



## EFFECTIVE LEGAL GUARANTEEING OF THE QUALITY OF AGRICULTURAL PRODUCTION AS THE CONDITION OF COMPETITION ABILITY OF AGRARIAN SECTOR OF ECONOMY

Yaroslav SYDOROV,

PhD in Jurisprudence, Associate Professor,  
Department of Administrative and Commercial Law, Zaporizhzhya National University

### Summary

This scientific article is devoted to the analysis of the effectiveness of legal guaranteeing of the quality of agricultural production taking into account its significance in the conditions of economic integrative processes, which display the urgent problem of competition ability of agrarian sector of economy. Modern situation of legal regulation in the sphere of agrarian sector of economy is analyzed. Conceptions of the system of regulation of the quality of agricultural production described in the agricultural law literature are generalized and systematized, main directions of further development of above described legal relations are determined.

**Key words:** agrarian sector, agrarian legal relations, legislation, euro integration, World Trade Organization, legal guaranteeing, agricultural production.

### Аннотация

Научная статья посвящена вопросам эффективности правового обеспечения качества сельскохозяйственной продукции с учетом особого его значения в условиях экономических интеграционных процессов, обуславливающих актуализацию проблемы конкурентоспособности аграрной сферы экономики. Проанализировано современное состояние законодательного регулирования указанных вопросов и практики его применения. Обобщены и систематизированы отраженные в аграрно-правовой литературе положения и концепции касательно системы регулирования качества сельскохозяйственной продукции, определены основные направления дальнейшего развития указанных правоотношений.

**Ключевые слова:** аграрный сектор, аграрные правоотношения, законодательство, евроинтеграция, ВТО, качество, правовое обеспечение, сельскохозяйственная продукция.

**Statement of the problem.** An important condition to guarantee the human right to a decent standard of living, enshrined at the constitutional level, «one of the most concrete manifestations of which is the right to getting and consumption of quality food to meet the needs and the needs of family members to adequate food» [1, p. 105], presents an optimal and effective enforceability for agricultural products' quality. No coincidentally that among the main tasks of the agrarian law in modern terms experts define «enforcement of the rights and freedoms of the peasant, on the one hand, and on the other one – the assurance of the constitutional rights of citizens of Ukraine to complete, environmentally safe nutrition according to health indicators» [2, p. 217]. The understanding of country food security is becoming more common based not only on quantitative parameters that define sufficient food volume, its economic availability, but on its safety and quality, reduction of which occurs on a global scale, especially in low-income countries. Gradually, the quality of agricultural products, which is the basis of nutrition, becomes the main criterion for its competitiveness in the domestic market, where it competes with imported ones, and foreign market.

Modern international economic integration processes, in which our

country takes part actively, open the way for the implementation of rather ambitious plans in the sphere of production and sale of domestic agricultural products. Thus, despite the negative outlook on the development of the agricultural sector in the case of Ukraine's accession to the WTO, after joining the organization national agribusiness increased its exports almost threefold, and in 2012 it showed impressive growth – almost a half, from 10.7 billion to 15.5 billion dollars. In its turn, as the Food Program of the United Nations (FAO) projected, in the coming years Ukraine will have the world's highest rate of growth of agricultural production and, consequently, agricultural exports, which will increase by 60% by 2020 [3]. Among the objectives of public policy for 2013-2014, defined in the National Programme of economic development intensification for 2013-2014 and the Action Plan for its implementation (approved by the Cabinet of Ministers of Ukraine on February, 27, 2013) there is an increase of agricultural production in the domestic market by 25 percent and an increase in exports of agricultural products and foodstuffs.

However, please note that the features mentioned above can be implemented in the long-term perspective and in conditions of effective public policies

to ensure the quality of agricultural products. Failure of this task reduces the level of competitiveness of domestic agricultural products significantly, and under conditions of openness of the domestic market, it may lead to the displacement of domestic products' import and to limitation of these products' access to world markets under the pretext of non-compliance with quality standards.

