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LEGISLATIVE REGULATION OF THE PRODUCTION OF ORGANIC AGRICULTURAL PRODUCTS IN UKRAINE

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Abstract. The article analyzes the legislation on the production of organic agricultural products in Ukraine. Legal acts regulating the relationships in the sphere of production and circulation of organic agricultural products (raw materials) are analyzed. The main scientific approaches to the further development of national legislation on the production of organic agricultural products are investigated. The article formulates the suggestions on the improvement of legal regulation of organic production in Ukraine as well as on the adaptation of Ukrainian legislation on the production of organic agricultural products (raw materials) to the EU legislation.

Keywords: organic production, agricultural production, organic agricultural production, ecologization of agricultural production, agrarian legislation.

1. INTRODUCTION

An important direction of the development of agricultural production under modern conditions is its ecologization. As agricultural productive activity is inseparably linked to the use of land and other natural resources, the problems of ecologization of agricultural production are becoming particularly relevant.

One of the means of ecologization of agricultural productive activity is the development of the production of organic agricultural products (raw materials). The implementation of the organic production of agricultural products (raw materials) and state support for the producers of such products are a guarantee of quality and safety of agricultural production, and hence, a guarantee of the rights of consumers of agricultural products (raw materials).

At the same time, the development of organic production is possible only with the establishment of a proper regulatory framework for the implementation of such activity by agricultural commodity producers as well as with the definition of clear and stable conditions for state support and regulation of such activity, etc.

The problems of the legal regulation of the production of organic agricultural products (raw materials) were investigated by the representatives of agrarian and legal science including M. M. Bakhurynska, A. P. Hetman, V. M. Yermolenko, T. O. Kovalenko, T. H. Kovalchuk, V. M. Korniienko, S. I. Marchenko, V. O. Melnyk, V. V. Nosik, T. K. Overkovska, A. M. Stativka, V. Yu. Urkevych, M. V. Shulga and other scientists. At the same time, the existence of gaps in the

legislative regulation of organic production and the importance of adaptation of national legislation to the requirements of the EU legislation predetermine the need for further scientific research of the modern legislative provision for the production of organic agricultural products (raw materials).

2. ANALYSIS AND DISCUSSION

The legislation on the production of organic agricultural products (raw materials) includes a system of normative legal acts of various legal force that regulate social relations in the field of production and circulation of organic agricultural products (raw materials) and determine the order and conditions for the implementation of organic production.

The development of the legislation on organic production began with the adoption of the Law of Ukraine "On the Production and Circulation of Organic Agricultural Products and Raw Materials" from September 3, 2013 [21]. In accordance with Part 1 of Article 3 of this Law, "the legislation of Ukraine in the field of organic production consists of the Constitution of Ukraine, the Law of Ukraine "On Environmental Protection", this Law and other laws of Ukraine, international treaties of Ukraine, the consent for necessity of which was given by the Verkhovna Rada of Ukraine, and other legal acts issued in accordance with them" [21].

The Law of Ukraine "On the Production and Circulation of Organic Agricultural Products and Raw Materials" defines the principles of production, storage, transportation, and sale of organic products, the main directions of state policy in the field of production and circulation of organic products (raw materials) and the powers of state authorities in this area; regulates the procedure and conditions for the production of organic products and raw materials; defines the conditions of suitability of the land (soils) for the production of organic products and raw materials and the procedure of confirming the conformity of the production of organic products and raw materials; establishes general requirements for storage, processing, and sale of organic products and raw materials, etc.

