

## CONTEMPORARY SIGNIFICANCE OF THE CULTIVATION CONTRACT

Izabela Lipińska

Uniwersytet Przyrodniczy w Poznaniu

**Abstract.** The cultivation contract is a contract strictly related with the process of production in agriculture. It is not an obligatory contract although national and EU regulations require that it must be signed for selected agricultural products. The aim of the article is an attempt to indicate the contemporary role of the cultivation contract. The article also attempts to answer the question if the current legal regulations secure the interest of both parties of the contract. The contract in question has numerous functions, which are modified along with the technological progress. However, it should still be seen as the main stem of the system supplying raw materials for the agri-food industry. Besides, it also plays a vital role as a legal instrument limiting broadly understood risk in agricultural production.

**Key words:** agricultural procurement contract, production risk, agricultural production, agricultural market

## INTRODUCTION

The subject of the consideration here is the cultivation contract, which is seen as 'production contract'. It is strictly related with the production activity in agriculture. It has a long history in Poland and its influence on the production and turnover of agricultural products has been changing [Stelmachowski 1960]. The cultivation contract was introduced into the civil code as a separate nominate contract (Art. 613-626 Civil Code) [Ustawa... 1964]. The Civil Code only outlines its model and lists the essential rights and duties of the parties. The regulations concerning the cultivation contract were contained in several articles. They comprised the essential stem of the rules, which were

made to facilitate and unify the application of various standards concerning the contract, which had been scattered in numerous legal acts. For many years the contract had been entered according to a specific standard.

The cultivation contract is an agreement required by national and EU regulations but only for selected agricultural products. It always takes place wherever it is necessary to secure a specific volume of production. In other cases it is optional for the parties to sign it.

## **AIM AND METHODOLOGY OF RESEARCH**

The aim of the article is an attempt to indicate the contemporary role of the cultivation contract. As it has been mentioned in the introduction, the functions of the contract have been changing over years. This is the result of the changing agricultural policy of the state and economic conditions. The particular importance of the cultivation contract was noticed when Poland joined the European Union. It was then that the contract became an instrument influencing the local agricultural market.

The starting point for substantive considerations is to specify the importance of the cultivation contract both in the historical aspect and after Poland's accession to the European Union. First, it is necessary to study its role as agreement required by legal regulations and second, to specify its function as an optional agreement. The article also attempts to answer the question if the current legal regulations secure the interest of both parties of the contract.

The methods applied in the article are a dogmatic analysis of the EU and national legal regulations, as well as the descriptive method.

## **CULTIVATION CONTRACT – HISTORICAL ASPECT**

Cultivation agreements were made as early as the 17th century and their main aim was to obtain raw material for the tobacco industry [Stelmachowski 2004]. However, during the partitions of Poland cultivation contracts did not play a significant role. The contract became an important tool of economic policy during the interbellum. At the time, the second most important raw material purchased on the basis of cultivation contracts, was sugar beets which followed tobacco. Apart from them, the usual subjects of the contract were pigs and rapeseed. During the period in question the state expressed its pro-export or anti-import policy by means of cultivation contracts.

The cultivation contract began to flourish again after World War II. At the time it was one of the instruments to execute the national social and economic plans [Selwa and Stelmachowski 1970]. It enabled inclusion of individual farms into the state supply and market system and thus eliminated private agents [Stelmachowski 1960]. Apart from that, the contract supplemented the system of obligatory deliveries. After 1956, as a result of changes in the government's agricultural policy, along with free market purchase it became the dominant purchase method, which was supplemented with obligatory deliveries. Farmers were free to sign cultivation contracts, but the agreements were based on the cultivation contract plan established by the Council of Ministers or

the Government Presidium as a resolution. Although in theory the state tried to encourage farmers to sign such contracts and it only applied economic stimuli, the aforementioned resolutions specified the conditions of the contract and its financing [Selwa and Stelmachowski 1970].

In 1990 farmers lost their interest in cultivation contracts. On the one hand, it was caused by liberalisation of prices and new free market purchasing possibilities. On the other hand, it was caused by the liquidation of State Farms, which were the main supplier of agricultural products. However, the cultivation contract was still based on the regulations of the civil code, which gave the parties of the contract big freedom in their rights and duties. At the time the contracted products were mainly: sugar beets, rapeseed, cereals, pigs and selected fruit and vegetables.

