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Subjects of legal relations in the field of organic agricultural production: General characteristics

Tamara S. Novak

PhD in Law, Associate Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

Victoriia O. Melnyk*

PhD in Law, Assistant Professor
Bila Tserkva National University
09117, 8/1 Soborna Sq., Bila Tserkva, Ukraine

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The article is devoted to the definition of the concept and types of subjects of legal relations in the field of organic agricultural production based on the analysis of doctrinal approaches and provisions of national and international legislation. Applying the “from the general to the specific” approach, the author examines the concepts of “subjects of legal relations”, “subjects of agrarian legal relations”, and “subjects of legal relations in the field of organic agricultural production”. It is concluded that the concept of “agricultural producer” is generalized and covers all producers of such products, regardless of the object of production and other characteristics of this entity and the production process. The author formulates the concept of “producer of organic products (raw materials)” as a subject of agrarian legal relations which independently owns and disposes of separate property, in the property

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*Corresponding author

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complex of which the main means of production is a natural object – agricultural land used by it for the production of organic products, and processing of raw materials of plant and animal origin, or a fishery facility for the production and processing of aquaculture facilities to ensure food security, subject to environmental safety requirements. The author identifies the basic constitutive features of organic producers (raw materials): the availability of a certificate of conformity and inclusion in the registers in accordance with the law. It is substantiated that the main subjects of legal relations in the field of organic agricultural production are individuals and legal entities engaged in the production and/or circulation of products in accordance with the requirements of legislation in the field of organic production, circulation and labelling of organic products. The auxiliary subjects of legal relations in the area under study are certification bodies, public authorities vested with the authority to regulate and control such activities, as well as processing, procurement, marketing, supply, service and other agricultural business entities, and the public

Keywords: subject, legal relations, organic agricultural production, agricultural enterprise, agricultural producer, agricultural products, agricultural products, operator, certification body, organic products

Introduction

Organic agricultural production, being a promising area of activity in the field of agriculture, is gaining more and more popularity in our country. In 2020 alone, the number of organic production operators in Ukraine increased by 17% (from 617 to 722) compared to 2019, the number of organic processors increased by 33%, and the number of producers who already have a labelled organic product on offer to the end consumer increased by 7% [1]. For an effective organic business, one of the basic requirements is clear legal regulation of the relevant relations. In turn, legislative provisions should be based on scientific substantiation, which emphasizes the relevance of theoretical research in this area in general, and such a basic category as subjects of legal relations in

the field of organic agricultural production in particular.

The problem of determining the subjective composition of agrarian legal relations has been repeatedly the subject of scientific works by scholars, including: O.V. Gafurova [2], V.M. Yermolenko, V.P. Zhushman, O.O. Pogribnyi & V.Yu. Yanchuk *et al.* As for the concept and list of subjects of legal relations in the field of organic agricultural production, this issue remains poorly understood in legal doctrine.

The purpose of the article is to define the concept and types of subjects of legal relations in the field of organic agricultural production based on the analysis of doctrinal approaches and provisions of national and international legislation.

Results and Discussion

To begin with, the subjects of legal relations in the field of organic agricultural production are one of the types of subjects of agrarian legal relations, and they, in turn, are included in the generalized category of subjects of legal relations.

The theory of law has formed a generally accepted approach, according to which the subjects of legal relations are recognized as legally capable persons in public life who are holders of legal rights and obligations; individual or collective subjects of law who use their legal personality in specific legal relations, acting as implementers of subjective legal rights and obligations, powers and legal liability [4].

When this general definition is applied to the subjects of legal relations in a particular branch of law, it is supplemented by features that reflect the specifics of the branch. In our case, it is agrarian law.

The subjects of agrarian legal relations are individuals and legal entities endowed with rights and obligations in the field of production, processing, and sale of agricultural products, as well as in their production, technical and social security. The composition of subjects of agrarian legal relations is not static, it changes as a result of changes in the social relations regulated by agrarian law. In addition, there are specific subjects inherent in agrarian legal relations as an independent branch of law. For example, V.Y. Urkevych [5] identifies among them persons who run private farms, agricultural cooperatives, and structural subdivisions of agricultural enterprises.