In order to ensure the implementation of the legislative provisions, a number of legal acts regulating social relations in the field of production of organic agricultural products (raw materials) were developed and adopted. Among them, the Detailed rules for the production of organic products (raw materials) of plant origin (approved by the Decree of the Cabinet of Ministers of Ukraine on August 31, 2016, No. 587) [17], the Detailed rules for the production of organic products (raw materials) of animal origin (approved by the Decree of the Cabinet of Ministers of Ukraine on March 30, 2016, No. 241) [13], the Detailed rules for the production of organic products (raw materials) of beekeeping (approved by the decree of the Cabinet of Ministers of Ukraine on March 23, 2016, No. 208) [15], the Detailed rules for the production of organic marine algae (approved by the Decree of the Cabinet of Ministers of Ukraine on September 30, 2015, No. 980) [16], and the Detailed rules for the production of organic products (raw materials) of aquaculture (approved by the Decree of the Cabinet of Ministers of Ukraine on September 30, 2015, No. 982) [14] are of particular importance. However, proceeding from the contents of Article 14 of the Law "On the Production and Circulation of Organic Agricultural Products and Raw Materials" [21], the specified legal acts are insufficient, as the legal acts must be adopted that will determine the procedure and conditions for the transportation, storage, and sale of organic products (raw materials); collection of wild plants, forest products, and algae; production during the transitional period; the order of transition to the production of organic products (raw materials); the list, conditions, and allowable volumes of use of inorganic products, substances, and products obtained during the transitional period in the production of organic products (raw materials) for each category of products and substances; the list of substances that are forbidden to use in the production of organic products (raw materials); allowable volumes and the list of inorganic products, substances, and products obtained during the transitional period, which can exceptionally be used in the production of organic products (raw materials); the criteria for assessing the suitability of agricultural land for the production of organic products (raw materials) (Part 3 of Article 14 of the Law).

According to Article 1 of the Law "On the Production and Circulation of Organic Agricultural Products and Raw Materials", the production of organic products (raw materials) is the productive activity of individuals or legal entities (including the cultivation and the processing), in which during such production, the application of chemical fertilisers, pesticides, genetically modified organisms (GMOs), preservatives, etc. is excluded and at all the stages of the production (the cultivation and the processing), methods, principles, and rules prescribed hereby for the obtainment of natural (environmentally safe) products as well as for the preservation and the restoration of natural resources are applied [21]. Also, the law also defines the concepts of "organic products" and "organic raw materials". In particular, organic products are products obtained as a result of the certified production in accordance with requirements of the Law, and organic raw materials are the raw materials obtained as a result of the certified production in accordance with requirements of the Law and intended for the subsequent use for the obtainment of new products [21]. Analyzing the relation between the concepts of "organic agricultural products" and "ecologically safe agricultural products," T. K. Overkovska notes that the latter concept is wider, since "organic production should imply only that obtained as a result of production that has passed the evaluation and confirmation of the conformity of the production of organic products (raw materials) and has received a certificate of conformity" [22, p. 96].

According to V. Yu. Urkevych, organic production can be defined as a special means (method) of agriculture (production of agricultural products), carried out on certified agricultural lands and subject to mandatory certification, that provides for the use of such a production management system that takes into account and improves the condition of the agro-ecosystem (including biological diversity, biological cycles, and biological nature of the soil), minimizes soil cultivation, and uses energy- and resources-saving technologies, is characterized by the care for all the components of the environment as well as by the refusal to use artificial fertilizers or synthetic chemicals and genetically modified organisms, the purpose of which is the most complete satisfaction of consumers with products manufactured with the use of natural substances and mechanisms [24, p. 26]. As the scientist points out, the notions of organic production and organic farming should be correlated as a general and a component, and the categories "organic production" and "organic agriculture" should be considered synonymous [8, p. 70].

At the legislative level, the principles of production, storage, transportation, and sale of organic products (raw materials) are also defined. The general principles of production, storage, transportation, and sale of organic products (raw materials) are the principles of: 1) voluntariness; 2) equality of rights of economic entities that produce, store, transport, and sell organic products (raw materials); 3) rational use of natural resources and the ensurance of their proper use and reproduction; 4) refusal to use genetically modified organisms and products with them; 5) refusal to use chemically synthesized external resources, except for the exceptional cases established by this Law; 6) long-term maintenance of soil fertility; 7) the use of living organisms and methods of mechanical production; 8) the ensurance of a high level of biological diversity; 9) the use of the processes that do not harm the environment, human health, plants, animal health, and welfare in production.