The resurgence of interest in cultivation contracts took place when Poland joined the European Union. On the one hand, it was dictated by the need to prepare the Polish agricultural market to be subject to the Common Agricultural Policy, but on the other hand it resulted from the changes taking place on the domestic market. Especially it was the consequence of the advantage of supply over the demand. This fact gave agricultural producers a privileged position, which enabled them to enforce market changes in the most desirable direction, i.e. a convenient price drop [Tomasini 2003].

#### **THE FUNCTIONS OF THE CULTIVATION CONTRACT AS AN OBLIGATORY AGREEMENT**

Although there is a general rule of freedom of contract, in some cases the cultivation contract is enforced by law. This duty may be caused by different reasons, including political, social and economic ones. At present the national legislature commits parties to enter a cultivation contract in reference to two agricultural products, i.e. poppy seeds and sugar beets.

As far as the production of poppy seeds is concerned, the obligation to sign a cultivation contract results from the Act on Counteracting Drug Addiction of 29 July 2005. The conditions of growing this crop were specified in Article 46 of the Act [Ustawa... 2005]. According to them, before growing poppy it is necessary to sign a cultivation contract. One of the parties of the contract is an agricultural producer who has a concession for the plantation issued by the competent voigt (mayor, president of the city), according to the location of the plantation, whereas the other party is the contracting authority, which can only be an entity authorised by the marshal of the voivodeship to purchase poppy seeds.

The *sine qua non* for the production and supply of poppy seeds is precise specification of the plantation area, the region of its production, the declaration to use only the seeds of elite or qualified categories, according to the seed regulations. The contracted poppy seeds can only be produced in the amounts necessary for the pharmaceutical and food industry and to satisfy the demand of the seed production.

The act in question also influences the plantation of hemp, which can only be grown for the textile, chemical, cellulose and paper, food, cosmetic, pharmaceutical and building material industries and for seed production. Growing hemp for other purposes is forbidden. In the case under discussion, apart from the cultivation contract in certain

cases the legislature also allows the sales contract, according to Article 91, Regulation 1234/2007 [Rozporządzenie Rady... 2007]. Nevertheless, the parties have to receive permission for the production.

As far as the production of both agricultural products is concerned, the cultivation contract is a certain instrument of the social policy of the state, which introduces rationed supply of the raw material which might be used for drug production. The purpose of limitation of the production and availability is health care and protection of humans from the harmful effect of the consumption of processed products made from both plants. Thus, the cultivation contract enables the state to hold a monopoly and to make decisions about the volume of production and availability.

Plantations are subject to special supervision, which manifests the far-reaching state-controlled prevention of their spreading. On the one hand, the agricultural producer has a possibility to grow the plants, but on the other hand, it is limited in many ways. For example, for both the agricultural producer and the contracting authority the duty to have permission to produce and supply those products is a manifestation of administrative obligation. In the case under discussion unauthorised production of the plants is punishable. According to Article 63 [Ustawa... 2005], anyone growing poppy, except for low morphine poppies, and hemp is subject to imprisonment up to three years. Apart from that, if poppy or hemp are found to be grown with violation of the applicable law, the voigt (mayor, president of the city) orders to destroy the plantations by ploughing, digging the soil, or in any other way which guarantees that the order is effective, at the planter's expense.

Apart from poppy, sugar beets are also subject to obligatory cultivation contracts. It is worth mentioning that the contract is one of the essential instruments in the execution of the assumptions of the Common Agricultural Policy with reference to the sugar market.

The example of this market shows that cultivation contracts play a significant role, which can be seen in the EU legislation. It states that "specific instruments are needed to ensure a fair balance of rights and obligations between sugar undertakings and sugar beet growers" [Rozporządzenie Rady... 2007, Preambuła, pkt 25].

According to Council Regulation No. 1234/2007 of 22 October 2007 [Rozporządzenie Rady... 2007], establishing common organisation of agricultural markets and detailed regulations concerning selected agricultural products (the regulation on single common market organisation), sugar beets grown in the European Union are purchased by processing plants only on the basis of contracts signed beforehand. Although the EU legislature uses the name *delivery contract*, the cultivation contract is implied.

