



C(Extr.)/28/2

ORIGINAL: Englisch

DATUM: 15. März 2011

**INTERNATIONALER VERBAND ZUM SCHUTZ VON PFLANZENZÜCHTUNGEN**  
GENF

**DER RAT**

**Achtundzwanzigste außerordentliche Tagung**  
**Genf, 8. April 2011**

**PRÜFUNG DER VEREINBARKEIT DES GESETZENTWURFS  
DER REPUBLIK SERBIEN ÜBER DEN SCHUTZ VON ZÜCHTERRECHTEN  
MIT DER AKTE VON 1991 DES UPOV-ÜBEREINKOMMENS**

*Vom Verbandsbüro erstelltes Dokument*

1. Mit Schreiben vom 22. Februar 2011 an den Generalsekretär der UPOV, das durch die Ständige Vertretung der Republik Serbien beim Amt der Vereinten Nationen und anderen internationalen Organisationen in Genf übermittelt wurde und am 4. März 2011 bei der UPOV einging, ersuchte Herr Saša Dragin, Minister für Land-, Forst- und Wasserwirtschaft der Republik Serbien (nachstehend „Serbien“), um Prüfung der Vereinbarkeit des „Gesetzentwurfs über den Schutz von Züchterrechten“ (nachstehend „Gesetzentwurf“) mit der Akte von 1991 des UPOV-Übereinkommens (nachstehend „Akte von 1991“). Das Schreiben ist in Anlage I dieses Dokuments wiedergegeben. Anlage II enthält eine von den serbischen Behörden erstellte Übersetzung des Gesetzentwurfs ins Englische.

**HINTERGRUND**

2. Artikel 34 Absatz 3 der Akte von 1991 sieht vor: „Jeder Staat, der dem Verband nicht angehört, sowie jede zwischenstaatliche Organisation ersuchen vor Hinterlegung ihrer Beitrittsurkunde den Rat um Stellungnahme, ob ihre Rechtsvorschriften mit diesem Übereinkommen vereinbar sind. Ist der Beschluß über die Stellungnahme positiv, so kann die Beitrittsurkunde hinterlegt werden.“

3. Die Regierung von Serbien leitete das Verfahren für einen Beitritt zur UPOV mit einer Note vom 25. Februar 2008 ein, in der die Regierung von Serbien den Rat der UPOV um Stellungnahme hinsichtlich der Vereinbarkeit des „Gesetzentwurfs über den Schutz von Züchterrechten“ von 2008 („Gesetzentwurf von 2008“) mit der Akte von 1991 ersuchte.

4. Auf seiner fünfundzwanzigsten außerordentlichen Tagung in Genf am 11. April 2008 entschied der Rat,

„a) die Analyse in Dokument C(Extr.)/25/5 sowie die von der Delegation Serbiens erteilten Informationen zur Kenntnis zu nehmen; diese beabsichtigt:

i) Absatz 1 des Artikels 22 des Gesetzentwurfs über die Dauer des Züchterrechts wie folgt zu ändern: ‚Das Züchterrecht für die geschützte Sorte erlischt 25 Jahre nach dessen Erteilung oder für Bäume und Reben 30 Jahre nach dessen Erteilung‘;

ii) Absatz 3 des Artikels 29 des Gesetzentwurfs zu streichen;

iii) Artikel 35 des Gesetzentwurfs zu streichen, und

b) vorbehaltlich der Aufnahme der empfohlenen Änderungen in den Gesetzentwurf, wie in Dokument C(Extr.)/25/5 ausgewiesen, und der Änderung von ‚90 Tagen‘ in ‚drei Monaten‘ in Artikel 17 Absatz 2, eine positive Entscheidung über die Vereinbarkeit des Gesetzentwurfs der Republik Serbien über den Schutz von Züchterrechten mit den Bestimmungen der Akte von 1991 des Internationalen Übereinkommens zum Schutz von Pflanzenzüchtungen zu treffen; nach der Aufnahme der Änderungen in den Gesetzentwurf und der Verabschiedung und dem Inkrafttreten des Gesetzes kann die Republik Serbien ihre Urkunde über den Beitritt zur Akte von 1991 hinterlegen;

c) das Verbandsbüro zu ersuchen, die Regierung der Republik Serbien bei der Vornahme der in Dokument C(Extr.)/25/5 ausgewiesenen Änderungen des Gesetzentwurfs zu unterstützen, und

d) den Generalsekretär zu ermächtigen, die Regierung der Republik Serbien von dieser Entscheidung zu unterrichten.“

(siehe Dokument C(Extr.)/25/10, „Bericht“, Absatz 9)

5. Am 15. April 2008 unterrichtete der Generalsekretär die Regierung Serbiens über die Entscheidung des Rates.

6. Am 14. Mai 2010 ersuchte Frau Jelisaveta Djurickovic-Tuvic, Gesandte, Stellvertreterin des Leiters der Ständigen Vertretung der Republik Serbien beim Amt der Vereinten Nationen und anderen internationalen Organisationen in Genf, das Verbandsbüro um Stellungnahme zu dem Gesetz über den Schutz von Züchterrechten, das am 29. Mai 2009 von der Nationalversammlung angenommen worden war und am 10. Juni 2009 in Kraft getreten ist (Gesetz von 2009). Das Verbandsbüro stellte fest, daß sich das Gesetz von 2009 von dem Gesetzentwurf unterschied, auf dessen Grundlage der Rat 2008 eine positive Entscheidung hinsichtlich des Beitritts zum UPOV-Übereinkommen getroffen hatte.

7. Am 18. Mai 2010 übermittelte das Verbandsbüro der Ständigen Vertretung seine Stellungnahme zum Gesetz von 2009.

8. Am 29. Juni 2010 teilte Herr Saša Dragin, Minister für Land-, Forst- und Wasserwirtschaft, dem Generalsekretär mit, das Ministerium für Land-, Forst- und Wasserwirtschaft werde die Stellungnahme des Verbandsbüros berücksichtigen und dem Rat so rasch wie möglich einen Gesetzentwurf zur Prüfung unterbreiten.

## RECHTSGRUNDLAGE FÜR DEN SCHUTZ VON PFLANZENZÜCHTUNGEN IN SERBIEN

9. Der Schutz neuer Pflanzensorten wird in Serbien künftig durch das Gesetz von 2009 in der abgeänderten Fassung geregelt. Das Gesetz von 2009 in der Fassung, wie sie abgeändert werden soll, wird in Anlage II als Gesetzentwurf vorgestellt. Eine Analyse des Gesetzentwurfs folgt in der Reihenfolge der wesentlichen Bestimmungen der Akte von 1991.

### Artikel 1 der Akte von 1991: Begriffsbestimmungen

10. Artikel 2 des Gesetzentwurfs enthält Begriffsbestimmungen, die den Begriffsbestimmungen in Artikel 1 der Akte von 1991 entsprechen.