The special principles of production, storage, transportation, and sale of organic products (raw materials) include the principles of: 1) the preservation and restoration of soil fertility, soil stability, and soil biodiversity methods that optimize the biological activity of the soil providing a balanced supply of nutrients for plants; 2) minimizing the use of non-renewable and external resources; 3) processing of waste and related products of plant and animal origin for further use in the production of products of plant and animal origin; 4) taking into account the local or regional ecological status of the territories when choosing the category of production for manufacturing; 5) the protection of animal health by encouraging the natural immune protection of animals and the selection of the breeds; 6) the protection of plants by means of preventive measures, such as the selection of appropriate species and varieties resistant to diseases and pests, crop rotation, mechanical and physical methods, and the protection of natural enemies (pests); 7) consideration of the degree of adaptation to local conditions when selecting breeds of animals as well as consideration of their vitality and resistance to disease; 8) observance of a high level of welfare of animals that meets the needs inherent for each individual species; 9) organic

livestock production from animals that have been grown in organic farms since birth throughout the whole life; 10) feeding animals with organic fodder; 11) the exclusion of the use of artificially derived polyploid animals; 12) the preservation of biological diversity of natural water ecological systems and continuous protection of the water environment and the quality of the surrounding water and the surface ecological systems in the production of fishery products.

V. O. Melnyk defines the legal principles of organic production as a system of "legally defined requirements, which should correspond to the practice of public relations in the production, storage, transportation, and sale of organic products (raw materials)" [10, p. 4]. However, according to scientists, these principles are the criteria for assessing the legality of decisions of public authorities and the subjects of agrarian relations [10, p.14].

As it is fairly noted by the scientists, the norms of the Law of Ukraine "On the Production and Circulation of Organic Agricultural Products and Raw Materials" concerning environmental safety are united into an independent legal institute of ecological safety in the production of organic agricultural products, which has an interdisciplinary character. The standards of the named institute belong both to the right to environmental safety and to agricultural law, since organic production is the result of agricultural activity [8, p. 69]. At the same time, according to A.M. Stativka and V. N. Kornienko, the Law contains a large number of blanket norms referring to other legislation, and requires the use of a large number of technical norms, most of which are not yet developed [23, p. 212].

Currently, there are some disadvantages of the legislative regulation of the registration of producers of organic agricultural products. Such registration is a necessary condition for carrying out activities in the field of organic production, since according to Article 12 of the Law of Ukraine "On the Production and Circulation of Organic Agricultural Products and Raw Materials" [21], an individual or a legal entity, who have passed the assessment of conformity of the production of organic products (raw materials), have received a certificate of conformity and are included in the Register of the Producers of Organic Products (Raw Materials), have the right to produce organic products (raw materials).

The concept of the producers of organic products (raw materials) is proposed by V.O. Melnyk and defines them as "the subjects of agrarian relations possessing a separate property, who are endowed with a special legal personality, carry out economic activity using land as the main means of the production of raw materials and products of plant and animal origin, products of beekeeping or using a fishing object for the production and processing of aquaculture objects with an aim to ensure food safety and subject to the requirements of environmental safety" [10, p. 4]. Today, the scientists substantiate important proposals regarding the need to expand the range of the producers of organic agricultural products (raw materials) and to enable individuals who are not entrepreneurs to also produce organic agricultural products (raw materials), which would be in line with European standards [11, p. 100].

According to the legislation, only natural and legal persons who have passed the assessment of the conformity of production of organic products (raw materials) and received a certificate of conformity may be included in the Register of the Producers of Organic Products (Raw Materials). The procedure of assessing and confirming the conformity of the production of organic products (raw materials), preceding the registration of the producers of organic agricultural products (raw materials), is determined by Article 24 of the Law "On the Production and Circulation of Organic Agricultural Products and Raw Materials" [21]. The assessment of the conformity of the production of organic products (raw materials) is carried out by the conformity assessment body in accordance with the rules of the conformity assessment procedure, which are determined by the central executive authority, which ensures the formation of the state policy in the field of conformity assessment, and with detailed rules of production and circulation of the relevant organic products (raw materials) [5]. The detailed requirements for the assessment of conformity of the production of organic agricultural products (raw materials) are stipulated by the Law of Ukraine dated January 15, 2015 "On Technical Regulations and Conformity Assessment" [20] and by subordinate legal acts.

