

ГАЛУЗЕВІ ДОСЛІДЖЕННЯ ЕКОЛОГІЧНЕ ТА АГРАРНЕ ПРАВО

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V. Yu. URKEVYCH,
2nd PhD, Professor, Leading Researcher of Scientific
and Research Institute of Providing Legal Framework
for the Innovative Development of National Academy
of Law Sciences of Ukraine

AGRARIAN RECEIPTS CIRCULATION IN UKRAINE: CURRENT ISSUES OF LEGAL FRAMEWORK

Agrarian receipts are the title documents used in credit legal relations of agricultural enterprises and individuals engaged in agricultural production. The article deals with the problem of legal framework of formalization, issuance, registration and circulation of agricultural receipts. The author make suggestions to improving the legislation of Ukraine concerning with the turnover of agricultural receipts.

Key words: agrarian receipt, title document, agricultural production, agricultural production pledge, future harvest.

Formulation of the problem. Agricultural goods producers carry out their production and business activities using live plant and animal organism influenced by climatic conditions and its resulting in the seasonality. For the production of agricultural products mentioned subjects need a variety of material and financial (monetary) resources in a short period of time (usually in the spring). The agrarian receipts become one of the newest ways of crediting to agricultural producers. It's about the receiving of appropriate resources (products, goods and services) from their counterparts with deferred payment. The legal issues of such documents circulation are not studied in the legal literature sufficiently. The characteristics of legal regulation of formalization, issuance, registration and circulation of agrarian receipts is significantly important in both theoretical and practical ways. In theoretical way – for further improvements of agrarian law theory and for other legal fields. In practical way – for improving the legislation of Ukraine and solving the law enforcement problems. The abovementioned positions point to the urgency of the proposed article.

Target of research. The aim of the article is to analyze the legislation of Ukraine on the agricultural receipts turnover and to formulate the proposals for its improving.

Article's main body. Public relations arising during the formalization, issuance, circulation, fulfillment of agrarian receipts regulated by the Law of Ukraine «On agricultural receipts» dated November, 6,

2012 № 5479 – VI [1] (hereinafter – the Law). Also this legal act defines the procedure for registration of agrarian receipts and the aim of the Law to create legal, economic and organizational conditions of circulation of mentioned documents.

The definition of such receipts is given in par. 2 p. 1 Art. 1 of the Law. It stated the agrarian receipt as title document that captures the unconditional debtor's secured obligation to deliver the agricultural products or pay for it under defined conditions. This definition contains the characteristics of such receipts and we will consider them in more details.

Primarily, the agrarian receipt defined as the title document. We should note that these documents also include a bill of lading, railroad bill of loading and warehouse receipts (Art. 334, 909, 962 of the Civil Code of Ukraine, Art. 135 Merchant Shipping Code of Ukraine, Art. 1 of the Law of Ukraine «On Certified warehouses and simple and double warehouse receipts» dated December, 23, 2004 № 2286-IV [2]). Such documents certifying the ownership for the certain goods (things, products) and also entitling the holder of title document to dispose such objects provided that certain legal facts will come.

P. 1, Art. 509 of the Civil Code of Ukraine defines the obligations as legal relationship where one party (the debtor) is obliged to act in favor of the other party (the creditor) a certain action (transfer property, perform work, provide services, pay money, etc.) or to refrain from certain actions and the creditor has the right to

require the debtor to perform his duties. So the agrarian receipt captures such a relationship that has developed between certain individuals.

This agrarian receipt shows the unconditional obligation of the debtor. The existence of such obligation cannot depend on the occurrence (or absence) of certain conditions. The status of creditor and debtor, as the parties of the agrarian receipt, are the important issue for the characterizing of mentioned document. Par. 4 p. 1 Art. 1 of the Law stipulates that under the agrarian receipt the creditor may be a person or entity providing cash services, supplying goods, performing work as a counter obligation under the contract. On this contract the debtor gives to the other party the agrarian receipt, with the right to require proper performance of obligations. Also the creditor may be a person or entity who received the creditor's rights under agrarian receipt from another creditor in a manner not prohibited by law. It follows that participate in lending legal relationship using the agrarian receipts as eligible person may a wide range of subjects – person and entities, including business entities, as well as those that do not have this status. For the concerned legal relations no matter the creditors' status of resident and other characteristics of their personality. The determining fact is the lawful possession of the property (money or things) that transferred to the debtor, or possession of certain abilities to provide services to the debtor or performance the relevant work.

