



C(Extr.)/25/5

ORIGINAL: English

DATE: March 7, 2008

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Twenty-Fifth Extraordinary Session
Geneva, April 11, 2008

EXAMINATION OF THE CONFORMITY
OF THE DRAFT LAW ON THE PROTECTION OF PLANT BREEDER'S RIGHTS
OF THE REPUBLIC OF SERBIA WITH THE 1991 ACT
OF THE UPOV CONVENTION

Document prepared by the Office of the Union

Introduction

1. By Note dated February 25, 2008, addressed to the Secretary-General of UPOV, the Permanent Mission of the Republic of Serbia to the United Nations Office and other International Organizations in Geneva, enclosed a letter from His Excellency Mr. Slobodan Milosavljevic, Minister for Agriculture, Forestry and Water Management of the Republic of Serbia (hereinafter referred to as "Serbia") requesting the examination of the "Draft Law on the Protection of Plant Breeder's Rights" (hereinafter referred to as the "Draft Law"), for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act"). The Note and letter are reproduced in Annex I to this document. Annex II contains a translation in English of the Draft Law provided by the Serbian authorities.

2. Article 34(3) of the 1991 Act provides that "[a]ny State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited."

Basis for the Protection of New Plant Varieties in Serbia

3. In Serbia, the protection of new plant varieties will be governed by the Draft Law once adopted. An analysis of the Draft Law follows in the order of the substantive provisions of the 1991 Act.

Article 1 of the 1991 Act: Definitions

4. Article 2 of the Draft Law contains definitions in line with the corresponding definitions in Article 1 of the 1991 Act.

Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

5. The first paragraph of Article 1 of the Draft Law provides that “[t]his Law contains provisions governing the criteria and the procedure for grant and protection of plant breeder’s rights (hereinafter referred to: as breeder’s rights)”; this fulfils the basic obligation provided by Article 2 of the 1991 Act.

Article 3 of the 1991 Act: Genera and Species to be Protected

6. The second paragraph of Article 1 of the Draft Law provides that “[t]his Law will apply to all plant genera and species”. This conforms with Article 3(2)(ii) of the 1991 Act. It should be noted that, in accordance with Article 36(1)(ii) of the 1991 Act, when depositing its instrument of accession, Serbia must notify in a declaration that the Law applies to all plant genera and species.

Article 4 of the 1991 Act: National Treatment

7. Article 2(3) of the Draft Law provides that “‘Person’ means any natural or legal person”. Furthermore, Article 3 of the Draft Law provides that “With respect to grant and protection of breeder’s rights in the Republic of Serbia foreign persons shall enjoy the same rights as national persons”. These provisions comply with the requirements of Article 4 of the 1991 Act.

Articles 5 to 9 of the 1991 Act: Conditions of Protection, Novelty, Distinctness, Uniformity and Stability

8. Articles 5 to 9 of the Draft Law contain the conditions of protection in conformity with the provisions of Articles 5 to 9 of the 1991 Act.

9. Article 45 of the Draft Law implements a transitional novelty regime for “Varieties of recent creation” based on Article 6(2) of the 1991 Act.

Article 10 of the 1991 Act: Filing of Applications

10. Articles 14 to 16 of the Draft Law deal with the filing of applications. The Draft Law does not contain provisions which conflict with Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

11. Article 17 of the Draft Law contains provisions on the right of priority in conformity with Article 11 of the 1991 Act.

Article 12 of the 1991 Act: Examination of the Application

12. Articles 18 to 24 of the Draft Law contain provisions concerning the examination of the application in line with the provisions of Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

13. Article 28 of the Draft Law contains provisions on provisional protection in conformity with Article 13 of the 1991 Act.

Article 14 of the 1991 Act: Scope of the Breeder's Right

14. In relation to paragraph 4 of Article 25 of the Draft Law, which incorporates the optional provision under Article 14(3) of the 1991 Act, it is recommended to delete "Each Contracting Party may provide that". With the recommended change, paragraph 4 of Article 25 of the Draft Law would read as follows:

~~"Each Contracting Party may provide that s~~Subject to Articles 26 and 27, the acts referred to in items 1) to 6) of paragraph 2 in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraphs 3 through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material."

15. Subject to the recommended change in paragraph 14 above, Article 25 of the Draft Law contains provisions on the scope of the breeder's right, which are in conformity with Article 14 of the 1991 Act.

