports the production of healthy food, fiber, wood, etc. Such farming should avoid use of chemically synthesized fertilizers, pesticides, veterinary drugs, and at the same time actively apply natural organic products, achieving an increase of natural soil fertility, resistance of plants and animals to diseases [6, p. 258].

Also, organic production is proposed to be defined as agroindustrial practice that does not use synthetic chemicals (fertilizers, pesticides, antibiotics, etc.), provides minimum tillage and does not use genetically modified organisms (GMOs) and covers areas such as crop production, horticulture, gardening, livestock, etc. [13, p. 42]. However, according to the opinion of E. N. Tuyevoyi, this definition is simplified and considers only production and economic component of this method of agriculture, reduces organic farming only to methods of production, i.e. to use of certain technological methods. It is no less important the aspect of organic agriculture as a special kind of economic management, which is characterized by introduction of certain restrictions or prohibitions on such actions as affection the environment, deterioration or pollution the environment, creation a risk of poor quality, environmentally hazardous food [12, p. 130].

N. A. Berlach convinces that organic agriculture - is the certified management control system of agriculture that uses energy and resource saving technologies and is based on minimal use of mechanical tillage and synthetic substances excluded from the process of production of genetically modified organisms [1, p. 230].

Also, organic production is stated as a method of agriculture that excludes the use of chemically synthesized fertilizers and plant protection and animal use of genetically modified organisms, etc. Thus all stages of growing, transporting and processing of agricultural products should provide maximum protection of the environment, staff health protection and are subject to mandatory inspection and certification [10, p. 160].

It should be emphasized separately that for the statement of organic farming is important that, as remarked T.V. Kurman, it must be executed on the certified land plots. Only such land plots that meet established standards should be certificated [4, p. 146]. We could agree with P. F. Kulinych who offers to consider as certified the organic farming lands, agricultural lands, which soils for their productive and environmental characteristics meet the defined in the legislation (regulations) criteria [3, p. 416].

Despite the resemblance and some similarity of the definitions of organic production, organic farming, it should be noted that they focus on different aspects of the considered phenomenon. In the event of all their generalization it could be defined the following features of organic production:

- 1) it is the special way (method) of farming, agricultural production;
- 2) it is carried out using certified agricultural land plots;
- 3) it is subject to mandatory certification;
- 4) it is the integral production management system (requires use of advanced management methods, taking into account regional conditions, management systems, adapted to these conditions);
- 5) considers and improves agroecosystems (including, biological diversity, biological cycles and soil biological nature), provides minimum tillage;
- 6) uses energy and resource saving technologies, is characterized by concern of all components of the environment;
- 7) denial at its implementation from usage of artificial fertilizers or synthetic chemicals (plant protection is carried out mostly by natural origin drugs, within the process of growing organic fertilizers, in the livestock farming it is not permitted to use growth stimulators, hormones and antibiotics) and use of genetically modified organisms;
- 8) it is carried out for the full provision of consumer products manufactured with the use of natural material and machinery.

Considering the abovementioned, organic production could be defined as a special way (method) of agriculture (agricultural production) that is carried out on the certified agricultural lands and is subject to mandatory certification, provides use of such system of management production that takes into account and improves the condition of agroecosystem (including biological diversity, biological cycles and soil biological nature), provides minimum tillage and uses energy and resource saving technologies, is characterized by concern of all components of the environment and denial from use of artificial fertilizers or synthetic chemicals and use of genetically modified organisms, which aims to the full provision of consumer products manufactured with the use of natural material and machinery.

Concerning the categories «organic production», «organic farming» and «organic agriculture», the following should be noted. We believe that it should be agreed with the fact that if organic production is the integral production system and production with involvement of agricultural lands, so

the essential part of organic agricultural production is the organic farming. Thus, the term «organic farming» and «organic production» should be related both as general and composite [8, p. 191, 192]. Under such circumstances, we consider that the category «organic production» and «organic agriculture» should be considered as synonymous.

Describing the state of legal regulation of organic production relations in Ukraine, it should be noted that at this time the researched scientific categories (as well as other issues of organic production) are not legally defined. The proposed categories were just mentioned in the Draft Law of Ukraine «On the production and circulation of organic agricultural products and raw materials», «On the Principles of Organic Production», «On organic production», which were considered at different period of times by the the Verkhovna Rada of Ukraine. The development of organic production in Ukraine is just constrained by the lack of specific legislative act on implementation of this method agriculture management. The future law on organic production should regulate the complex of relations that occur on the stage of growing of organic production, provide with the rules for its labeling. It is important to amend this legislative act with provisions concerning certification as agricultural lands that would be used for organic production, so the organic production as well as measures of state support regarding stimulation of organic products production.