The procedure of registration of the producers of organic products (raw materials) is determined by Article 13 of the Law "On the Production and Circulation of Organic Agricultural Products and Raw Materials" [21] and by the Resolution of the Cabinet of Ministers of Ukraine dated August 8, 2016 No. 505 "On Approval of the Register of the Producers of Organic Products (Raw Materials)" [18]. At the same time, Article 13 of the Law of Ukraine "On the Production and Circulation of Organic Agricultural Products and Raw Materials" [21] provides for the development and adoption of two subordinate legal acts on registration of the producers of organic products (raw materials), one of which has not yet been adopted.

According to the requirements of the legislation, the responsibility for maintaining the Register of the Producers of Organic Products (Raw Materials) is now assigned to the State Service of Ukraine for Food Safety and Consumer Protection (State Committee for Consumer Safety). Thus, according to Clause 2, Part 1, Article 9 of the Law "On the Production and Circulation of Organic Agricultural Products and Raw Materials" [21], the maintenance of the Register of the Producers of Organic Products (Raw Materials) and ensuring of the publication of official data on persons engaged in the production and sale of organic products (raw materials) belong to the powers of the central executive authority, which implements state policy in the field of safety and individual indicators of quality food products in the field of the production and circulation of organic products (raw materials). These powers are provided for in the Regulation on the State Service of Ukraine for Food Safety and Consumer Protection, approved by the Resolution of the Cabinet of Ministers of September 2, 2015 No. 667 "On Approval of the Regulation on the State Service of Ukraine for Food Safety and Consumer Protection" (sub-paragraph 124 paragraph 4 of the Regulation) [19].

In accordance with Part 2 of Article 13 of the Law "On the Production and Circulation of Organic Agricultural Products and Raw Materials" [21], the central executive body, which ensures the formation and implementation of the state agricultural policy, should establish and approve the Regulation on the Register of the Producers of Organic Products (Raw Materials). V. Yu. Urkevych correctly points out that the lack of subordinate acts on the issues of keeping the Register of the Producers of Organic Products (Raw Materials) "virtually eliminates the possibility of organic production in the territory of Ukraine. Article 4, paragraph 4 of the Law stipulates that persons who do not belong to the Register of the Producers of Organic Products (Raw Materials) have no right to carry out the production of organic products and / or raw materials" [25, p. 32].

To date, the draft Regulation on the Register of the Producers of Organic Products (Raw Materials) has been developed and promulgated by the Ministry of Agrarian Policy and Food of Ukraine [4]. According to the Explanatory note to the draft Regulations, the adoption of the corresponding order by the Ministry will enable "to register the business entities that produce and sell agricultural products (raw materials) with the logo "organic," which will allow for the legislative regulation of the process of identification of the producers of organic agricultural products (raw materials) and to accelerate the filling of the domestic market with high-quality food products" [6]. The legislative provision stipulated in Part 3 of Article 13 of the Law "On the Production and Circulation of Organic Agricultural Products and Raw Materials" [21] concerning openness and accessibility of the Register of the Producers of Organic Products (Raw Materials) has not yet been implemented. After all, the Register has not been disclosed on the official website of the central executive body that implements the state policy in the field of food safety in accordance with the requirements of the legislation.

According to the scientists, the creation and publication of the Register of the Producers of Organic Products is long-awaited in Ukrainian society, and its functioning will ensure the transparency and trust of consumers in organic products as well as will guarantee the identification of its producers [11, p. 103]. Therefore, the urgent approval of the Regulation on the Register of the Producers of Organic Products (Raw Materials) will contribute to solving these problems.

The representatives of agrarian and legal science substantiate other important proposals for improving the legislative regulation of organic production. As M. M. Bakhurynska notes, "to date, the Law has not been fully harmonized with the Council of the European Union (EU) Regulation 834/2007 from June 28, 2007 "On Organic Production and Labeling of Organic Products and On the Repealing of"

the Regulation (EEC) No 2092/91", in particular as part of the control system for the production and circulation of organic products" [1, p. 25; 2, p. 128]. Therefore, one of the areas of the adaptation of national legislation to EU legislation is, in the scholars' opinion, the construction of an effective control system that will not only meet EU regulatory requirements but will also be protected from corruption risks inherent in Ukraine [2, p. 128].