Article 15 of the 1991 Act: Exceptions to the Breeder's Right

16. In relation to subparagraph 3 of paragraph 1 of Article 26 of the Draft Law, reference to paragraph 6 should be replaced by reference to paragraph 5, to read as follows:

"3) done for the purpose of breeding other varieties, and, except where the provisions of Article 25 paragraph 6~~5~~ apply, acts referred to in Article 25 paragraphs 2 to 4 in respect of such other varieties."

17. Subject to the recommended change in paragraph 16 above, paragraph 1 of Article 26 of the Draft Law contains the compulsory exceptions to the breeder's right in line with Article 15(1) of the 1991 Act.

18. Paragraphs 2 to 5 of Article 26 of the Draft Law contain provisions on the optional exception to the breeder's right in line with the provisions in Article 15(2) of the 1991 Act.

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

19. In relation to Article 27 of the Draft Law, it is recommended to introduce the wording of Article 16 of the 1991 Act, as follows:

“The 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 the authorization of the holder of the breeder's right~~ his consent, in the Republic of Serbia, unless such acts involve:”

20. Subject to the recommended changes in paragraph 19 above, Article 27 of the Draft Law contains provisions concerning the exhaustion of the breeder's right which conform with Article 16 of the 1991 Act.

Article 17 of the 1991 Act: Restrictions on the Exercise of the Breeder's Right

21. Articles 30 to 34 of the Draft Law contain provisions on compulsory licensing in line with Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

22. The Draft Law does not seem to contain provisions which conflict with Article 18 of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder's Right

23. In relation to Article 22 of the Draft Law, it is recommended to introduce the following change:

“The breeder's right to the protected variety shall expire 20 years after the grant thereof, ~~i.e. or~~ 25 years after the grant thereof in case of trees and vines.”

24. Subject to the recommended change in paragraph 23 above, Article 22 of the Draft Law contains provisions concerning the duration of the breeder's right in line with Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

25. In relation to paragraph 5 of Article 11 of the Draft Law, reference to paragraph 4 should be replaced by reference to paragraph 3, as follows:

“The obligation to use the registered variety denomination shall not cease after the expiration of variety protection under Article 22 of this Law, except where, in accordance with the provisions of paragraph 4~~3~~, prior rights prevent such use.”

26. Subject to the recommended change in paragraph 25 above, Articles 10 to 13 of the Draft Law contain provisions on variety denominations in line with Article 20 of the 1991 Act.

Article 21 of the 1991 Act: Nullity of the Breeder’s Right

27. Article 36 of the Draft Law contains the provisions on the nullity of the breeder’s right in line with Article 21 of the 1991 Act.

Article 22 of the 1991 Act: Cancellation of the Breeder’s Right

28. Article 37(2) of the Draft Law provides that “the breeder renounces to it [the breeder’s right] by written declaration addressed to the Institute as of the date stated or as of the date of receipt of the declaration”. This provision is contrary to Article 22(2) of the 1991 Act, which excludes additional reasons for cancellation to the ones provided in Article 22(1) of the 1991 Act. The provision under Article 37(2) of the Draft Law appears to refer to an early termination of the breeder’s right. It is recommended to move Article 37(2) of the Draft Law to Article 35 of the Draft Law.

29. Subject to the recommended change in paragraph 28 above, Article 37 of the Draft Law contains the provisions on the cancellation of the breeder’s right in line with Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

30. In relation to the obligation to “provide for appropriate legal remedies for the effective enforcement of breeders’ rights” (Article 30(1)(i) of the 1991 Act), Articles 39 to 43 of the Draft Law refer to the available civil remedies, sanctions and fines. It is recommended that reference is made in the Draft Law to any legislation in the Republic of Serbia providing for provisional and customs measures.

31. Paragraph 3 of Article 1 of the Draft Law provides that the “Breeder’s rights activities, regulated by this Law, in the Republic of Serbia are carried out by the Plant Institute (hereinafter referred to as ‘the Institute’).” Furthermore, paragraph 1 of Article 21 of the Draft Law provides that the “Head of the Institute shall, based on the results of variety testing and the proposal of the Board, pass the decision on grant of the breeder’s right ...”. The Draft Law thus complies with the obligation under Article 30(1)(ii) of the 1991 Act.

32. Articles 10 (paragraph 2), 16 (paragraph 1) and 21 (paragraph 5) of the Draft Law contain provisions which comply with the obligation to publish the information required under Article 30(1)(iii) of the 1991 Act.

General Conclusion

33. In the opinion of the Office of the Union, the Draft Law incorporates the substantive provisions of the 1991 Act. Once the recommended changes have been introduced in the Draft Law (see paragraphs 14, 16, 19, 23, 25 and 28 of this document) and the Law is adopted, Serbia will be in a position “to give effect” to the provisions of the 1991 Act, as required by its Article 30(2).