These contracts are the only method of supplying roots to sugar refineries. Simultaneously, the legislature does not provide 'rigid' rules of contracts, because due to the diversity of natural conditions, economic and technical situation it is impossible to unify the purchase rules for all the member states. Thus, depending on the internal (domestic) regulations, before sugar beets are planted such contracts are signed as long-term contracts. They have individual character and they are based on typical contracts. Nevertheless, their provisions must be in agreement with the applicable regulations of the EU and national law. In particular, in the Preamble of Council Regulation No. 1234/2007 the legislature stresses the need to adopt the legal framework regulating the contractual relations between sugar beet growers and purchasers [Rozporządzenie Rady... 2007].

Specification of the sugar beet type is an element of utmost importance in contracts. It is necessary to indicate if quota or non-quota sugar will be produced from the plants. Contracts must comply with the purchase conditions specified by the Commission in Regulation No. 707/2008 [Rozporządzenie Komisji... 2008], especially in reference to the conditions regulating the purchase, delivery, reception and payment for the products. The legislature provides for obligatory pre-sowing contracts. Otherwise, the sugar refineries which have not signed them are obliged to pay at least the minimum price of quota beets for all the sugar beets they process into sugar.

When analysing the applicable legal regulations it is necessary to state the explicit fact that the cultivation contracts signed with the agricultural producer must comply with the range of branch agreements. According to Article 50, Paragraph 2, Council Regulation No. 1234/2007 [Rozporządzenie Rady... 2007] the conditions of purchase of sugar beets and sugar cane are regulated by the agreements between the growers of those products and sugar enterprises. The provisions of those agreements are formulated by each member state and they specify all solutions related with e.g. the quality or conditions of purchase of the roots. Usually agreements contain certain accepted contract standards. Apart from that, as Perzyna [2007] notes, in a way they “come before” the concluded cultivation contracts.

In reference to the sugar market it is necessary to state that as far as the contemporary role of the contract in question is concerned, it does not diverge much from the role it had in history. On the one hand, it secures the inflow of the necessary amount of the raw material to the industry by specifying fixed parameters in advance. On the other hand, it guarantees that the grower receives compensation for the roots if they meet all the conditions connected with obtaining them. Nevertheless, the contract omits the elements which cannot be arranged or predicted in advance due to the natural character of production, which depends on the climatic conditions, diseases, etc. In this case the position and economic policy of the sugar manufacturer on the internal market plays a vital role. The other, invariable contractual provisions are specified in branch agreements, which are usually understood as special commitments [Budzinowski 2008].

The cultivation contract plays a considerable role in production limitation. According to the applicable regulations of the EU law, sugar beets are purchased by the industry only on the basis of this contract. Production quotas are supposed to perform a specific function as an instrument of execution of the CAP assumptions. In this case they are supposed to stabilise the market. It is possible to achieve it by the introduction of a wide spectrum of legal solutions, which are *lex specialis*, as compared with the code regulation [Pytlak 2006].

#### **THE ROLE OF THE CULTIVATION CONTRACT AS AN OPTIONAL AGREEMENT**

Apart from the aforementioned cases at present the legislature does not provide for the obligation to sign cultivation contracts. Thus, the parties have a possibility to make the most appropriate choice depending on the subject and type of contract. Usually this concerns the sales or delivery contract. These contracts are concluded in each case when there is no simultaneous obligation to produce and deliver the product or to supervise

the production process. The legislature adopted a similar legal solution in reference to the production of e.g. grapevines. Due to the fact that apart from the grapevine grower on the market there are also other entities which only purchase grapes, those which produce wine and distil wine and the by-products made in the production process, the number and diversity of individuals participating in the market limit the possibility to sign a contract where the only parties are the agricultural producer and the contracting authority. On the other hand, the act on the organisation of the fruit and vegetable market, the hop market, the tobacco market and the dried fodder market of 19 December 2003 provides for the possibility to sign a delivery contract along with the cultivation contract [Ustawa... 2003]. In this case the subject of the contract is dried fodder and hop, which is also justified by the EU regulations [Article 185, Regulation No. 1234/2007 and Article 382, Regulation No. 382/2005].

In comparison with the aforementioned contracts the cultivation contract is strictly related with two production stages – the production and delivery of the agricultural product. In this respect the importance of the cultivation contract has not changed over the years. The contract secures the volume of production specified in the contract. For the agricultural producer it is a guarantee of the possibility to make a previously agreed amount of products, e.g. according to the mass or yield from a particular area. Thus, the farmer has a guarantee of the market and payment for the products. On the other hand, by signing the contract the contracting authority secures the amount of the raw material which is necessary for further production.