The key subject in agrarian legal relations is an agricultural enterprise, which is

defined as: “a legal entity whose main activity is the cultivation and processing of its own agricultural products” [6]. It can exist in various forms – agricultural company, cooperative, state, and municipal agricultural enterprises and other business entities based on private property. It should also be noted that joint ventures with foreign capital play a key role in the development of domestic agricultural production.

The classification of agricultural producers can also be conducted by the type of production object: food, raw materials, plant and animal food, fisheries, beekeeping, etc. Thus, L.O. Sviatchenko [7] emphasized the special status of subjects of legal relations in the field of fisheries. The subjects of beekeeping are defined in Articles 4, 5 of the Law of Ukraine “On Beekeeping”. Unions, associations, and other associations whose activities are related to beekeeping, according to Part 2 of Article 4 of the Law of Ukraine “On Beekeeping”, also belong to beekeeping entities.

The definition of an agricultural producer is also specific. Doctrinally, this concept is defined as “an individual or legal entity engaged in the production of marketable agricultural products, processing of own agricultural products and their sale” (Great Ukrainian Legal Encyclopedia, 2019: 596). Instead, the definition of an agricultural commodity producer provided in clause 14.1.235 of the Tax Code of Ukraine is limited by the organizational and legal form to legal entities and additionally mentions fishery activities.

Given the frequent changes in national legislation, characteristics of agricultural

activities and subjects of agricultural legal relations, the definition given in the Dictionary of Agricultural Law can be considered a classic, which states that: “an agricultural producer is a legal entity of any organizational and legal form of management and its separate subdivisions; an individual (individual entrepreneur or household) engaged in agricultural activities provided for in the Classifier of Economic Activities, who owns, uses or disposes of agricultural land or livestock and poultry” [6].

The concept of “subjects of agrarian legal relations” also covers those entities that are not directly involved in agricultural production, but the subject of their activities is related to it. These are various service agricultural business entities, without which effective agricultural production is impossible, such as processing, procurement, marketing, supply, service, and other enterprises, as well as peasants’ unions [8].

Given the above, it can be concluded that the concept of “agricultural producer” is generalized and covers all producers of such products, regardless of the object of production and other characteristics of this entity and the production process.

Given that the object of legal relations regarding the production of organic products (raw materials) is also a food product, attention should also be paid to the concept of “food producer”, which is based on an understanding of the content of the function of the subject of agrarian law and does not depend on its organizational and legal form. Entities engaged in the production and/or circulation of food products in Ukraine are defined in the Law of Ukraine “On Basic Principles and Requirements for Food Safety

and Quality” of 23.12.1997 No. 771/97-BP as food market operators. Based on the analysis of the definition of this concept in Article 1 of the said law, it can be concluded that the concept of “food producer” correlates with the more general concept of “food market operator” as a stage of circulation and sale as part of the overall process of organic production (raw materials).

According to the relevant remark of M. Krupka [9]: “the subjects of agrarian legal relations are individuals and legal entities endowed with civil legal capacity and legal capacity in the field of production, processing and sale of agricultural products, service, financial, social and other support of agricultural producers”.

Given the above, we support the following definition of the subjects of agrarian legal relations: “individuals and legal entities with rights and obligations in the field of agricultural production, processing and sale: a) agricultural producers with agrarian legal personality (legal entities: farms, agricultural cooperatives, agricultural business associations, private (private-rental), state and municipal agricultural enterprises, their associations); Individuals: private entrepreneurs, members and employees of agricultural enterprises, peasants; private farms; b) agroservice enterprises (supply, marketing, processing, service, etc.); c) state and local government bodies, Agrarian Exchange, Agrarian Fund, banking institutions, etc.” [6].

In order to obtain the status of a producer of organic products (raw materials), the relevant business entity must undergo a certification procedure, i.e., verification of compliance with organic production

standards. The procedure for certification of organic production and/or circulation of organic products is approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1032 dated 21.10.2020.

At the same time, in order to ensure the effective development of the organic market in a market economy, each of the market participants must have a certain mandatory set of attributes – knowledge, qualifications, and there must be an incentive to produce organic products (raw materials). Additionally, it is worth mentioning Article 4 of the Law of Ukraine “On Basic Principles and Requirements for Food Safety and Quality” regarding the need to ensure food safety and quality in order to protect human life and health from harmful factors that may be present in food. T.O. Chaika [10] appropriately emphasized that: “...if the mandatory set of attributes of organic market participants is not complete or not fully completed, it is necessary to know the reasons for this phenomenon and be able to eliminate them. In addition, in the process of interaction between the main participants of the organic market, any mutual claims, problems, unsatisfied expectations that can and should be resolved in a timely manner necessarily arise” [10].