### Artikel 2 der Akte von 1991: Grundlegende Verpflichtung der Vertragsparteien

11. Artikel 1 Absatz 1 des Gesetzentwurfs sieht vor: „[D]ieses Gesetz regelt die Voraussetzungen, die Art und das Verfahren für den Schutz von Züchterrechten“; damit entspricht er der grundlegenden Verpflichtung in Artikel 2 der Akte von 1991.

### Artikel 3 der Akte von 1991: Gattungen und Arten, die geschützt werden müssen

12. Artikel 1 Absatz 3 des Gesetzentwurfs sieht vor: „[D]ieses Gesetz ist auf alle Pflanzengattungen und -arten anwendbar.“ Dies ist mit Artikel 3 Absatz 2 Buchstabe ii der Akte von 1991 vereinbar. Es ist darauf hinzuweisen, daß Serbien bei der Hinterlegung seiner Beitrittsurkunde gemäß Artikel 36 Absatz 1 Buchstabe ii der Akte von 1991 in einer Erklärung amtlich mitteilen muß, daß das Gesetz auf alle Pflanzengattungen und -arten anwendbar ist.

### Artikel 4 der Akte von 1991: Inländerbehandlung

13. Die Bestimmungen in Artikel 2 Absätze 3, 4 und 5 sowie Artikel 5 des Gesetzentwurfs entsprechen den Anforderungen von Artikel 4 der Akte von 1991.

### Artikel 5 bis 9 der Akte von 1991: Schutzvoraussetzungen; Neuheit; Unterscheidbarkeit; Homogenität; Beständigkeit

14. Die Artikel 6 bis 10 des Gesetzentwurfs enthalten die Schutzvoraussetzungen, die den Bestimmungen der Artikel 5 bis 9 der Akte von 1991 entsprechen.

15. Artikel 52 des Gesetzentwurfs setzt eine Übergangsregelung für die Neuheit für „vor kurzem gezüchtete Sorten“ aufgrund von Artikel 6 Absatz 2 der Akte von 1991 um.

Artikel 10 der Akte von 1991: Einreichung von Anträgen

16. Die Artikel 15 bis 17 des Gesetzentwurfs enthalten Bestimmungen zur Einreichung von Anträgen. Der Gesetzentwurf enthält keine Bestimmungen, die im Widerspruch zu Artikel 10 der Akte von 1991 stehen.

Artikel 11 der Akte von 1991: Priorität

17. Artikel 18 des Gesetzentwurfs enthält Bestimmungen über das Prioritätsrecht, die den Bestimmungen in Artikel 11 der Akte von 1991 entsprechen.

Artikel 12 der Akte von 1991: Prüfung des Antrags

18. Die Artikel 19 bis 21 des Gesetzentwurfs enthalten Bestimmungen über die Prüfung des Antrags, die den Bestimmungen in Artikel 12 der Akte von 1991 entsprechen.

Artikel 13 der Akte von 1991: Vorläufiger Schutz

19. Artikel 28 des Gesetzentwurfs enthält Bestimmungen über den vorläufigen Schutz, die den Bestimmungen in Artikel 13 der Akte von 1991 entsprechen.

Artikel 14 der Akte von 1991: Inhalt des Züchterrechts

20. Artikel 25 Absatz 4 des Gesetzentwurfs enthält die freigestellte Bestimmung nach Artikel 14 Absatz 3 der Akte von 1991. Artikel 25 des Gesetzentwurfs enthält Bestimmungen über den Inhalt des Züchterrechts, die den Bestimmungen in Artikel 14 der Akte von 1991 entsprechen.

Artikel 15 der Akte von 1991: Ausnahmen vom Züchterrecht

21. Artikel 26 Absatz 1 des Gesetzentwurfs enthält Bestimmungen über verbindliche Ausnahmen vom Züchterrecht, die den Bestimmungen in Artikel 15 Absatz 1 der Akte von 1991 entsprechen.

22. Artikel 26 Absätze 2 bis 6 des Gesetzentwurfs enthalten Bestimmungen über die freigestellte Ausnahme nach Artikel 15 Absatz 2 der Akte von 1991 wie folgt:

„Ausnahmen vom Züchterrecht

Artikel 26

Bei einer Pflanzensorte, welche in der Artenliste landwirtschaftlicher Pflanzen aufgeführt ist, bei denen Ausnahmen vom Züchterrecht zur Anwendung kommen, werden Züchterrechte nicht verletzt durch einen Landwirt, der in angemessenem Rahmen und unter Wahrung der berechtigten Interessen der Züchter Erntegut, das er aus dem Anbau einer geschützten Sorte oder einer in Artikel 25 Absatz 5 Punkt 1 und 2 erwähnten Sorte im eigenen Betrieb gewonnen hat, im eigenen Betrieb zum Zwecke der Vermehrung verwendet (nachstehend ‚Nachbausaatgut‘).

Obst- und Zierpflanzen, Gemüse und forstliche Baumarten sind nicht in der Liste der Sorten landwirtschaftlicher Pflanzenarten aufgeführt, auf die in Absatz 2 dieses Artikels verwiesen wird.

Landwirtschaftliche Erzeuger mit Ausnahme landwirtschaftlicher Kleinerzeuger sind verpflichtet, dem Inhaber des Züchterrechts für die Nutzung von Nachbausaatgut ein nach den Marktverhältnissen angemessenes Entgelt zu zahlen, das deutlich unter dem Entgelt für erworbenes Saatgut liegt.

Landwirtschaftliche Erzeuger sind verpflichtet, dem Züchter auf dessen Ersuchen alle notwendigen Daten betreffend die Nutzung des Nachbausaatguts in schriftlicher Form zur Verfügung zu stellen.

Der Minister stellt die Liste der Sorten landwirtschaftlicher Pflanzenarten auf, auf die in Absatz 2 dieses Artikels verwiesen wird, und er schreibt die Elemente vor, anhand derer die landwirtschaftlichen Kleinerzeuger bestimmt werden, auf die in Absatz 4 dieses Artikels verwiesen wird.“

Artikel 16 der Akte von 1991: Erschöpfung des Züchterrechts

23. Artikel 27 des Gesetzentwurfs enthält Bestimmungen über die Erschöpfung des Züchterrechts, die den Bestimmungen in Artikel 16 der Akte von 1991 entsprechen.

Artikel 17 der Akte von 1991: Beschränkungen in der Ausübung des Züchterrechts

24. Die Artikel 31 bis 35 des Gesetzentwurfs enthalten Bestimmungen über Beschränkungen in der Ausübung des Züchterrechts, die den Bestimmungen in Artikel 17 der Akte von 1991 entsprechen.

Artikel 18 der Akte von 1991: Maßnahmen zur Regelung des Handels

25. Der Gesetzentwurf scheint keine Bestimmungen zu enthalten, die mit Artikel 18 der Akte von 1991 in Widerspruch stehen.

Artikel 19 der Akte von 1991: Dauer des Züchterrechts

26. Artikel 23 des Gesetzentwurfs enthält Bestimmungen über die Dauer des Züchterrechts, die den Bestimmungen in Artikel 19 der Akte von 1991 entsprechen.

