



UDC 349.2

DOI: 10.31548/law2021.04.07

Estimation of the suitability of land for organic agricultural production: Certain aspects of legal support

Tamara S. Novak*

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

Article's History: **Abstract**

Received: 20.8.21
Revised: 25.10.21
Accepted: 11.11.21

The idea of organic production (agriculture) is to completely abandon the use of genetically modified organisms (GMOs), antibiotics, pesticides, and mineral fertilizers. This increases the natural biological activity in the soil, restoring the balance of nutrients, enhancing the regenerative properties, normalizing the work of living organisms, humus growth, and results in an increase in crop yields. The result of organic production is environmentally friendly products that are free of GMOs and chemical elements that are not inherent in food products. The idea of organic farming is popular in many countries around the world, including Europe. In this regard, this article is aimed at investigating the suitability of land for organic agricultural production. This paper also has to justify the already constructed scientific provisions and provide recommendations for modernizing legislation in this area. The leading method for researching this problem addresses the gaps in the laws "On the Production and Circulation of Organic Agricultural Products and Raw Materials", "On the Protection of Lands", in the draft "Procedure

Suggested Citation:

Novak, T. (2021). Estimation of the suitability of land for organic agricultural production: Certain aspects of legal support. *Law. Human. Environment*, 12(4), 54-61. doi: 10.31548/law2021.04.007.



*Corresponding author

Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

for estimating the suitability of land (soils) and establishing zones for the production of organic products and raw materials”, and issues related to legal editing and supplementing requirements regarding land for organic production. This paper analyses the current state of legal support for estimating the suitability of land for organic agricultural production. It was found that in contrast to the previous legislation in the field of organic production, circulation, and labelling of organic products, the current Law of Ukraine No. 2496-VIII “On Fundamental Principles and Requirements for Organic Production, Circulation, and Labelling of Organic Products” dated 10.07.2018 does not prescribe an estimation of the suitability of agricultural land plots to produce organic goods. There are no requirements for such an estimation in the sub-legislation governing this sphere of public relations. As a result, the first step to regulating the estimation of agricultural land for organic production is to conduct agrochemical certification of land to be used for organic production. This element is a fundamental way to figure out the soil quality indicators. It is proposed to amend Part 5 of Art. 37 of the Law of Ukraine “On Land Protection”; Clause 3 of the Procedure for Certification of Organic Production and/or Circulation of Organic Products, approved by Resolution No. 1032 of the Cabinet of Ministers of Ukraine dated October 21, 2020; clauses 1.5 and 1.6 of the Procedure for maintaining the agrochemical passport of the field, land plot, approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine No. 536 dated 11.10.2011. The introduced innovations will allow objectively estimating the qualitative state of such lands and will serve as a guarantee for organic crop production

Keywords: soil, land plot, agricultural land, organic products, organic agricultural production, legal support, agriculture, soil quality

Introduction

Organic production in Ukraine is becoming increasingly popular as a fairly promising and profitable area of agricultural activity. Currently, there is a steady trend towards increasing the area of land used in this sector. According to the latest published data (as of 2019), this is 467,980 hectares, which is 1.1% of the total area of agricultural land in Ukraine [1]. For objective reasons, the use of land as the main means of organic crop production and the spatial base in organic animal husbandry is an integral condition for organic production. Moreover, to

obtain organic products that would meet their quality and safety requirements, such lands must have certain qualitative characteristics. However, despite the presence in Ukraine of a large body of legislation that governs production relations, circulation, and labelling of organic products (and this legislation generally meets international standards, which researchers substantiated in their studies [2]), there are a number of yet unresolved issues that concern legal consolidation of requirements concerning land for organic production, the

procedure for determining their quality characteristics, etc. This gap can be filled through the improvement of regulatory prescriptions, the basis of which should be the results of scientific research, which determines the relevance of this paper.

The issue of statutory regulation of confirming the qualitative characteristics of land for organic agricultural production has repeatedly attracted the attention of lawyers and has been INVESTIGATED by such scientists as V.I. Andreitsev, O.V. Hafurova, T.H.Kovalchuk, P.F. Kulynych, V.Yu. Urkevych, R.A. Tsyliuryk, M.V. Shulha, and others.