Another function of the cultivation contract, which also has a historical background, is a guarantee that the agricultural producer will supply agricultural products of the required quality. It is not only a matter of achieving the desirable parameters of the supplied raw material, but also a matter of production from the input material indicated by the contracting authority, usually according to their cultivation recommendations. In this case organic farming deserves special attention, where the final product should meet statutory requirements. The role of the cultivation contract may also be of utmost importance in the production of genetically modified raw materials. It enables both precise specification of the cultivation conditions and the equipment as well as further production fate of the land. In this case the problem of crop ownership may appear. Can the farmer cultivating genetically modified plants from the received input material have the by-product at their disposal and what effect will the crop have in crop rotation? Or should the agricultural producer be treated only as a service provider? As far as the crops in question are concerned, the stability of the contract in the system of long years of production should be an indispensable element.

According to the contract, it is the agricultural producer's duty to make the necessary effort during the cultivation to provide the most wanted product for the contracting authority. On the other hand, when the product has been delivered, it may also be necessary to provide temporary storage of it or to meet a wide range of special requirements during transport. Thus, the qualitative function of the cultivation contract may have numerous aspects, which should result from the contents of the contract and especially from its subject.

The contracting authority concludes a contract with a selected agricultural producer, the one who gives the best guarantee of appropriate production and supplying of the subject of the contract. In practice, more and more often such contracts are signed with the farmers who make large amounts of the raw material and who own farms located

a short distance away from the contracting authority, which considerably limits the cost of transport of the products. Fulfilling the aforementioned conditions enables the farmer to sell the products at a fixed price and amount. Thus, the farmer is not exposed to the risk of changeable economic situation at the time of delivery. Another function of the cultivation contract can be observed here – stabilisation of production.

The cultivation contract may involve the requirement to provide additional benefits, which influence the production, its rationalisation, improvement, etc. The legislature indicated an example catalogue of such benefits in Article 615 of the Civil Code [Ustawa... 1964]. They include such elements as enabling the producer to acquire specific means of production and to receive financial aid, agritechnical and zootechnical assistance, cash bonuses and bonuses in kind. Especially giving the farmer a possibility to incur credits for purchasing the means of production necessary to produce the subject of the contract or to receive advance payments may have influence on the modernisation of their farm, and on the macro scale – the modernisation of agriculture. However, in the contemporary production process these benefits are more developed. More and more often the contracting authority guarantees the farmer access to latest knowledge and technologies. This enables the introduction of innovations in the production process and thus contributes to the production of the most wanted raw materials on the market. Thus, cultivation contracts may be treated as a tool of modernisation of agricultural production.

However, the role and functions of contemporary cultivation contracts are not exclusively limited to the very production process. The amount of the income generated by the agricultural producer depends on signing a cultivation contract. On the one hand, the contract guarantees compensation for the agricultural products. On the other hand, it gives the right to receive additional support in the form of subsidies paid for different reasons, which are provided for by the CAP.

Again, the sugar market may be an example, where planters may apply for the sugar payment if they meet the necessary requirements to be granted the Single Area Payment Scheme in a given year and if they submitted an application to be granted the payment and if they signed a sugar beet delivery contract with the sugar manufacturer for a specific economic year, according to Article 24, Paragraph 1 of the Act on payments under direct support schemes of 26 January 2007 [Ustawa... 2007]. Although the quoted law uses the name delivery contract, in fact the cultivation contract is implied.

The sugar market is not the only market where legislature provides for the possibility to conclude cultivation contracts in order to receive additional financial support. For example, the Act on the Agricultural Market Agency and organisation of selected agricultural markets of 11 March 2004 imposes the duty to conclude cultivation contracts between starch producers and starch potato growers and to provide their lists to the Agricultural Market Agency every year [Ustawa... 2004]. Signing this contract is a condition the potato producer must meet in order to receive the related payment from the Agricultural Market Agency (Article 38 of the Act). The system of those payments applies to the agricultural producers who produced and delivered potatoes under cultivation contracts, but only for the purpose of starch production. The payment is due if the amount of starch contained in potatoes is not higher than the one specified in the cultivation contract as its equivalent. Agricultural producers sign contracts with starch manufacturers under the allocated production quotas. Thus, in the case under discussion, the

cultivation contract both stimulates the volume of production and the farmer's income and it is an instrument of market monitoring.