Artikel 20 der Akte von 1991: Sortenbezeichnung

27. Die Artikel 11 bis 14, Artikel 17 und Artikel 20 des Gesetzentwurfs enthalten Bestimmungen über die Sortenbezeichnung, die den Bestimmungen in Artikel 20 der Akte von 1991 entsprechen.

Artikel 21 der Akte von 1991: Nichtigkeit des Züchterrechts

28. Artikel 37 des Gesetzentwurfs enthält Bestimmungen über die Nichtigkeit des Züchterrechts, die den Bestimmungen in Artikel 21 der Akte von 1991 entsprechen.

Artikel 22 der Akte von 1991: Aufhebung des Züchterrechts

29. Artikel 38 des Gesetzentwurfs enthält Bestimmungen über die Aufhebung des Züchterrechts, die den Bestimmungen in Artikel 22 der Akte von 1991 entsprechen.

Artikel 30 der Akte von 1991: Anwendung des Übereinkommens

30. Hinsichtlich der Verpflichtung, „geeignete Rechtsmittel [vorzusehen], die eine wirksame Wahrung der Züchterrechte ermöglichen“ (Artikel 30 Absatz 1 Buchstabe i der Akte von 1991), sehen die Artikel 40 und 41 des Gesetzentwurfs Folgendes vor:

„Klage wegen Verletzung von Züchterrechten

Artikel 40

Personen, die Züchterrechte verletzen, haften im Einklang mit den allgemeinen gesetzlichen Vorschriften, die Schadensersatz vorsehen, für die entstandenen Schäden.

Inhaber von Züchterrechten, deren Recht verletzt wurde, können zusätzlich zu einem Schadensersatz auch beantragen, daß den Personen, die ihr Recht verletzt haben, jede weitere Tätigkeit, die eine solche Verletzung darstellen würde, verboten wird, und sie können die Veröffentlichung des die Verletzung feststellenden Urteils auf Kosten der Beklagten beantragen.

Klagefrist bei Verletzung von Züchterrechten

Artikel 41

Klage wegen Verletzung von Züchterrechten kann beim zuständigen Gericht innerhalb von drei Jahren ab dem Tag erhoben werden, an dem die Verletzung von Züchterrechten zur Kenntnis gelangte.

Nach Ablauf von fünf Jahren ab dem Tag der Verletzung von Züchterrechten ist eine Klage nicht mehr zulässig.“

31. Hinsichtlich der Verpflichtung nach Artikel 30 Absatz 1 Buchstabe ii der Akte von 1991 sehen die Artikel 3 und 22 Absatz 1 des Gesetzentwurfs Folgendes vor:

„Erteilung von Züchterrechten

#### Artikel 22

Auf der Grundlage der Ergebnisse der Prüfung und des Vorschlags des Sachverständigenrats nimmt der Minister innerhalb von 30 Tagen ab dem Tag, an dem der Sachverständigenrat seinen Vorschlag eingereicht hat, Stellung zu der Frage, ob Züchterrechte erteilt werden oder der Antrag auf Züchterrechte abgelehnt wird.

Sachverständigenrat für den Schutz von Züchterrechten

#### Artikel 3

Das für die Agrarpolitik zuständige Ministerium (nachstehend: das Ministerium) übt die Tätigkeiten aus, die mit dem in diesem Gesetz verankerten Schutz von Züchterrechten in der Republik Serbien verbunden sind.

Zum Zweck der Überwachung des Schutzes der Züchterrechte, der Prüfung von Fachfragen, der Bereitstellung fachlicher Stellungnahmen und Vorschläge sowie der Teilnahme an der Durchführung von Projekten im Bereich der Züchterrechte setzt der für die Agrarpolitik zuständige Minister (nachstehend: der Minister) im Einklang mit den Regelungen für die staatliche Verwaltung eine besondere Arbeitsgruppe ein, namentlich den Sachverständigenrat für den Schutz von Züchterrechten (nachstehend: der Sachverständigenrat).“

32. Artikel 20 Absatz 1, Artikel 21 Absatz 1 und Artikel 22 Absatz 7 des Gesetzentwurfs entsprechen der Verpflichtung zur Veröffentlichung von Mitteilungen über Anträge auf und Erteilung von Züchterrechten sowie über die vorgeschlagenen und genehmigten Sortenbezeichnungen gemäß Artikel 30 Absatz 1 Buchstabe iii der Akte von 1991.

#### Allgemeine Schlußfolgerung

33. Nach Ansicht des Verbandsbüros enthält der Gesetzentwurf die wesentlichen Bestimmungen der Akte von 1991. Auf dieser Grundlage, und sobald das Gesetz von 2009 in Übereinstimmung mit dem in Anlage II enthaltenen Gesetzentwurf ohne Änderungen abgeändert worden ist und das abgeänderte Gesetz in Kraft getreten ist, wird Serbien in der Lage sein, den Bestimmungen der Akte von 1991 „Wirkung zu verleihen“, wie in deren Artikel 30 Absatz 2 vorgeschrieben.

34. *Der Rat wird ersucht,*

*a) die Analyse in diesem Dokument zur Kenntnis zu nehmen;*

*b) eine positive Entscheidung über die Vereinbarkeit des Gesetzentwurfs der Republik Serbien über den Schutz von Züchterrechten mit den Bestimmungen der Akte von 1991 des Internationalen Übereinkommens zum Schutz von Pflanzenzüchtungen zu treffen und damit die Republik Serbien in die Lage zu versetzen, sobald das Gesetz von 2009 in Übereinstimmung mit dem in Anlage II enthaltenen Gesetzentwurf ohne Änderungen abgeändert worden ist und das abgeänderte Gesetz in Kraft getreten ist, ihre Urkunde über den Beitritt zur Akte von 1991 zu hinterlegen, und*

*c) den Generalsekretär zu ermächtigen, die Regierung der Republik Serbien von dieser Entscheidung zu unterrichten.*

[Anlagen folgen]



ANLAGE I

Schreiben des Ministers für Land-, Forst- und Wasserwirtschaft der Republik Serbien  
an den Generalsekretär der UPOV

Republik Serbien  
MINISTERIUM FÜR LAND-, FORST- UND WASSERWIRTSCHAFT  
Belgrad, Nemanjina 22-26

22. Februar 2011

z.Hd. Herrn Francis Gurry  
Generalsekretär  
Internationaler Verband zum Schutz von  
Pflanzenzüchtungen (UPOV)  
34, Chemin des Colombettes  
CH-1211 Genf 20

Sehr geehrter Herr Gurry,

hiermit beehre ich mich, Sie davon zu unterrichten, daß das Ministerium für Land-, Forst- und Wasserwirtschaft der Republik Serbien nach Beratung mit dem Büro des Internationalen Verbands zum Schutz von Pflanzenzüchtungen (UPOV) in Bezug auf die vorgeschlagenen Änderungen des Gesetzes über den Schutz von Züchterrechten der Republik Serbien die vom Verbandsbüro vorgeschlagenen Änderungen berücksichtigt hat und den Gesetzentwurf zur Prüfung durch den Rat der UPOV vorlegt.