In general, summarizing the above and taking into account the peculiarities of organic products (raw materials) production, the following definition can be given: subjects of legal relations in relation to the production of organic products (raw materials) are producers of organic products (raw materials) who own separate property, have special legal capacity and legal capacity (legal personality), carry out economic activities using

land as the main means of production to provide the population of Ukraine and other states with the necessary food, cheese, and other products.

In a market economy, these entities may be based on any form of ownership and independently choose their organizational and legal form in accordance with the Commercial Code of Ukraine and the Civil Code of Ukraine, etc.

Based on the provisions of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products” No. 2496-VIII dated 10.07.2018, a producer of organic products (raw materials) is included in the broader concept of “operator”. According to Art. 1 of the said Law, this is a legal entity, or an individual entrepreneur engaged in the production and/or circulation of products in accordance with the requirements of the legislation in the field of organic production, circulation and labelling of organic products. It should be noted that at the international level: in Council Regulation (EC) No. 834/2007 of 28.06.2007 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2092/91, the definition of “operator” is narrower, as it includes natural or legal persons responsible for ensuring compliance with the requirements of this Regulation in the process of organic production that they manage.

Regarding the constitutive features of organic producers (raw materials), one of them is the inclusion of the State Register of Operators engaged in the production of products in accordance with the requirements of the legislation in the field of organic production,

circulation and labelling of organic products (the Register of Operators), which is defined in Article 1 of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products”. The procedure for maintaining the Register of Operators is approved by the Resolution of the Cabinet of Ministers of Ukraine No. 87 dated February 12, 2020.

It should also be noted that food production and/or circulation facilities that do not require an operational permit are subject to state registration pursuant to Part 1 of Article 25 of the Law of Ukraine “On Basic Principles and Requirements for Food Safety and Quality”. The procedure for state registration of capacities, maintenance of the state register of capacities of market operators and provision of information from it to the interested parties is approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine No. 39 dated 10.02.2016.

Additionally, the above-mentioned entities are subject to registration with the central executive body that implements the state policy in the field of plant quarantine, if they: produce seed and planting material; store and process grain, etc. (Article 27 of the Law of Ukraine “On Plant Quarantine” of 30.06.1993 No. 3348-XII). In general, the above-mentioned legal relations regarding the registration of organic producers are external agricultural legal relations, which are carried out with the participation of producers of these products and state authorities represented by their representatives.

The circle of subjects of legal relations in the field of organic agricultural production also includes public persons, among whom it

is necessary to distinguish certification bodies, which are key public bodies in legal relations regarding the certification of organic products (raw materials).

According to Art. 1 of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products”, a certification body may be an enterprise, institution, organization or their separate subdivision that has the right to certify organic production and/or circulation of organic products and is included in the State Register of Certification Bodies in the Field of Organic Production and Circulation of Organic Products. The procedure for maintaining this register was approved by the Resolution of the Cabinet of Ministers of Ukraine No. 87 dated February 12, 2020.

We believe that moving away from the state’s monopoly in determining the certification body and establishing requirements for such entities and defining their functions at the level of law (Article 28 of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products”) is an extremely positive step that meets international standards for conducting business in the field of organic agricultural production.

It is also true that one of the conditions for obtaining the status of a certification body is that the accreditation body must be accredited in the field of organic production and/or circulation of products in one or more of its sectors in accordance with the Law of Ukraine “On Accreditation of Conformity Assessment Bodies” of 17.05.2001 No. 2407-III.