Under the agrarian receipt, the debtor is another party of concerned legal credit relations. It's the person issuing the agrarian receipt for formalization their obligation to supply agricultural products or pay for it at certain conditions contained in the document (par. 3 p. 1, Art. 1 of the Law). The requirements for such persons specified in p. 2, Art. 2 of the Law. It found that agrarian receipts can be issued only to the persons that have agrarian land title or land leasehold to carry out the agricultural production. Logically, it is primarily referred to the agricultural producers, because exactly they use agricultural land for farming. But actually production of agricultural products could be carried out using the agricultural land of different designated purpose (for agricultural production, private farming, gardening, mowing and grazing, farming that defines by p. 3, Art. 22 of the Land Code of Ukraine). Because the Law does not specify the kind of agricultural production: tradable or non-tradable. Hence the debtors for agrarian receipt can act as agricultural enterprises and individuals engaged in agricultural production. The rights (ownership or use) of such persons to the relevant land should be acquired legally, including state registration in the legally

established order. The participation of such debtors with using the agricultural receipts in the credit relationship is mandatory.

The essential characteristic of concerned documents and the relevant legal relations is that the fulfillment of obligation of the debtor for the issued receipt is secured by the pledge. The latter one is the mean of securing an obligation, whereby the creditor (mortgagee) has the right (in case of debtor's (mortgagor's) default of the secured obligation) to obtain the satisfaction from the value of the pledge property mainly before other creditors (Art. 1 of the Law of Ukraine «On Pledge» dated October, 2, 1992 № 2654-XII [3]). It can be stated that there are the group of legal relations appears in the credit relationship, involving agricultural enterprises and individuals engaged in agricultural production with the agrarian receipts. Among them relations concerning with fulfillment of: a) the basic credit obligations; b) obligations under agrarian receipt; c) secured obligations in case of debtor's delay.

The latter kind of relationship (the one that applies to the pledge of debtor's property) characterized by significant features enshrined in Articles 7 and 8 of the Law, including the following:

1) under the agrarian receipt the subject of the pledge may be only the future harvest of agricultural production. It follows that at the time of issuance of the agrarian receipt the crops should be sown, but the crop is not harvested. Using of agrarian receipts is impossible without abovementioned condition. This is another logical conclusion – only agrarian agricultural enterprises or individuals engaged in production in the crop field could issue the agrarian receipts, because the object of pledge is the future harvest. However, it's desirable to entrench by the law the farm animals and animal products as subjects of the pledge under the agrarian receipt;

2) the amount of pledge should not be less than the amount of the obligations under the agrarian receipts. This rule has been set to provide the real guarantee of the creditor's right in the case of debtor's delay. But it's impossible to determine the size of the future harvest that is the object of the pledge. It seems that in this case we should talk about: a) the cost of such harvest based on the average purchase price for the product that should be equal to the amount of the obligation; b) the number of such products;

3) on the day of issue of agrarian receipts the future harvest of agricultural products cannot be the object of other pledges, but agrarian receipts. Obviously, this requirement must guarantee to the creditor the possibility to charge the future harvest of agricultural products in the case of debtor's delay under the agrarian receipt. Because if such harvest will be the subject of «normal»

pledge (that one that carried out under the general requirements of the legislation of Ukraine on the pledge of property), it will be quite difficult to pay off the creditors' claims, because the binding of legal regimes on various types of pledges will take place;

4) as of the date of harvesting the number of agricultural products become the object of pledge, and the debtor has the duty to proof the origin of these products. According to this provision, because of the natural properties of crops, after its maturation and harvesting, the harvest become the pledge. This suggests that the legislation on agrarian receipts considers the features of agricultural activities;

5) since the beginning of the legal regime of the pledge of future harvest of agricultural products, creditor is entitled in his own direction or through third parties to monitor the object of pledge (monitoring the future harvest, the compliance with the relevant processes by debtor etc.).

Concerned pledge relationships involve special legal consequences in the case of debtor's obligation default under the agrarian receipt defined in Art. 7 of the Law. Thus, in the case of debtor's delay, in accordance with enforcement creditor is entitled to meet their requirements as follows: a) by transfer of the ownership of the pledge's object for repayment of debtor's real obligation under the agrarian receipt; b) vest right in creditor to grow future harvest of agricultural production, to crop it himself or by authorized person and repay the debtor's real obligation on agricultural under the agrarian receipt; such repayment conducting by acquiring the ownership rights to the grown agricultural products; c) to repay debtor's money obligations under the agrarian receipt by the negotiation of the pledged agricultural productions purchase agreement with another person – the buyer (including the public auction contract) to obtain the payment under the agrarian receipt for such a contract.