Ich wäre dankbar, wenn der Rat der UPOV die Vereinbarkeit des Gesetzes über den Schutz von Züchterrechten der Republik Serbien mit den Bestimmungen der Akte von 1991 des UPOV-Übereinkommens auf seiner nächsten Tagung prüfen würde.

Hochachtungsvoll,

Der Minister  
Dr. Saša Dragin

Anlage: Gesetz über den Schutz von Pflanzenzüchtungen

[Anlage II folgt]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[In English only / En anglais seulement /  
Nur auf Englisch / En Inglés solamente]

REPUBLIC OF SERBIA

DRAFT LAW ON PROTECTION OF PLANT BREEDERS' RIGHTS

I GENERAL PROVISIONS

Subject of the Law

Article 1

This Law shall regulate conditions, manner and procedure for protection of plant breeders' rights.

Protection of breeders' rights referred to in paragraph 1 of this Article shall include conditions for granting breeders' rights, procedure for granting breeders' rights, breeders' rights (scope of plant breeders' rights, exceptions from breeders' rights, exhaustion of breeders' rights, provisional protection of breeders' rights), transfer of breeders' rights and ceding of rights for the usage of protected variety, termination of breeders' rights as well as civil and legal protection of breeders' rights.

This Law shall apply to all plant genera and species.

Definitions

Article 2

For the purpose of this Law:

1) "Plant variety" (hereinafter referred to as "the variety") shall mean a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be:

- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- distinguished from any other plant grouping by the expression of at least one of the said characteristics and
- considered as a unit with regard to its suitability for being propagated unchanged;

2) "Protected variety" shall mean a variety protected in accordance with provisions of this Law;

3) "Person" shall mean any natural or legal person;

- 4) “ Domestic person” shall mean a person with permanent residence, or seat in the Republic of Serbia;
- 5) “Foreign person” shall mean a person with permanent residence, or seat outside the Republic of Serbia;
- 6) “Breeder” shall mean
- the person who bred, or discovered and developed, a variety,
  - the employer of the person that has during the working relation bred, or discovered and developed, a variety or who has commissioned the latter’s work,
  - the successor in title of the first or second aforementioned person, as the case may be;
- 7) “Breeder’s right” shall mean the right of the breeder provided for in this Law;
- 8) “Holder of breeders’ right“ shall mean a breeder who has been granted breeders’ rights;
- 9) “Register of Applications for Plant Breeder’s Rights” shall mean the register of all applications duly filed for protection of breeder’s rights;
- 10) “Register of Protected Plant Varieties” shall mean the register of protected varieties and granted breeder’s rights;
- 11) “Register of transferred breeders’ rights“ shall mean a register wherein transferred breeders’ rights are entered;
- 12) “Register of license contracts “ shall mean a register wherein license contracts are entered;
- 13) “UPOV“ shall mean the International Union for the Protection of New Varieties of Plants.

Expert Council for Protection of Plant Breeders’ Rights

Article 3

Ministry in charge of agriculture policy (hereinafter: the Ministry) shall conduct activities related to the protection of breeders’ rights in the Republic of Serbia stipulated by this Law.

For the purposes of monitoring the conditions in the area of protection of breeders’ rights, reviewing expert issues, providing professional opinions and suggestions, as well as for the participation in the implementation of project tasks in the area of breeders’ rights, the Minister in charge of agriculture (hereinafter: the Minister) in compliance with regulations governing state administration, shall issue a decision on establishment of a special working group – Expert Council for Protection of Plant Breeders’ Rights (hereinafter: the Expert Council).

## Status of Breeders Regarding Rights to Protection of Breeders' Rights

### Article 4

The breeders' right shall be granted to a breeder of a variety.

If two or more breeders have mutually bred, or discovered and developed the variety, they shall both have equal right to protection of breeders' rights.

If two or more breeders have independently bred, or discovered and developed the variety, breeders' right shall be granted to the first breeder that filed the application for granting plant breeders' right.

## Status of a Foreign Person regarding Protection of Breeders' Rights

### Article 5

With respect to grant and protection of breeder's rights in the Republic of Serbia foreign persons shall enjoy the same rights as domestic persons, if that stems from international treaties that are binding for the Republic of Serbia.

In the proceedings before the Ministry, a foreign person shall be represented by his authorized representative who has domicile in the Republic of Serbia.

## II CONDITIONS FOR GRANTING BREEDERS' RIGHTS

### General Conditions for Granting Breeders' Rights

#### Article 6

Breeders' rights shall be granted if the variety is new, distinct, uniform, and stable and if it meets conditions for giving the variety denomination, in compliance with the provisions of this Law.

#### Novelty

#### Article 7

A variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety in the Republic of Serbia earlier than one year, or within foreign territory earlier than four years and in the case of vine and tree varieties earlier than six years before the filing date.

The variety referred to in paragraph 1 of this Article shall be deemed to be new if it is disposed of to others under the following conditions:

- 1) by a contract on the transfer of rights to the successor in title;

- 2) by a contract on disposal of variety material between companies related through capital, where one company is owner of another company, or between companies that are owned by third company, provided that the disposal is not for purpose of exploitation of the variety;
- 3) by an agreement under which a person multiplies propagating material of a variety on behalf of the breeder where that agreement requires that the property in the multiplied material reverts to the breeder;
- 4) by a contract on testing in trial fields or laboratory for the purpose of variety evaluation.

A variety referred to in paragraph 1 of this Article shall be deemed to be new if availability of such variety by the breeder is the result of presenting such variety in exhibitions officially recognized pursuant to the Convention on International Exhibitions, concluded on November 22, 1928 in Paris.

### Distinctness

#### Article 8

A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application for the granting of a breeder's right.

In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country or intergovernmental organization, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

The Minister shall prescribe the procedural arrangements of variety distinctness evaluation.

### Uniformity

#### Article 9

A variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

The Minister shall prescribe the procedural arrangements of variety uniformity evaluation.

### Stability

#### Article 10

A variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in case of a particular cycle of propagation, at the end of each such cycle.

The Minister shall prescribe the procedural arrangements of variety stability evaluation.

## Variety Denomination

### Article 11

The variety shall be designated by a denomination which will be its generic designation.

The denomination:

- 1) must enable the variety to be identified;
- 2) may not consist solely of figures except where this is an established practice for designating varieties;
- 3) must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species;
- 4) cannot be unsuitable for usage in the Republic of Serbia.

Where the variety is already protected in the UPOV member or where an application for the protection of the same variety is filed in a member of UPOV, only the variety denomination which has been proposed or registered in that other member of UPOV may be submitted within the Republic of Serbia by the breeder.

Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who is obliged to use it, the Ministry shall require the breeder to submit another denomination for the variety.

The Minister shall prescribe which plant species are considered closely related.

## Proposing Variety Denomination

### Article 12

A breeder shall propose the variety denomination in his application for the granting of plant breeder's right.