The purpose of this paper was to investigate the current state of legal support for estimating the suitability of land for organic agricultural production, analyse the current scientific opinions, and develop proposals for improving legislation in this area.

Results and Discussion

The current Law of Ukraine No. 2496-VIII "On the Fundamental Principles and Requirements for Organic Production, Circulation, and Labelling of Organic Products" dated 10.07.2018 does not prescribe the estimation of the suitability of agricultural land to produce the organic products, being limited only to establishing the duration of the transition period in relation to land plots for organic crop production (Article 25). There is also no regulation of this issue in the Procedure (detailed guidelines) for organic production and turnover of organic products, approved by Resolution of the Cabinet of Ministers of Ukraine No. 970 of 23.10.2019. As the required information

about the lands designated for activities to be specified by the business entity that intends to switch to organic production and/or engage in the circulation of organic products, the Procedure for Certification of Organic Production and/or Circulation of Organic Products, approved by the Resolution No. 1032 of the Cabinet of Ministers of Ukraine dated October 21, 2020 includes only the land area and location.

Instead, Art. 23 of the currently invalid Law of Ukraine "On the Production and Circulation of Organic Agricultural Products and Raw Materials" prescribed the obligatory estimation of the suitability of land (soil) for organic products and raw materials, which should be performed by the central body of the executive power, which implements the national policy on the state supervision (control) concerning environmental and land protection [3].

The Procedure for Estimating the Suitability of Land (Soils) for Organic Products was to be approved by the Cabinet of Ministers of Ukraine. However, as V.Y. Urkevych correctly noted, despite the urgent need to develop and approve such a document as the basis for recognizing the corresponding agricultural production as organic, it was never adopted, staying at the draft level [4]. Additionally, back in 2014, together with the above-mentioned Procedure, "Criteria for the quality of lands (soils), their suitability for organic products and raw materials, suitability for specific crops" [5] were drafted, which were also not adopted.

According to T.H. Kovalchuk [6], and the author of the present paper agrees with this

opinion, the factual absence of legal regulation concerning the estimation of suitability of agricultural land plots for organic products of plant origin, which in its essence should act as a proper guarantee for the production of such goods, negates the guarantee itself.

In the scientific literature, various proposals have been put forward to solve this issue: the provision of a corresponding article in Chapter 5 of the Land Code of Ukraine, which defines the legal regime of agricultural land [7]; the inclusion of a separate section called "Organic lands" in the Land Code of Ukraine [8]; the implementation of mandatory certification of such lands through a system of certificate organizations to ensure that the state of organic land meets the criteria to produce organic and environmentally safe products, etc. [9].

Within the framework of the study of the legal regime of land used for organic farming, in addition to indicators of soil and plant quality, M.V. Shulha offered to base the estimation of the suitability of land for organic agricultural production on the remoteness of land plots from sources of pollution, i.e., industrial enterprises, objects that can pollute the environment with any dangerous substances, highways, etc.; the content of pollutants in the soil [10]. All these criteria were considered in the mentioned draft Procedure for estimating the suitability of land (soils) and establishing zones to produce organic products and raw materials (item 4 of the draft) [5]. Furthermore, M.V. Shulha noted that the basis for estimating the suitability of land for this purpose should be the "data of agrochemical

certification of agricultural land, since its task is precisely to determine the indicators of the quality condition of the soil, its changes over the economic activity, as well as conditions for the rational use of organic fertilizers, conditions for protection from pollution and restoration of soil fertility" [10]. Again, item 5 of the draft Procedure [5] prescribed the use of data from the last round of agrochemical certification of land and other soil cover surveys conducted over the past two years to estimate the suitability of land. And the list of documents that applicants had to submit for an opinion on the suitability of land for organic products and raw materials included an agrochemical passport of the field, land plot (paragraph item of the draft Procedure [5]). This aspect should be covered in more detail.