The next feature of agrarian receipts revealed through the debtor's obligation to deliver the agricultural productions or pay under the certain conditions. This legal provision extrapolated to the possibility of circulation of two types of agricultural receipts – commodity and financial.

According to Art. 3 of the Law, agrarian commodity receipt establishes an unconditional obligation of the debtor to deliver a coherent agricultural production with the quality, quantity, delivery time and place determined by the agrarian receipts. These receipts compiled on writing, pre-printed form, should be notarized and, as a general rule, cannot be transferred to the non-documentary form (immobilized). Agrarian commodity receipt should contain the required details enshrined in law, but parties could include the additional conditions (Art. 4 of the Law). Agrarian commodity receipt can be

presented according to the standards proposed by the practical persons [4].

Another type of agrarian receipts is the financial, defined by the Art. 5 of the Law as the agrarian receipt that establishes an unconditional obligation of the debtor to pay a sum of money, the amount of what is determined by the debtor and the creditor agreed formula based on agricultural productions prices in the certain quantity and quality. In this case, the debtor's financial obligations meeting under the agrarian receipts are cashless. As well as commodity agrarian receipts, finance agrarian receipts compiled on writing, pre-printed form, should be notarized and, as a general rule, cannot be transferred to the non-documentary form (immobilized). Article 6 of the Law stipulates the mandatory details of the financial agricultural receipts with the debtor's and creditor's right to include the additional condition to such receipt that is not inconsistent with the provisions of the law. Documents that do not meet these requirements are not agrarian receipts.

Excepting above mentioned features, the legal credit relationships that use the agrarian receipts characterized by other features. These receipts are the object to mandatory notarization (p. 2, Art. 9 of the Law), its conduct in the order established by the Law of Ukraine «On Notary» dated 2 September 1993 №3425-XII [5] and p. 5.30. of Chapter 2 «Certification of transactions on alienation of property and pledge of property» of the Order of notarization acts by notaries of Ukraine, approved by the Ministry of Justice of Ukraine on February 22, 2012 №296/5, registered in the Ministry of Justice of Ukraine on February 22, 2012 by №282/20595 [6]. Also in the case of notarization of agrarian receipts we should take into account the letter of the Ministry of Justice of Ukraine on April 10, 2015 №13-32/143 that sets out the recommendations on it [4]. In particular, agrarian receipts consist in two copies, one of them is kept for the person who performs notarial acts of its registration, and the second copy is transferred to the creditor for such receipt. At the request of the debtor the certified copy of the issued agrarian receipts can be given.

Also the registration of the agrarian receipt is the prerequisite of its transferability. Thus, according to p. 2, Art. 9 of the Law, the information on pledge's object under the agrarian receipt entered to the State Register of the movable property encumbrances at the time of notarization of agrarian receipts. Mentioned Register is maintained by the Law of Ukraine «On Securing the Creditors' Claims and Registration of Encumbrances» dated November 18, 2003 №1255-IV [7] and the Order of the maintain of the State Register of movable property encumbrances, approved by the Cabinet of Ministers of Ukraine dated July 5, 2004 №830 [8].

Also, the Law contains the special provisions that the agrarian receipt is considered issued from the date of registration in the Register of agrarian receipts. The order of the register of agrarian receipts defined in Art. 10 of the Law, and in more detail – by the Act of the Cabinet of Ministers of Ukraine dated July, 17, 2013 № 665 «On approval of the Order of register of agrarian receipts maintaining» [9]. The holder of the called Register is the Ministry of Agrarian Policy and Food of Ukraine, and the administrator is the specially created by the Directive of Ministry of Agrarian Policy and Food of Ukraine on 23 January 2014 № 29 [10] State Enterprise «Agrarian registers». The Administrator provides free access through the Internet (website agroregisters.com.ua) to the information on issued agrarian receipts that remain unfulfilled on the request date.

The foregoing indicates that the credit relationship that use the agrarian receipts include double registration – both the agrarian receipts in the Register of agrarian receipts and the registration of pledge of future crops of agricultural production in the State Register of movable property encumbrances.

Finally, we should note that despite some identified legal regulation shortcomings of the agrarian receipts turnover, the Law establishes a coherent legal framework for their issuance, formalization, registration and circulation. However, at present time the agrarian receipts cannot be used throughout Ukraine.