The Ministry shall inform competent authorities of all UPOV members on issues related to the denomination of a variety, particularly on the proposal, registration and cancellation of the denomination for a variety.

Competent authorities of UPOV members may submit their objections regarding denominations to the Ministry.

## Cancellation of registered variety denomination

### Article 13

The Ministry shall cancel any registered variety denomination if it is contrary to Article 11 of this Law or based on the court decision forbidding the use of a given denomination.

When a variety denomination has been cancelled, the Ministry shall notify the breeder thereof and invite him to submit a proposal for a new variety denomination within 60 days as of the date of receipt of such notification.

## Obligation to use the registered variety denomination

### Article 14

Any person who offers for sale or markets the propagating material of a protected variety shall use the registered variety denomination.

The obligation to use the registered variety denomination shall not cease after the expiration of variety protection under Article 23 of this Law, except where, prior rights of third person prevent such use.

When a protected variety is offered for sale or marketed, a trademark, trade name or another similar identification may be associated with the registered variety denomination provided that the denomination is easily recognizable.

## III PROCEDURE FOR GRANTING PLANT BREEDERS' RIGHTS

### Application for Granting Plant Breeders' Right

#### Article 15

The procedure for grant of breeder's rights shall be initiated based on the application for granting plant breeder's right filed by the breeder or his authorized representative to the Ministry (hereinafter: the application for granting plant breeder right).

With the application referred to in paragraph 1 of this Article, the breeder, or his authorized representative shall submit the documents on the breeding history of the variety and the proposal of the variety denomination and, upon the request from the Ministry, shall also be obliged to deliver appropriate samples of the propagating material of the variety for testing, for the purposes of determining fulfillment of conditions for granting breeders' rights.

Material of a variety, for which the application for granting breeders' right has been submitted, along with the documents related to that material shall be deemed as official secret and shall be handled as confidential information.

The Minister shall prescribe the form and contents of the application for granting breeders' right, as well as required documents, quantity and manner of submitting samples referred to in paragraph 2 of this Article.

## Examination whether the Application for Granting Breeders Right is Complete

### Article 16

Upon the receipt of the application, the Ministry shall determine whether the application is complete, i.e. whether it meets the conditions prescribed by the provisions of this Law.

If the Ministry determines that the application is not complete it shall state the reasons and invite the breeder, or his authorized representative to remove the detected deficiencies within 60 days upon receiving the notification.

If the breeder, or his authorized representative does not remove the deficiencies within the defined deadline, the Minister shall reject the application and issue a conclusion on such matter.

The Conclusion referred to in paragraph 3 of this Article shall be final and administrative proceedings may be initiated against it.

## Entry of the Application for Granting Breeders' Right and Proposed

### Denomination of a Variety into the Register of Applications

### Article 17

Any application assessed as complete by the Ministry, and proposed denomination of a variety shall be entered into the Register of Applications for Granting Plant Breeders' Rights (hereinafter: the Register of Applications), which is kept by the Ministry and published in the website of the Ministry.

Notwithstanding paragraph 1 of this Article, the proposed denomination of a variety shall not be entered into the Register of Applications and published in the website of the Ministry if it has been determined that the proposed denomination is unsuitable for use in the Republic of Serbia.

In case referred to in paragraph 2 of this Article the Ministry shall invite the breeder to propose another denomination for a variety within three months.

The Minister shall issue a decision on rejection of the proposal regarding the denomination of a variety, if it has been determined that the proposed denomination is a designation which is contrary to Article 11 of this Law.

Register of Applications shall especially include:

- 1) Name and surname of a breeder, or his authorized representative;
- 2) Permanent residence, or seat of a breeder, or his authorized representative;
- 3) Proposed denomination for the variety and plant species;
- 4) Date and time of submitting the application for granting breeders right.



Information from the Register of Applications shall be open to public inspection, except information deemed confidential in compliance with Article 15, paragraph 3 of this Law.

The decision of the Minister referred to in paragraph 4 of this Article shall be final and administrative proceedings may be initiated against it.

The Minister shall prescribe in detail contents and manner of keeping the Register of Applications.

#### Right of Priority for Granting Breeder's Right

##### Article 18

A breeder who has duly filed an application for the grant of a breeder's right with the competent authority of another UPOV member (hereinafter: the first application), shall enjoy the right of priority for granting breeder's rights, within the Republic of Serbia, for a period of 12 months from the date of the first application, provided that the day of filing shall not be included in this period.

In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application and within three months of filing the application for granting of the breeder's right to submit the following to the Ministry:

1) the proof regarding the priority date, which consist of a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed,

2) samples or other evidence that the variety which is the subject matter of both applications is the same.

If the Ministry accepts the proof regarding the priority date, the application shall be deemed to have been filed at the date of the filing of the first application.

The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, a period of 12 months after such rejection or withdrawal, in which to furnish, to the Ministry, any necessary information, documents or material required for the purpose of the examination.

#### Examination of the Application for Granting Breeder's Right

##### Article 19

In the process of examination of application for granting breeders' right, the Ministry shall examine the variety.

The Ministry may delegate activities related to variety examination referred to in paragraph 1 of his Article to a legal entity that in terms of staffing, equipment and devices meets conditions for execution of such examinations, or may accept results of previously conducted examinations of the variety.

The Ministry shall conclude a contract with legal entity referred to in paragraph 2 of this Article for the purposes of variety examination.

The Ministry may use results of technical examination of a variety obtained in other UPOV member.

The Minister shall issue a decision on fulfillment of conditions referred to in paragraph 2 of this Article.

The decision referred to in paragraph 5 of this Article shall be final and administrative proceedings may be instituted against it.

The Minister shall prescribe in detail the conditions that the legal entity referred to in paragraph 2 of this Article needs to comply with.

### Objection to the Proposal of Variety Denomination

#### Article 20

A person that considers that the proposed denomination of a variety does not fulfill conditions regarding the denomination of a protected variety may submit to the Ministry an objection to the proposal of the denomination entered into the Register of Applications and published in the website of the Ministry, within three months following the day of publication of the proposed denomination of the variety.

The Ministry shall deliver the objection referred to in paragraph 1 of this Article to the breeder and invite him to submit response to the objection within 30 days upon receiving the notification.

The breeder may propose a new denomination for a variety in the response to the objection.

If the proposed denomination is not in compliance with provisions of this Law, the Ministry shall order the breeder to deliver a proposal for a new denomination of a variety within 60 days upon receiving the objection.

If the breeder does not deliver a proposal for a new denomination of a variety within the defined deadline, the Minister shall reject the application for granting breeders' right and issue a conclusion on such matter.

The Conclusion referred to in paragraph 5 of this Article, shall be final and administrative proceedings may be instituted against it.

### Objection to Entry of the Application for Granting Breeders' Right into the Register of Applications

#### Article 21

A person that considers that the variety is not new, distinct, uniform and stable or that the breeder is not entitled to breeders' right, may submit to the Ministry an objection to entry of the application for granting breeders' right into the Register of Application, within time frame

starting from the day of publication of the application for granting breeders' rights until the day of adopting decision on granting breeders' rights or rejection of application for granting breeders' right.