Currently, agrochemical certification of land according to Article 1 of the Law of Ukraine No. 963-IV "On State Control Over the Use and Protection of Land" dated 19.06.2003 involves "mandatory agrochemical survey of soils with the issuance of an agrochemical passport of the field, land plot, which records the initial and current levels of providing nutrients to soils, the levels of their contamination with toxic substances and radionuclides". According to the Law of Ukraine No. 962-IV "On Land Protection" dated June 19, 2003, the data of the agrochemical passport of the land plot are considered for economic stimulation of the implementation of measures regarding the use and protection of land and increasing soil fertility (Art. 27); establishing indicators of the intensity of agricultural

land use (Art. 34); transfer of ownership or provision for use, including for rent, of a plot of land, change of the owner of a plot of land or land user, a monetary assessment of land, determining the amount of payment for land, control over the state of soil fertility (Art. 37); soil monitoring on agricultural lands (Art. 54). According to the latest legal norm, as well as item 1.5. of the Procedure for Maintaining an Agrochemical Passport of a Field, Land Plot, approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine No. 536 dated 11.10.2011, agrochemical certification of arable land is conducted every 5 years, hayfields, pastures and perennial plantings – every 5-10 years.

Evidently, the current legislation does not contain special instructions on the mandatory agrochemical certification as a condition for recognizing land as suitable for use in organic agricultural production. Furthermore, the author of this paper agrees with O.V. Hafurova that “currently we can observe quite negative trends in the Ukrainian land legislation, which are aimed at abolishing agrochemical certification of land”. Hafurova points out potential changes in land legislation concerning the abolition of the obligation to develop an agrochemical passport when transferring a land plot to ownership and use [11]. The changes did take place – the Law of Ukraine No. 1423-IX “On Amendments to Certain Legislative Acts of Ukraine on Improving the Management System and Deregulation in the Field of Land Relations” dated 28.04.2021 amended the Article 37 of the Law of Ukraine “On Land Protection” with part seven of the corresponding content.

Conclusions

The author of this paper, fully sharing the above positions of scientists regarding the need for agrochemical certification of agricultural land as one of the basic measures for determining the qualitative composition of soils, proposes as one of the steps to regulate the estimation of agricultural land for organic production, to establish the obligation to conduct agrochemical certification of land on which organic crop production activities are planned. Therewith, to operate with relevant data, the author proposes to determine the terms of agrochemical certification of such lands no later than one year before the submission of an application for certification of organic production. For this, it proposed to amend Part 5 of Art. 37 of the Law of Ukraine “On Land Protection”; Clause 3 of the Procedure for Certification of Organic Production and/or Circulation of Organic Products, approved by Resolution No. 1032 of the Cabinet of Ministers of Ukraine dated October 21, 2020; clauses 1.5 and 1.6 of the Procedure for maintaining the agrochemical passport of the field, land plot, approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine No. 536 dated 11.10.2011. This allows objectively estimating the quality of such lands and will serve as a guarantee of the production of organic plant-based goods.

Further scientific research in the field under study should focus on the development and regulatory consolidation of criteria for the quality of land (soils) suitable for growing individual agricultural crops in organic production of plant-based goods.

References

- [1] Organic production in Ukraine. Retrieved from <https://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=ed6463ce-f338-4ef0-a8a8-e778d3d0ffd1&title=OrganichneVirobnitstvoVUkraini>.
- [2] Novak, T.S., & Melnyk, V.O. (2020). On the issue of legal support of organic agricultural production in Ukraine. *Law. Human. Environment*, 11(2), 47-55.
- [3] Law of Ukraine № 425-VII “On the production and circulation of organic agricultural products and raw materials” (2013, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/425-18#Text>.
- [4] Urkevych, V.Yu. (2015). Natural resource law and legal regulation of land use for organic agricultural production. In *Natural resource law in the legal system of Ukraine: History, present, prospects: collection of materials of the round table* (pp. 192-194). Kharkiv: Yaroslav Mudryi National Law University.
- [5] Draft Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Assessing the Suitability of Lands (Soils) and Establishing Zones of Production of Organic Products and Raw Materials Criteria for Quality of Lands (Soils), Their Suitability for Production of Organic Products and Raw Materials”. (2014, April). Retrieved from <https://minagro.gov.ua/ua/npa/proekt-postanovikabinetu-ministriv-ukraini-pro-zatverdzhennya-poryadku-otsinki-pridatnosti-zemel-gruntiv-ta-vstanovlennya-zon-virobnitstva-organichnoi-produktsii-ta-sirovin-5c66bfe45c31b>.
- [6] Kovalchuk, T.H. (2017). Regarding the legal regulation of the assessment of the suitability of lands for the production of organic products. In *Legal principles of organic farming: collection of materials of International scientific and practical conferences* (pp. 104-107). Kharkiv: Domino.
- [7] Shulha, M.V., Malysheva, N.R., & Nosik, V.V. (2020). *Organic agricultural production in Ukraine: legal principles of management*. Kharkiv: Yurait.
- [8] Andreitsev, V.I. (2017). The problem of improving the legal regime of organic agricultural lands. In *Legal principles of organic farming: collection of materials of International scientific and practical conferences* (pp. 3-5). Kharkiv: Domino.
- [9] Kulynych, P.F. (2011). *Legal problems of protection and use of agricultural lands in Ukraine*. Kyiv: Lohos.
- [10] Shulha, M.V. (2017). Regarding the legal regime of lands used for organic farming. In *Legal principles of organic farming: collection of materials of International scientific and practical conferences* (pp. 234-237). Kharkiv: Domino.
- [11] Hafurova, O.V. (2020). Legal bases of agrochemical certification of agricultural lands in Ukraine. *Law. Human. Environment*, 11(4), 15-22.