**State of the study.** Recently there has been the increasing interest among agrarian scientists to these issues, which are dealt with as a part of more general topic, including food security, agricultural development in the international integration process, law regulation of agriculture manufacturing, etc. (works of M. Grebenyuk, J. Bogdan, V. Ermolenko, V. Zharenko, T. Kovalchuk, S. Marchenko, A. Polivodskyy, S. Romanko, A. Stativko, V. Semchyk, V. Urkevych et al.), and it becomes the direct object of scientific inquiry (works of S. Bugera and S. Kaydashov). Stressing the importance of scholars' developments the advisability of further in-depth study of the most pressing issues of legal regulation of agrarian relations in the field of agricultural products' quality for the formulation of the proposals should be emphasized. The



above indicates **the relevance of the chosen topic** of the article, the **purpose** and **object** of which is generalization and systematization of the legal provisions regarding the effectiveness of the quality enforceability of agricultural products, defining and clarifying of the main ways to improve it.

**Statement of the material.** One of the main objectives of the legal regulation of the quality of agricultural production is to increase its competitiveness in modern integration processes in the international economy, which leads to a significant impact of international law norms on the formation of agrarian legislation in the field of the study of social relations. In particular, international agreements, adopted at the WTO, aimed at «a compromise between two opposing positions: the promotion of international trade, which is in elimination of administrative barriers (these tasks sets the WTO) to provide health care of plant and animal products' consumers [4, p. 76]. Extrapolating this approach to determine the effectiveness of national regulation of agrarian relations in the field of quality agricultural products, as the latter criterion we can determine the balance between public and private interests: on the one hand, the need to ensure consumers' rights to healthy and safe food, as well as a favorable legal climate without excessive and unwarranted government intervention, conducting of agricultural activities, and on the other one, expanding the conditions of free access of domestic producers on foreign markets, their competitiveness.

Instead, according to foreign and domestic experts, the Ukrainian government regulation of food safety means that enterprises to incur unreasonable expenses, but it does not guarantee higher than anywhere else indicators of the health of Ukrainian citizens and their safety [5, p. 5]. As approved by the Cabinet of Ministers of Ukraine on October 17, 2013 the Development Strategy for the agricultural sector until 2020 among the key issues identified, among other things, the volatile competitive positions of domestic agricultural products and food on international markets due to the incomplete process of adaptation to European requirements for quality and

safety of agricultural commodities and food products. Scientists-economists argue persuasively that «for domestic agricultural producers the standards harmonized with WTO and EU law are the only way to compete on the international market» [6, p. 27].

The issue of legislation harmonization concerning the quality and safety of products to the international legal requirement is, A. Polivodskyy says, in bringing the existing regulations to date with the requirements of EU and WTO, and in using them with the same approach as the most international partners of Ukraine, and he identifies the following components of the concept of legal regulation of the quality and safety of agricultural products in the EU: 1) the principle of «horizontal» legislation (legal approaches that are common to all types of food) and the gradual restriction of the use of «vertical» legislation (requirements for each specific product), 2) the concept of «risk analysis», which is carried out at two levels: the legal one and the level of control, 3) the responsibility of manufacturer and dealer for the products they offer for sale and for damage that may cause with such products, 4) the concept of tracking «from farm to fork» (producer or seller of products keeps track of all the documents on the way to the consumer), 5) implementation of agricultural quality management system of HACPS (Hazard Analysis and Critical Points System), thus eliminating the need for certification of enterprises, 6) the voluntary use of standards adopted under the influence of the market as a competitive advantage [4, p. 75-81].