The person filing the objection referred to in paragraph 1 of this Article shall be obliged, at the request by the Ministry, to deliver additional data and documents supporting his objection within 60 days.

If the person filing the objection fails to comply with the application referred to in paragraph 2 of this Article the Minister shall reject the request and issue a conclusion on such matter.

If the objection contains all required data and documents, the Ministry shall review the objection and submit response to the objection within 30 days.

The Ministry may conduct further examination of a variety, for the purposes of determining statements from the objections.

The conclusion referred to in paragraph 3 of this Article shall be final and administrative proceedings may be instituted against it.

### Decision on Granting Breeders' Rights

#### Article 22

Based on the results of the examination and proposal of the Expert Council, the Minister shall issue a decision on granting breeders' right or rejection of application for granting breeders' right within 30 days following the day of providing proposal by the Expert Council.

The decision on granting breeders' rights referred to in paragraph 1 of this Article shall approve the denomination of a variety.

Decision referred to in paragraph 1 of this Article may also stipulate a decision on objection to the proposed denomination, and objection to entry of the application for granting breeders' right into the Register of Applications.

The variety that has been granted protection shall be entered into the Register of Protected Plant Varieties by the Ministry.

Register of Protected Plant Varieties shall especially include:

- 1) Denomination of the variety and plant species;
- 2) Name and surname of the breeder;
- 3) Permanent residence, or seat of a breeder;
- 4) Date of granting breeders' rights.

Data from the Register of Protected Plant Varieties shall be open to the public inspection.

List of protected varieties with data on the variety denomination and plant species, breeder, his permanent residence, or seat, number and date of decision on granting breeders' rights and other data shall be published in the "RS Official Gazette".

The decision of the Minister referred to in paragraph 1 of this Article shall be final and administrative proceedings may be initiated against it.

The Minister shall prescribe in detail contents and manner of keeping the Register of Protected Plant Varieties.

#### Duration of Breeder's Rights

##### Article 23

Breeder's rights to the protected variety shall expire 25 years after the grant thereof or 30 years after the grant thereof in case of potato, trees and vines.

The date of the granting breeder's rights shall be the date of the decision of the compliance with the conditions of protection.

#### Delivery of Samples of Propagating Material of a Variety

##### Article 24

Each holder of breeders' right shall be obliged upon request by the Ministry to deliver samples of propagating material of a variety for which he has been granted breeders' right, during the validity period of protection of breeders' rights referred to in Article 23 of this Law.

### IV BREEDERS' RIGHTS

#### Scope of the Breeders' Right

##### Article 25

A Breeder shall have the right to indicate his name, and designation in the application for granting breeders' right, documentation, registers, public documents and publications.

Following acts in respect of propagating material of a protected variety shall require the authorization of the holder of the breeders' right, in compliance with conditions and limitations stipulated by the holder of the breeders' right:

- 1) production or reproduction (multiplication);
- 2) conditioning for the purpose of propagation;
- 3) offering for sale;
- 4) selling or other marketing;
- 5) exporting and importing;
- 6) stocking for any of the purposes referred to in subsections 1) to 5).

The acts referred to in paragraph 2 of this Article in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of the propagating material of the protected variety, shall require the authorization of the holder of the breeder's right, unless the holder of the breeder's right has had reasonable opportunity to exercise his right in relation to the said propagating material.

The acts referred to in paragraph 2 in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph 3 of this Article through the unauthorized use of the said harvested material shall require the authorization of the holder of the breeder's right, unless the holder of the breeder's right has had reasonable opportunity to exercise his right in relation to the said harvested material.

The provisions of paragraphs 2, 3 and 4 shall also apply in relation to:

- 1) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- 2) varieties which are not clearly distinguishable from the protected variety;
- 3) varieties whose production requires the repeated use of the protected variety.

For the purposes of paragraph 5, point 1), a variety shall be deemed to be essentially derived from another variety (the initial variety) when:

- 1) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or from the combination of genotypes of the initial variety;
- 2) it is clearly distinguishable from the initial variety and;
- 3) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

### Exceptions to the Breeder's Right

#### Article 26

Authorization of holder of breeders' right referred to in Article 25 of this Law shall not be necessary for acts:

- 1) done privately and for non-commercial purposes;
- 2) done for experimental purposes;

3) done for the purpose of breeding other varieties, and, except where the provisions of Article 25 paragraph 5 apply, acts referred to in Article 25 paragraphs 2, 3 and 4 in respect of such other varieties.

For a variety of plant species that is included in the list of species of agricultural plants involving exceptions to the plant breeder's rights, it is considered that breeder's rights shall not be infringed by a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeders, uses for propagating purposes, on his own holding, the product of the harvest which he has obtained by planting, on his own holding, the protected variety or a variety covered by paragraph 5 point 1) and 2) of Article 25 (hereinafter "farm saved seed").

Varieties of fruit, ornamentals, vegetables and forest trees shall not be included into the list of agricultural plants referred to in paragraph 2 of this Article.

Agricultural producers, except for small agricultural producers, shall be obliged to pay the holder of breeders' right a reasonable remuneration for using "farm saved seed" in compliance with market conditions, which is significantly lower than the level of remuneration of the purchased seed.

Agricultural producers shall be obliged to deliver in writing to the breeder, at his request, all necessary data regarding usage of "farm saved seed".

The Minister shall prescribe the list of species of agricultural plants referred to in paragraph 2 of this Article as well as elements for determining small agricultural producers referred to in paragraph 4 of this Article.

### Exhaustion of the Breeder's Right

#### Article 27

Breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of paragraph 5 of article 25, which has been sold or otherwise marketed by the breeder, or with his consent, in the Republic of Serbia, unless such acts involve:

- 1) further propagation of the variety in question, or
- 2) exports of the material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

For the purposes of paragraph 1 of this Article, "material" means, in relation to a variety,

- 1) propagating material of any kind,
- 2) harvested material, including entire plants and parts of plants, and
- 3) any product made directly from the harvested material.

## Provisional Protection

### Article 28

Throughout the period starting from the publication of the application for a breeder's right to the passing of the decision of a breeder's right, the holder of the breeder's right shall be entitled to equitable remuneration from any person who has carried out acts which, once the right is granted, require the right holder's authorization as provided in Article 25.

Amount, payment method and deadline for payment of remuneration referred to in paragraph 1 of this Article shall be determined by mutual consent of both parties.

If the parties fail to reach an agreement, the competent court shall determine the amount and the payment method as well as the deadline for the payment of fair remuneration.

## V TRANSFER OF BREEDERS' RIGHTS AND CEDING USAGE RIGHTS TO PROTECTED VARIETY

### Transfer of Breeders' Rights

#### Article 29

Holder of breeders' right may transfer his breeders' right in relation to the protected variety, in part or fully, to another person by means of contract.

The contract on transfer of breeders' rights referred to in paragraph 1 of this Article must be prepared in writing.