Оцінка придатності земель для органічного сільськогосподарського виробництва: окремі аспекти правового забезпечення

Тамара Сергіївна Новак

Кандидат юридичних наук, доцент

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

Анотація

Ідея органічного виробництва (землеробства) полягає у повній відмові від застосування генетично модифікованих організмів (ГМО), антибіотиків, отрутохімікатів та мінеральних добрив. Це призводить до підвищення природної біологічної активності у ґрунті, відновлення балансу поживних речовин, підсилюються відновлювальні властивості, нормалізується робота живих організмів, відбувається приріст гумусу, і як результат – збільшення урожайності сільськогосподарських культур. Результатом органічного виробництва є екологічна безпечна продукція, вільна від ГМО та невластивих продуктам харчування хімічних елементів. Ідея органічного землеробства є популярною у багатьох країнах світу, в тому числі у Європі. У зв'язку з цим дана стаття спрямована дослідження придатності земель для проведення органічного сільськогосподарського виробництва. А також тема потребує розкриття обґрунтування вже побудованих наукових положень та створення рекомендацій щодо модернізування законодавства у даній галузі. Провідним методом для дослідження цієї проблеми є підхід у піднятті до уваги прогалин у законів «Про виробництво та обіг органічної сільськогосподарської продукції та сировини», «Про охорону земель», в проєкті «Порядку оцінки придатності земель (ґрунтів) та встановлення зон виробництва органічної продукції та сировини» та питань, які стосуються правового редагування та доповнення вимог щодо земель для органічного виробництва. У статті проведено аналіз сучасного стану правового забезпечення оцінки придатності земель для ведення органічного сільськогосподарського виробництва. Визначено, що на відміну від попереднього законодавства у сфері органічного виробництва, обігу та маркування органічної продукції, чинний Закон України «Про основні принципи та вимоги до органічного виробництва, обігу та маркування органічної продукції» від 10.07.2018 р. № 2496-VIII не передбачає оцінки придатності земельних ділянок сільськогосподарського призначення для виробництва органічної продукції. Відсутні вимоги до такої оцінки й у підзаконних нормативних актах, що регулюють цю сферу суспільних відносин. У результаті, першим кроком до врегулювання процесу оцінки земель сільськогосподарського призначення для органічного

виробництва необхідно обов'язково проводити агрохімічну паспортизацію земель, які будуть використовуватись для діяльності органічного виробництва. Даний елемент є фундаментальним способом для з'ясування показників добірності ґрунтів. Запропоновано внести доповнення до: ч. 5 ст. 37 Закону України «Про охорону земель»; п. 3 Порядку сертифікації органічного виробництва та/або обігу органічної продукції, затвердженого постановою Кабінету Міністрів України від 21.10.2020 р. № 1032; п.п. 1.5 та 1.6 Порядку ведення агрохімічного паспорта поля, земельної ділянки, затвердженого наказом Міністерства аграрної політики та продовольства України від 11.10.2011 р. № 536. Внесені нововведення дозволять об'єктивно оцінювати якісний стан таких земель та слугуватимуть гарантією виробництва органічної продукції рослинництва

Ключові слова: ґрунт, земельна ділянка, землі сільськогосподарського призначення, органічна продукція, органічне сільськогосподарське виробництво, правове забезпечення, сільське господарство, якість ґрунтів