It should be noted the latter aspect also, because the problem of investing to organic production is quite severe and requires government support. Thus, according to experts' opinion, conduction of such production requires at least and perhaps more capital investments than conventional agriculture. Primarily, the land certification requires funds for 3-4 years in amount of 3-4 thousand euro. Within this period, as well as in the future, it would be prohibited to use any chemical or synthetic drugs, growth stimulators and others. It is necessary to take into account the inevitable decrease of yield capacity on the lands of organic farms comparing with conventional intensive technologies, considerable costs for organic fertilizers, environmental technologies and greater degree of manual labor. [7] We believe that the transition to organic production should be invested both by the producers and the state as it is also interested in its development.

The conducted research allows making the conclusion that organic production is characterized by certain features, the combination of which made it possible to formulate its definition. The term «organic production» and «organic farming» should be related both as general and composite

and categories «organic production» and «organic agriculture» should be considered as synonymous. The Law of Ukraine «On organic production» should be adopted by provisions that should govern the appropriate range of public relations. Special attention should be given to the investment of organic production that should be mixed and carried out both by the producers, and the state.

The perspective of the further scientific researches in the direction of raised issues could be application of the obtained results of future investigations as well as characteristics of special legal aspects of management and conducting of organic production in Ukraine.

References:

1. Берлач Н.А. Правове визначення органічного сільського господарства в Україні / Н.А. Берлач // Держава і право : зб. наук. праць. Юридичні і політичні науки. – К., 2009. – Вип. 46. – С. 225–230.
2. Верховна Рада України започатковує правову базу органічного землеробства // Земельне право України: теорія і практика. – 2010. – № 10. – С. 77.
3. Кулинич П.Ф. Виробництво органічної та екологічно чистої сільськогосподарської продукції: земельно-правові аспекти / П.Ф. Кулинич // Держава і право : зб. наук. праць. Юридичні і політичні науки. – К., 2009 – Вип. 43. – С. 414–429.
4. Курман Т.В. Принцип екологізації аграрного виробництва в аспекті співвідношення аграрного, земельного та екологічного права / Т.В. Курман, О.М. Туєва // Співвідношення екологічного, природоресурсного, земельного та аграрного права : матер. до круглого столу 9 грудня 2011 р. / за заг. ред. А.П. Гетьмана та М.В. Шульги. – Х. : Нац. ун-т «Юридична академія України імені Ярослава Мудрого», 2011. – С. 141–147.
5. Лукьянова А.Н. Экологическое сельское хозяйство: актуальные проблемы развития / А.Н. Лукьянова // Аналитический вестник Совета Федерации ФС РФ. – 2003. – № 21. – С. 21–25.
6. Милованов Е.В. Органічне сільське господарство: перспективи для України / Е.В. Милованов // Посібник укр. хлібороба. – 2009. – № 8. – С. 257–260.
7. Музыченко О. МинаПК потянуло на органику / О. Музыченко // Комментарии. – 2007. – № 2(19). – 19 січня.
8. Оверковська Т.К. Проблемні питання правового регулювання органічного виробництва у сільському господарстві // Актуальні проблеми юридичної науки : зб. тез міжнар. наук. конф. «Десяті осінні юридичні читання» (м. Хмельницький, 18–19 листопада 2011 р.) : у 4-х част. – Частина друга. – Хмельницький : Вид-во Хмельницького університету управління та права, 2011. – С. 191–193.

9. Офіційний сайт IFOAM.

10. Сакаджи К.Б. Правове регулювання застосування засобів захисту сільськогосподарських рослин : дис. ... канд. юрид. наук / Катерина Борисівна Сакаджи. – Х., 2011. – 202 с.

11. Ситник В.П. Екологічний аспект агропромислового комплексу / В.П. Ситник // Вісн. аграрн. науки. – 2002. – № 9. – С. 55–59.

12. Туєва О.М. Органічне землеробство в контексті екологізації аграрних правовідносин / О.М. Туєва // Аграрне право як галузь права, юридична наука і навчальна дисципліна : матер. Всеукр. круглого столу (25 травня 2012 р.) : зб. наук. пр. / за заг. ред. В.М. Єрмоленка, В.І. Курила, В.І. Семчика. – К. : Видавничий центр НУБіП України, 2012. – С. 129–131.

13. Ярмілка В. ЕМ-технологія – основа органічного землеробства / В. Ярмілка // Агроогляд. – 2005. – №1. – січень. – С. 42–44.