At the request of one of the contractual parties, the contract on transfer of breeders' rights referred to in paragraph 1 of this Article shall be entered into the Register of Transferred Breeders' Rights, which is kept by the Ministry.

The contract on transfer of breeders' rights referred to in paragraph 1 of this Article that is not entered in the Register of Transferred Breeders' Rights shall not be legally valid in respect of third persons.

Register of Transferred Breeders' Rights shall especially include:

- 1) Name and surname and address, or name and seat of the holder of breeders' right;
- 2) Name and surname and address, or name and seat of the person whom breeders' rights are transferred to;
- 3) Number and date of contract by which breeders rights are transferred;
- 4) Denomination of the variety and plant species.

Data from the Register of Transferred Breeders' Rights shall be open to the public inspection.

The Minister shall prescribe in detail contents and manner of keeping the Register of Transferred Breeders' Rights.

## Contractual Licenses

### Article 30

Holder of breeder's right may grant an exclusive or non-exclusive license relating to all or any of the rights provided in Article 25 to another person by means of license contract.

License contract referred to in paragraph 1 of this Article must be prepared in writing and contain the following: scope of the rights and time period for the license, as well as the amount of agreed compensation for such rights.

At the request of one of the contractual parties, the license contract referred to in paragraph 1 of this Article shall be entered in the Register of License Contracts, which is kept by the Ministry.

The license contract referred to in paragraph 1 of this Article not entered in the Register of License Contracts shall not be legally valid in respect of third persons.

Register of License Contracts shall especially include:

- 1) Name and surname and address, or name and seat of the holder of breeders' right;
- 2) Name and surname and address, or name and seat of the person to whom the license contract is granted to;
- 3) Number and date of license contract;
- 4) Variety denomination and plant species.

Data from the Register of License Contracts shall be open to the public inspection.

The Minister shall prescribe in detail contents and manner of keeping Register of License Contracts.

## Conditions for Granting Compulsory License

### Article 31

If the holder of breeders' right refuses to grant a license contract concerning protected varieties to other persons, or sets unreasonable conditions for such license contract, on request of the interested person the Minister may, having reviewed each individual case, issue a decision on granting compulsory license, only for reasons of public interest (national or other exceptional necessity for the protection of health and food of the population, protection of public interest in areas of vital significance to social, economic and technological development), provided that the holder of breeders' right, himself or through other person, does not exercise or insufficiently exercises the rights concerning the protected variety in the Republic of Serbia.

Interested person referred in paragraph 1 of this Article may be only a person proving that he has abilities and capacities needed for using protected plant variety.

Holder of breeders' right shall be promptly informed on the procedure on granting compulsory license.



Compulsory license shall not be issued if the holder of the breeders' right proves that there are reasons justifying the non-exercise or insufficient exercise of the rights concerning the protected variety.

The decision of the Minister referred to in paragraph 1 of this Article shall be final and administrative proceedings may be instituted against it.

#### Scope and Duration of Compulsory License

##### Article 32

Compulsory license shall be granted, only for reasons of public interest, for the purposes of providing supplies to the market of the Republic of Serbia.

Scope and duration of compulsory license shall be limited to the reasons of public interest for which it has been granted.

Compulsory license cannot be exclusive.

Compulsory license may be transferred only together with the company, or other legal entity, or part of a company, or other legal entity in which it is used.

#### Remuneration for Using Protected Variety

##### Article 33

A person to whom a compulsory license has been granted shall pay the holder of the breeder's right an equitable remuneration determined by mutual agreement of the parties.

When there is no agreement on the amount and modality of payment referred to in paragraph 1, the remuneration shall be determined by the competent court.

#### Revocation and Extension of Compulsory License

##### Article 34

If the conditions referred to in Article 31, paragraph 1 of this Law under which compulsory license was issued, are changed or if a person, to whom compulsory license was issued no longer meets conditions referred to in Article 31, paragraph 2 of this Law, the Minister may issue a decision on revocation of compulsory license.

If it is determined that conditions for issuing compulsory license are still met, the Minister may issue a decision on extension of validity of compulsory license, as requested by the interested person.

The decision of the Minister referred to in paragraphs 1 and 2 of this Article shall be final and administrative proceedings may be initiated against it.

## Obligation to Deliver Propagating Material for Compulsory License Purposes

### Article 35

The holder of the breeders' right shall be obliged to deliver, as requested by the Ministry, the quantity of propagating material necessary for the exploitation of the compulsory license, to the person to whom the compulsory license has been granted.

Holder of compulsory license shall be obliged to pay equitable remuneration to the holder of breeders' right for delivered propagating material, agreed by mutual consent between both parties.

If the parties fail to reach an agreement the amount and payment method of the competent court shall determine remuneration referred to in paragraph 2 of this Article.

## VI TERMINATION OF THE BREEDERS' RIGHT

### Termination of the Breeders' Right as Requested by the Holder of Breeders' Right

#### Article 36

Breeders' right may be terminated before expiry of deadline referred to in Article 23 of this Law if the holder of breeders' right submits the statement in writing to the Ministry indicating that he wishes to terminate breeders' right, on the day indicated in the declaration, or on the day of receipt of the declaration.

### Nullity of the Breeders' Right

#### Article 37

The Minister ex officio or as requested by the interested person shall issue a decision on declaring the nullity of decision on granted breeders' rights, if during the validity period of protection of breeders' rights the following is determined:

- 1) the variety was not new or not distinct at the time of the grant of the breeder's right;
- 2) where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the variety was not stable or was not uniform at the time of the grant of the breeder's right;
- 3) the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

The decision of the Minister referred to in paragraph 1 of this Article shall be final and administrative proceedings may be initiated against it.

Decision on nullity of the decision on granted breeders' rights shall be entered into the Register of Protected Plant Varieties by the Ministry and published in "Official Gazette of the Republic of Serbia".

### Cancellation of the Breeders' Right

#### Article 38

Decision on granted breeders' right may be cancelled by the decision issued by the Minister, if:

- 1) it is established that the variety is no longer uniform or stable;
- 2) the holder of the breeder's right fails to provide the Ministry with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- 3) the breeder fails to propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination within 60 days referred to in Article 13 paragraph 2 of this Law.
- 4) the holder of the breeder's right fails to pay the annual fees to keep his right in force.

The decision of the Minister referred to in paragraph 1 of this Article shall be final and administrative proceedings may be instituted against it.

Decision on cancellation of the decision on granted breeders' rights shall be entered into the Register of Protected Plant Varieties by the Ministry and published in "Official Gazette of the Republic of Serbia".

### VII FEES

#### Article 39

The fees for the testing of varieties and the annual fees for a breeder's right shall be paid by the breeder or the holder of breeder's right.

The amount of fees referred to in paragraph 1 of this Article shall be determined by the Government.

### VIII PROTECTION OF BREEDERS' RIGHTS

#### Lawsuit Due to Violation of Breeders' Rights

#### Article 40

A person that violates breeder's rights shall be liable for damages, in compliance with the general legislation envisaging compensation for damages.