According to V. Yu. Urkevych, "now it is time for the adoption of the corresponding sub-legislative documents, which must create mechanisms for the implementation of the established legal provisions, in particular, the Procedure for assessing the suitability of land (soils) for the production of organic products (raw materials)" [8, p. 70; 25, p. 33]. Also, there are no technical regulations for the production of certain types of organic agricultural products and raw materials, and no typical plan for the transition to organic production, as outlined in the Law [8, p.70], has been developed.

Agricultural and legal science has also made suggestions on the necessity of adopting a normative legal act on the equivalence of Ukrainian standards with international standards in order to introduce a unified approach to the labeling of organic products, which will help to avoid divergences in the industry in the European Union and in Ukraine [10, p. 17].

Current and important is also the proposal of O. V. Hafurova concerning the necessity "of providing measures of state financial support for the production of organic products as well as of providing priority access to it for the producers of such products (especially to farmers and private farms) at the legislative level [7, p. 39]. In the opinion of S. I. Marchenko, the system of measures for state support to the producers of organic agricultural products should cover not only financial support, but also other types of state support (in particular, measures of informational and consultative nature) [9, p. 166].

Some problems of the current legislative regulation of organic production in Ukraine should be resolved with the adoption of the new Law "On Basic Principles and Requirements for Organic Production, Circulation, and Labeling of Organic Products" [3], the draft of which was adopted by the Verkhovna Rada of Ukraine on April 19, 2018 in the first reading [12]. As it is stated in the Explanatory Memorandum to the draft law, its purpose is to improve the principles of legal regulation of organic production, circulation, and labeling of organic products as well as to harmonize Ukrainian legislation with the legislation of the European Union in this area [5]. The bill No. 5448-d "On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products", in particular, provides for the annual certification of organic production to confirm compliance with the requirements of the legislation in the field of organic production, declaration of volumes of organic products that are put into circulation, and harmonization of the labeling of organic products with the certification body.

3. CONCLUSIONS

Thus, the legislation on the production of organic agricultural products (raw materials) includes a system of normative legal acts of various legal force governing the social relations in the sphere of production and circulation of organic agricultural products (raw materials). The Law of Ukraine "On the Production and Circulation of Organic Agricultural Products and Raw Materials" [21] from September 3, 2013, is of paramount importance.

An important direction in the development of national legislation on organic production is the development and adoption of subordinate legal acts that will determine the mechanism for the implementation of legislative provisions. There is a need to implement the legislative provisions for the development and approval of the Regulation on the Register of the Producers of Organic Products (Raw Materials) as well as compliance with the requirements for openness and accessibility of the Register of the Producers of Organic Products (Raw Materials). One of the major vectors for developing legislation on the production of organic agricultural products and raw materials is its harmonization with the legislation of the European Union and the implementation of state support measures for the producers of organic agricultural products (raw materials).

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Багай Надія. Законодавче регулювання виробництва органічної сільськогосподарської продукції в Україні. *Журнал Прикарпатського університету імені Василя Стефаника*, **5** (2) (2018), 83–90.

У статті здійснено аналіз законодавства про виробництво органічної сільськогосподарської продукції та сировини в Україні. Проаналізовано нормативно-правові акти, що регулюють відносини у сфері виробництва та обігу органічної сільськогосподарської продукції (сировини). Досліджено основні наукові підходи щодо подальшого розвитку національного законодавства про виробництво органічної сільськогосподарської продукції. Сформульовано пропозиції щодо вдосконалення законодавчого регулювання органічного виробництва в Україні та адаптації українського законодавства про виробництво органічної сільськогосподарської продукції (сировини) до законодавства ЄС.

Ключові слова: органічне виробництво, сільськогосподарська продукція, органічна сільськогосподарська продукція, екологізація сільськогосподарського виробництва, аграрне законодавство.