The subjects of legal relations regarding the production of organic products (raw

materials) may also include the public, which has the right to participate in decision-making that may affect the environment, as well as the right to access environmental information [11]. This stems from the essence and role of the organic production method as defined by Council Regulation (EC) No. 834/2007: "Organic production is an integral system of management and production of foodstuffs that combines best practices in terms of environmental protection, biodiversity, conservation of natural resources, application of high standards of proper animal welfare and a production method that meets certain requirements for products made using substances and processes of natural origin." As emphasized by O. Gafurova [2], organic agricultural production is aimed not only at producing food in conditions as close to natural as possible, but also at humane treatment of animals, economical use of natural resources, and environmental protection. In other words, organic production, on the one hand, meets the needs of the specific market for organic products, and on the other hand, contributes to environmental protection, proper animal husbandry, and rural development.

The public participates in the implementation of public environmental control through the activities of, inter alia, public environmental inspectors, in accordance with the provisions of the Law of Ukraine "On Environmental Protection" of 25.06.1991 No. 1264-XII and the Regulation on Public

Environmental Inspectors approved by the Order of the Ministry of Ecology and Natural Resources of Ukraine No. 88 of 27.02.2002.

Conclusions

Summarizing the above, it can be stated that the main subjects of legal relations in the field of organic agricultural production are individuals and legal entities engaged in the production and/or circulation of products in accordance with the requirements of the legislation in the field of organic production, circulation, and labelling of organic products. Auxiliary subjects of legal relations in the area under study are public authorities vested with the authority to regulate and control such activities, as well as processing, procurement, marketing, supply, service and other agricultural business entities, and the public.

A producer of organic products (raw materials) can be defined as follows: it is a subject of agrarian legal relations that independently owns and disposes of separate property, in the property complex of which the main means of production is a natural object – agricultural land, which is used by it for the production of organic products, as well as processing of raw materials of plant and animal origin, or a fishery facility for the production and processing of aquaculture facilities to ensure food security, subject to compliance with environmental safety requirements, has received a certificate of conformity and is included in the registers in accordance with the law.

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Суб'єкти правовідносин у сфері органічного сільськогосподарського виробництва: загальна характеристика

Тамара Сергіївна Новак

Кандидат юридичних наук, доцент
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Вікторія Олександрівна Мельник

Кандидат юридичних наук, асистент
Білоцерківський національний аграрний університет
09117, Соборна площа, 8/1, м. Біла Церква, Україна

Анотація

Стаття присвячена визначенню поняття та видів суб'єктів правовідносин у сфері органічного сільськогосподарського виробництва на основі аналізу доктринальних підходів та положень вітчизняного і міжнародного законодавства. Застосовуючи підхід «від загального до конкретного» досліджено поняття «суб'єкти правовідносин», «суб'єкти аграрних правовідносин», «суб'єкти правовідносин у сфері органічного

сільськогосподарського виробництва». Зроблено висновок, що поняття «виробник сільськогосподарської продукції» є узагальненим та охоплює всіх виробників такої продукції, незалежно від об'єкту виробництва та інших характеристик цього суб'єкту та процесу виробництва. Сформульовано поняття «виробник органічної продукції (сировини)» – це суб'єкт аграрних правовідносин, що самостійно володіє і розпоряджається відособленим майном, у майновому комплексі якого основним засобом виробництва є природний об'єкт – земля сільськогосподарського призначення, що використовується ним для виробництва органічної продукції, а також переробки сировини рослинного і тваринного походження, або ж рибогосподарський об'єкт для виробництва та переробки об'єктів аквакультури з метою забезпечення продовольчої безпеки за умови дотримання вимог щодо екологічної безпеки. Визначено базові конститутивні ознаки виробників органічної продукції (сировини): наявність сертифікату відповідності та включення до реєстрів згідно законодавства. Обґрунтовано, що основними суб'єктами правовідносин у сфері органічного сільськогосподарського виробництва є фізичні та юридичні особи, що здійснюють виробництво та/або обіг продукції відповідно до вимог законодавства у сфері органічного виробництва, обігу та маркування органічної продукції. Допоміжними суб'єктами правовідносин в досліджуваній сфері є органи сертифікації, органи державної влади, наділені повноваженнями у сфері регулювання та контролю за такою діяльністю, а також переробні, заготівельні, збутові, постачальницькі, сервісні та інші аграрні господарючі суб'єкти, громадськість

Ключові слова: суб'єкт, правовідносини, органічне сільськогосподарське виробництво, сільськогосподарське підприємство, виробник сільськогосподарської продукції, сільськогосподарська продукція, оператор, орган сертифікації, органічна продукція