So, to find out the mechanism for agrarian receipts issuing, its movement was introduced in 2014 in Poltava region by joint order of the Ministry of Agrarian Policy and Food of Ukraine and the Ministry of Justice of Ukraine «On Introduction of a pilot project to test the technology of market placing of the agrarian receipts» dated September 4, 2014 № 331/1471/5 [11]. The first agrarian receipt on 32 tons of sunflower seeds was issued February 13, 2015 by «IMS-Agro», the creditor under this receipt was the enterprise «Fodder factory», the contract value of receipt – 192 thousand UAH. In general the mechanism of Ukrainian agrarian receipts is based on so-called contracts-receipts CPR (Cedula de Produto Rural), introduced in Brazil in 1994. Now almost 40% of crediting in the country is carried out by such contracts-receipts [12]. In view of this, the joint order of the Ministry of Agrarian Policy and Food of Ukraine and the Ministry of Justice of Ukraine «On Introduction of a pilot project to test the technology of market placing

of the agrarian receipts» dated September 1, 2015 № 332/1627/5 [13] called pilot project held in Poltava region, on September 1, 2015 extended to Kharkiv, Cherkasy and Vinnitsa region.

Conclusions. By the legislation of Ukraine agrarian receipt has the following characteristics: a) it's a title document; b) it captures unconditional obligation of the debtor to the creditor; c) it has a specific subject composition. Creditor for agrarian receipt can be any legal or natural person, and the debtor – only agricultural enterprise or individual engaged in agricultural production; d) the obligation of the debtor under the receipt provided by the pledge of specific object – a future harvest of agricultural productions; e) the content of debtor's obligation is to carry out the delivery of agricultural production or cash payment; f) agrarian receipt is the subject to mandatory notarization and registration (as the pledge).

It can be stated that there are the group of legal relations appears in the credit relationship involving agricultural enterprises and individuals engaged in agricultural production with the agrarian receipts. Among them relations concerning with fulfillment of: a) the basic credit obligations; b) obligations under agrarian receipt; c) secured obligations in case of debtor's delay. Pledge legal relations in the credit legal relations using agrarian receipts are characterized by significant features concerning with the pledge object's special aspects (the future harvest of agricultural production).

In order to improve the legal regulation of agrarian receipts turnover, the Law of Ukraine «On agrarian receipts» should be amended. Particularly, the definition of agrarian receipts should be clarified with the provision about mandatory notarization and registration of the receipt and also provide the features of issuing the agrarian receipts provided by the pledge of farm animals and animal products.

Obviously, the mechanism of agrarian receipts will give to domestic agricultural producers the opportunity to receive the additional financial and other resources needed to carry out their production and business activities without bank crediting. Hence the circulation of the agrarian receipts should be extended to the territory of all regions of Ukraine.

The prospect of further research is the study of law issues concerning with the agrarian receipts execution.

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В. Ю. УРКЕВИЧ

доктор юридичних наук, професор, провідний науковий співробітник
НДІ правового забезпечення інноваційного розвитку НАПрН України

ОБИГ АГРАРНИХ РОЗПИСОК В УКРАЇНІ: АКТУАЛЬНІ ПРОБЛЕМИ ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ

Аграрні розписки є товаророзпорядчими документами, що застосовуються у правовідносинах кредитування сільськогосподарських підприємств та фізичних осіб, що займаються сільськогосподарським виробництвом. У статті розглянуто проблеми правового забезпечення оформлення, видачі, реєстрації та обігу аграрних розписок. Внесено пропозиції з удосконалення законодавства України щодо обігу аграрних розписок.

Ключові слова: аграрна розписка, товаророзпорядчий документ, сільськогосподарська продукція, застава сільськогосподарської продукції, майбутній урожай.

В. Ю. УРКЕВИЧ

доктор юридических наук, профессор, ведущий научный сотрудник
НИИ правового обеспечения инновационного развития НАПрН Украины

ОБОРОТ АГРАРНЫХ РАСПИСОК В УКРАИНЕ: АКТУАЛЬНЫЕ ПРОБЛЕМЫ ПРАВОВОГО ОБЕСПЕЧЕНИЯ

Аграрные расписки являются товарораспорядительными документами, используемыми в правоотношениях кредитования сельскохозяйственных предприятий и физических лиц, занимающихся сельскохозяйственным производством. В статье рассмотрены проблемы правового обеспечения оформления, выдачи, регистрации и оборота аграрных расписок. Внесены предложения по усовершенствованию законодательства Украины по обороту аграрных расписок.

Ключевые слова: аграрная расписка, товарораспорядительный документ, сельскохозяйственная продукция, залог сельскохозяйственной продукции, будущий урожай.

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