Recently there has been legislative and organizational work towards increasing the effectiveness of the legal provision of quality agricultural products, including adapting it to the requirements of WTO and EU. The letter is recognized as a priority in a number of legal programmatic acts. In particular, the state target program of development of Ukrainian village until 2015 provided the implementation of the policy guaranteeing safety and quality of food that are aimed at developing and implementing quality standards for major agricultural products in accordance with international ones and improvement of the mechanism of state control over

the quality of agricultural products and food products in accordance with WTO regulations and Action Plan «Ukraine – EU». One should also note the Action Plan for Adaptation of Ukrainian economy to WTO requirements, approved by the Cabinet of Ministers of Ukraine on October, 30, 2008, a significant portion of provisions which aims to ensure quality and safety of food products, in particular conform their legal acts to the WTO Agreement on sanitary and phytosanitary measures, including exclusion provisions for compulsory product certification, conduct in accordance with international standards, upgrading laboratory facilities of state sanitary-epidemiological service and veterinary medicine.

Basic organizational legal and legislative initiatives for the near future are enshrined in the National Action Plan for 2013 to implement the program of economic reforms in 2010-2014 «Prosperous Society, Competitive Economy, Effective State», approved by Decree of the President of Ukraine on March, 12, 2013 № 128/2013. That plan provides quite significant number of measures for adapting domestic legislation and government regulation in the area of quality and safety to EU law and WTO requirements, including amendments and additions to some legislative acts of Ukraine regarding safety and quality of food products aimed to establish principles and mechanisms of state regulation of safety and quality of food products in accordance with legislation of the European Union and WTO requirements; entrusting the power to organize and control safety and quality of all the food on the single supervisory authority, the abolition of the requirements for obtaining and/or playing (exercise) food manufacturers permits, opinions, certificates, consents, examinations, etc., which do not apply to law of the European Union, the state registration of only those objects of sanitary measures that are appropriate to register in accordance with the European Union; introducing the use of the standards of food on a voluntary basis, mandatory implementation of operator facilities that carry out activities for the production and/or treatment of food products, agri-food market operators of Hazard Analysis and Critical Points System (HACPS) and similar systems to



ensure safety and quality of food products based on HACPS principles, providing for the phased implementation of such requirements, research (tests) of food for the checking of safety and quality by only accredited laboratories and other measures aimed at reforming the enforcement powers in the field of safety and quality of food.

In the implementation of the Plan of on October, 17, 2013 at a cabinet meeting the strategy of the agricultural sector for the period until 2020 was approved (as a basis for the development of future programs of the agricultural sector through 2020), the provisions of which were determined as a priority to ensure quality and safety of agricultural commodities and food products, to comply with their production through: improvement of the product certification and standardization of agricultural products, the maximum coverage of quality management systems and safety of processing and food industry, the formation of a network of laboratories to determine the quality of agricultural products and foodstuff, the delegation of the powers of control for conformity of agricultural production and food self-regulatory associations based on mutual responsibility. Also it is expected to adapt technical regulation of food safety to the requirements of EU and WTO, increase accountability of self-regulatory industry, cooperative associations in monitoring the quality and safety of products produced by its members, limiting the direct control of domestic, small and medium-sized farms if all products are sold on the commodities markets through cooperatives.

Analysis of regulations that support further ways of reforming agrarian-legal relations in the sphere of agricultural products' quality indicates that it is carried out on the basis compatible with EU and WTO, and the borrowing of foreign experience of government regulation of these relations. In particular, today more than half of international standards in the field of agriculture and food industry are implemented in Ukraine, in particular, 52% of international standards ISO in agriculture and 59% in food industry. In addition, 64% of standards of the European Commission are harmonized in agriculture and 40% – in the food industry [7].