One of the main functions of the cultivation contract should be protection of agricultural producers from unfavourable consequences which may appear during the execution of the contract. Agricultural activity is considerably exposed to the risk of external factors, which are usually beyond the farmer's control and which cannot be prevented. This concerns unpredictable natural factors, such as the weather, pests or diseases. The cultivation contract gives a possibility to share the risk of production according to the shared risk rule resulting from Article 622 of the Civil Code [Stelmachowski 2004]. The aforementioned negative external factors determine the yield volume and influence the price level on the market. By signing a cultivation contract the agricultural producer cannot prevent them directly, but the farmer has a possibility to receive the agreed price regardless of the turmoil on the market.

The cultivation contract also gives a possibility to take strategic actions both within the farm and within the enterprise purchasing agricultural products. Besides, it stimulates the processes of planning and above all, the most wanted management of means of production in agriculture. Simultaneously, it limits the organisational risk, which should be understood as the achievement of a different production result than expected [Jerzak 2008]. In this case, the cultivation contract is also a chance to mitigate it and it also prevents it to a certain extent.

The functions of the cultivation contract differ depending on the approach to agricultural production. In the macro scale the contract enforces specialisation and concentration of production, which leads to reduced prices of agricultural products, in consequence [Czechelski 2007]. However, in this respect certain risk related with trade liberalisation also appears [Jerzak 2008]. Lower costs of receiving the raw material in developing countries may appear to be more favourable and it is necessary to remember that the prices of selected agricultural products are lower outside the European Union. On the other hand, in the micro scale the cultivation contract guarantees stabilisation of the reception of contracted products and it simultaneously enables access to innovations, which improves the quality of production and simultaneously cuts its costs. The consequence is specialisation of the concentration of production and a simultaneous increase in the profitability of farms.

However, more and more often it is possible to observe the weakening position of the agricultural producer as a party of the contract. This results from such facts as the presence of big enterprises as the contracting authority. Usually they are not interested in individual agreements concerning the conditions of contracts. They use the same general standard specifying the cultivation conditions, which are often impossible to achieve by small and weak farms. In this case strong competition which appears on the market supersedes them. Contrary to appearances, the weaker position of the agricultural producer may also result from the legal regulations influencing individual agricultural markets, especially in those places where in spite of production limitation the issues related with the formulation of essential rights and duties of the parties have been left to the decision of the contracting authority, which is economically stronger.



## SUMMARY

1. The cultivation contract has numerous functions, which are modified along with the technological development.

2. The cultivation contract should still be perceived as the main stem of the system of supplying raw materials to the agri-food industry.

3. The cultivation contract reduces the appearance of broadly understood risk in agricultural production as it guarantees the prices of produced and supplied products, the market, the volume and quality of production.

4. The contract intensifies mutual dependences and relations between farmers and contracting authorities, who may finally pursue the common aim, which is the profit.

5. The utmost importance of the contract is proved by the fact that although the farmer is often compelled by the situation, because otherwise he cannot sell his agricultural products beyond the cultivation contract, he becomes an active participant of the contract.

6. The cultivation contract is indispensable in all those places where intervention of the state is necessary and where it is necessary to maintain monopolist production due to different causes.

7. The cultivation contract is an instrument which may enforce specific behaviour on the agricultural market.

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## WSPÓLCZESNA ROLA UMOWY KONTRAKTACJI

**Streszczenie.** Umowa kontraktacji jest umową ściśle związaną z procesem produkcji w rolnictwie. Nie jest to umowa obligatoryjna, choć jej zawarcia wymagają przepisy krajowe oraz unijne, w odniesieniu do niektórych produktów rolnych. Celem artykułu jest próba wskazania współczesnej roli umowy kontraktacji. Ponadto została podjęta próba odpowiedzi na pytanie, czy obecna regulacja prawna zabezpiecza interesy jej stron. Omawiana umowa pełni wiele funkcji, które wraz z rozwojem technologii ulegają modyfikacjom. Jednakże nadal powinna być postrzegana jako główny trzon systemu zaopatrzenia przemysłu rolno-spożywczego w surowiec. Ponadto pełni ona znaczącą rolę jako prawny instrument ograniczający występowanie szeroko rozumianego ryzyka w produkcji rolnej.

**Słowa kluczowe:** umowa kontraktacji, ryzyko produkcyjne, produkcja rolna, rynek rolny

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