Holder of breeders' right whose right has been violated may, in addition to compensation for damages, seek that the person that violated his right be banned from further conduct of activities constituting such violation, as well as to have judgments determining the violation published at the cost of the defendant.

#### Obsolescence of Lawsuit Due to Violation of Breeders' Rights

##### Article 41

Lawsuit due to violation of breeders' rights may be filed with the competent court within three years following the day of receiving information regarding violation of breeders' rights.

Upon expiration of five-year period following the day of occurrence of violation of breeders' rights, lawsuit may not be filed.

#### Lawsuit for Determining the Status of a Breeder

##### Article 42

A breeder may file lawsuit with the competent court, requesting determination of his status of breeder and requesting his name, or designation to be stated in the application for granting breeders' right and accompanying documents and registers stipulated by this Law, if the request for granting breeders' rights or any other document contains any other person as a breeder.

Deadline within which lawsuit referred to in paragraph 1 of this Article may be filed shall not be limited.

### IX SUPERVISION

#### Supervisory Inspection

##### Article 43

Supervision over the implementation of provisions of this Law and over the regulations adopted pursuant to this Law shall be done by the Ministry through inspectors.

Activities of inspector in the area of protection of breeders' rights may be conducted by an agricultural engineer with graduate degree, or agricultural engineer with master's degree, department of crop science or fruit science and viticulture or forest engineer with graduate degree, or forest engineer with master's degree, with no less than three years of work experience and state professional examination taken.

#### Rights and Duties of an Inspector

##### Article 44

During the conduct of supervisory activities, the inspector shall have the right and duty to review:

- 1) Whether a variety is inspected according to the conditions stipulated in this Law;
- 2) Whether legal entity referred to in Article 19, paragraph 2 of this Law fulfills conditions for conducting of variety examination, in compliance with this Law.

#### Measures Ordered by the Inspector

##### Article 45

When carrying out activities referred to in Article 44 of this Law, the inspector may:

- 1) Order legal entity, referred to in Article 19, paragraph 2 of this Law, to remove deficiencies, if he determines that the variety is not examined in compliance with conditions stipulated in this Law;
- 2) Order legal entity referred to in Article 19, paragraph 2 of this Law to remove deficiencies if he determines that the legal entity does not fulfill conditions for examination of varieties stipulated in this Law.

Measures referred to in paragraph 1 of this Article shall be order by decision issued by an inspector in the administrative proceedings.

#### Obligations of Persons Subject to Supervisory Inspection

##### Article 46

Persons subject to supervisory inspection shall be obliged to enable the inspector the execution of the supervision, and to promptly provide him/her with necessary documents and other evidence for inspection, as well as to give statements on facts significant for implementation of supervision.

#### Competence for Deciding on Complaints

##### Article 47

Complaint on decision of the inspector referred to in Article 45, paragraph 2 of this Law may be submitted to the Minister, within 8 days from the day of delivery of decision.

The Minister shall issue a decision regarding the complaint within thirty days following the day of complaint delivery.

Complaint shall not delay execution of the decision.

The decision of the Minister pursuant to the complaint referred to in paragraph 1 of this Article shall be final and administrative proceedings may be initiated against it.

## X ADMINISTRATIVE SANCTIONS

### Article 48

A legal entity shall be fined 300,000 to 3,000,000 dinars for a commercial offence if it:

- 1) Uses the denomination of a protected variety for any other existing variety belonging to same plant species or closely related species (Article 11, paragraph 2 point 3);
- 2) Offers for sell or markets propagating material of a protected variety, without using the registered variety denomination (Article 14, paragraph 1).

The responsible person in legal entity shall also be fined 50,000 to 200,000 dinars for the offence referred to in paragraph 1 of this Article.

In addition to fines, for activities referred to in paragraph 1 of this Article the protective measure may be pronounced to legal entity which prohibits such legal entity to perform certain business activity, and protective measure which prohibits responsible person to conduct certain duties for the period from six months to three years.

### Article 49

Legal entity shall be fined 100,000 to 1,000,000 dinars for offence, if such entity fails to deliver required quantity of propagating material, at the request of the competent authority, needed for exercising compulsory license, in compliance with Article 35, paragraph 1 of this Law.

The responsible person in legal entity shall also be fined 10,000 to 50,000 dinars for the offence referred to in paragraph 1 of this Article.

### Article 50

Natural person shall be fined 10,000 to 50,000 dinars for the offence if he/she conducts activities referred to in Article 48, paragraph 1 and Article 49, paragraph 1 of this Law.

## XI TRANSITIONAL AND FINAL PROVISIONS

### Article 51

Applications for granting breeders' rights filed prior to the day of entered into force of this Law which have not been resolved, shall be resolved pursuant to the provisions of this Law.

### Article 52

Application for granting breeders' right, in compliance with this Law, may be filed within three years following the date when this Law entered into force, for varieties that prior to coming into force of this Law, were entered into the appropriate official register of varieties, in compliance with laws regulating seed and propagating material, or variety registration or protection in any other UPOV member, or if application has been filed for granting breeders'

right for such varieties in any UPOV member, and if breeders' right is granted pursuant to such application, in which case the novelty shall not be required.

The Minister shall issue the decision on granting breeders' right pursuant to the application, referred to in paragraph 1 of this Article, if it meets the requirements of Article 8 Paragraph 1, Article 9 Paragraph 1, Article 10 paragraph 1, and Article 11 of this Law.

Validity period of breeders' right on protected variety referred to in Article 23 of this Law for varieties subject to provisions stated in paragraph 1 of this Article shall commence on the day of the first entry into the official register of protected varieties, or official register of registered varieties, depending which of the two dates occurred earlier.

If a breeders' right has been granted, based on the application for granting breeders' right referred to in paragraph 1 of this Article, the holder of the breeders' right shall be obliged, under reasonable conditions and within reasonable deadlines, to grant a license contract in order to allow the continuation of the acts that require the breeder's authorization which have been initiated in good faith by the third party, prior to granting of such right.

#### Article 53

Regulations related to the implementation of this Law shall be enacted within two years following the date when this Law came into force.

#### Article 54

Until the adoption of regulations by the authority provided for in this Law, the regulations passed in keeping with the Law on the Protection of Agricultural Crop and Forest Plant Varieties ("Official Gazette of FRY", no. 28/2000 and "Official Gazette of the Republic of Serbia", no. 101/05 / second law) shall be applied, provided that they are not contrary to the provisions of this Law.

#### Article 55

The Law on the Protection of Agricultural and Forest Plant Varieties ("Official Gazette of FRY", no. 28/2000 and "Official Gazette of the Republic of Serbia", no. 101/05/ second law) shall cease to be valid on the day this Law enters into force.

#### Article 56

This Law shall enter into force on the eight day following its publication in the "Official Gazette of the Republic of Serbia".

[End of Annex II and of document/  
Fin de l'annexe II et du document/  
Ende der Anlage II und des Dokuments/  
Fin del Anexo II y del documento]