Assessing the dynamics of envisaged legislative changes' implementation the need to activate them should be recognized, as the majority of planned activities is unrealized or realized in incomplete condition. B. Kaydashov rightly points to the lack of systematic approaches to the development of these programs and plans for process improvement of legal regulation in accordance with EU and WTO, which occurs at the annual plans based on proposals by the central authorities without reference to the general requirements specified in the construction EU legislation *acquis communautaire*. This approach goes as contrary one to the legally established norms according to which Ukraine is an adaptation of a planned process involving several stages, each of which has achieved a certain degree of compliance with the legislation of Ukraine to the *acquis communautaire* [8, p. 65]. Improvement of the legal aspects of quality assurance and food safety is an important concern of institutional change, experts in the field of public administration note. The current concept of quality and food safety, the principle of which is to respond to violations of quality standards and which does not provide for preventive measures to prevent violations of the current legislation, should be customized towards the elaboration of a systematic approach to quality management and food safety. Methodologically, this approach assumes that the under the influence of management there are not the individual parts (components), but the system as a whole as a single object, and therefore changes of individual elements lead to some qualitative changes in general [9].

S. Bugera insists on the need for a systematic approach, who considers legislative strengthening of Systematization legislation concept to be appropriate to improve the efficiency of agricultural legislation that regulates the quality of agricultural products, the end result of the implementation of which the adoption of the Agricultural Code of Ukraine shall be with the relevant part on the quality of agricultural products. He believes the use of international legal experience providing quality agricultural products in Ukraine is necessary and possible with: 1) developing of Concept of regulation of agricultural

products' quality with the peculiarities of the domestic agricultural market and international requirements, 2) the effective combination of administrative and economic levers of influence on the development of quality indicators for agricultural products as basic factors of competitiveness, and 3) the development of the Programme on domestic legislation adapting of agricultural product quality regulation to international standards, including the requirements of the European Union. Also S. Bugera considers as appropriate specialized adoption statute – Law of Ukraine «On the System of agricultural products' quality» [10, p. 11-15]. Suggested idea as a whole is maintained and developed by other researchers [11]. In turn, V. Kaydashov also proposes to adopt separate legislation, namely Law of Ukraine «On the production and sale of safe and high-quality agricultural products» and argues the need for the development and approval of State program to promote the production and sale of safe and high-quality agricultural products [8, p. 9]. Certainly, scientists made proposals for the codification of legislation on the quality of agricultural products deserve attention and support of the legal community and can be thorough basis for further accumulation of Legislative Initiatives. –

Thus it can be **concluded** that the agricultural sector remains the industry that does not fully realize its export and investment potential, due to, among several other reasons, ineffective regulation of both the quality of agricultural products and practice of their usage. Fundamental for the rise of national agroproducts in terms of expansion and diversification of export markets and import substitution in the domestic market, acquiring safety for legal and organizational level for availability of agricultural products according to international standards and systems of food quality. It is necessary to activate reforming of the current legal framework in this field relations in the conceptual basis of an integrated approach, international agreements, WTO and EU law to the legal regulation of the quality and safety of agricultural products that are intended to: 1) the introduction of foreign experience in providing comprehensive quality



management system for agricultural products «from farm to fork» (one of the prerequisites of a formula proposed by S. Bugera on account of the basic factors of production, especially the presence of inseparable, complementary connection «soil quality» – «quality of plant products» – «quality of animal products» [10, p. 5]), 2) the transition from control of finished product to control of manufacturing processes (control not product samples, but production cycle, not declarative, but actual implementation of the HACPS system), 3) liberalization and ensuring transparency of organizational and legal regime of the state control in this area, including the elimination of duplication of control, excessive and inefficient checks provided increased responsibility of the private sector in agriculture (the formula «state control over private control») and the extension of the legal conditions for the functioning of social control, 4) development of ecological and economic component of the legal regulation of the quality of agricultural products, in particular the use of GMO control, promotion of organic production etc. Legal registration of these areas should be in the systematization of legislation on the quality of agricultural products, in which it is necessary to eliminate the fragmentation and inconsistency, excessive detail and outdated requirements and relevant national standards, accelerating the pace of harmonization with the relevant documents of the Codex Alimentarius Commission and of the European Union. The academics should be supported in designing and adopting of a single legal act (in our opinion, this could be a «law on the system of agricultural products quality and state control in the field»), return to work on the bill of the organic production of agricultural products and subsequently, the regulation of these relations in a special section of the Agricultural Code.

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