34. *The Council is invited to:*

(a) take note of the analysis in this document;

(b) subject to the introduction of the recommended changes in the Draft Law, as identified in this document, take a positive decision on the conformity of the Draft Law on the Protection of Plant Breeder’s Rights of the Republic of Serbia with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants; which allows that, once the changes have been incorporated in the Draft Law and the Law is adopted and in force, the Republic of Serbia may deposit its instrument of accession to the 1991 Act;

(c) request the Office of the Union to offer its assistance to the Government of the Republic of Serbia in the incorporation of the changes in the Draft Law identified in this document; and

(d) authorize the Secretary-General to inform the Government of the Republic of Serbia of that decision.

[Annexes follow]

ANNEX I

Note from the Permanent Mission of the Republic of Serbia
received on February 25, 2008, enclosing a letter from the Minister for Agriculture, Forestry
and Water Management to the Secretary-General of UPOV

PERMANENT MISSION OF THE REPUBLIC OF SERBIA TO THE UNITED NATIONS OFFICE
AND OTHER INTERNATIONAL ORGANIZATIONS
СТАЛНА МИСИЈА РЕПУБЛИКЕ СРБИЈЕ ПРИ УЈЕДИЊЕНИМ НАЦИЈАМА И ДРУГИМ
МЕЂУНАРОДНИМ ОРГАНИЗАЦИЈАМА
5, chemin Thury, 1206 Genève Tel: 022 839 3344 Fax: 022 839 3359 E-mail:
Serbian.mission@bluewin.ch

No. 303/1

The Permanent Mission of the Republic of Serbia to the United Nations Office and other International Organizations in Geneva presents its compliments to Mr. Kamil Idris, Secretary-General of the International Union for the Protection of New Varieties of Plants (UPOV) and has the honour to convey the letter of Mr. Slobodan Milosavljevic, Minister for Agriculture, Forestry and Water Management.

The Mission of the Republic to Serbia encloses herewith the *Draft Law on the Protection of Plant Breeder's Rights* for further consideration and review by the UPOV.

The Permanent Mission of the Republic of Serbia avails itself of this opportunity to renew to Mr. Kamil Idris, Secretary-General of the UPOV the assurances of its highest consideration.



Geneva, February 25 2008

MR. KAMIL IDRIS, SECRETARY-GENERAL

THE INTERNATIONAL UNION FOR PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

Fax: 022 733 03 36



Republic of Serbia
MINISTRY OF AGRICULTURE, FORESTRY
AND WATER MANAGEMENT

Date: February 5, 2008
Nemanjina St. 22-26
Belgrade

Dr. Kamil Idris
Secretary-General
International Union for the Protection of New Varieties of Plants (UPOV)
34, chemin des Colombettes
CH-1211 Geneva 20

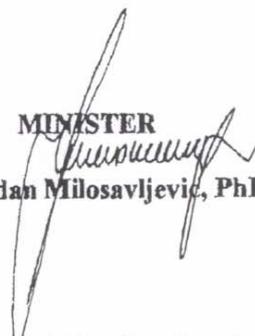
Dear Secretary-General Idris,

I have the pleasure to inform you that the Draft of the Plant Breeder's Rights Law will be submitted to the Parliament of the Republic of Serbia for adopting.

The Republic of Serbia intends to adhere to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, revised at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991 (UPOV Convention).

I would appreciate if the Council of UPOV could examine the conformity of the Draft of the Law of the Republic of Serbia with the provisions of the UPOV Convention.

Sincerely yours,

MINISTER

Slobodan Milosavljevic, PhD

Enclosure: Official translation of the Draft of the Plant Breeder's Rights Law into the English.

[Annex II follows]

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 THE PROTECTION OF PLANT BREEDER'S RIGHTS

Chapter I

GENERAL PROVISIONS

Article 1

This Law contains provisions governing the criteria and the procedure for grant and protection of plant breeder's rights (hereinafter referred to as: breeder's rights).

The Law will apply to all plant genera and species.

Breeder's rights activities, regulated by this Law, in the Republic of Serbia are carried out by the Plant Institute (hereinafter referred to as "the Institute").

For the purpose of monitoring the situation in the field of protection of breeder's rights, and issuing of the professional opinions and proposals within the Ministry of Agriculture, Forestry and Water Management (hereinafter referred to as "the Ministry") will be established National Plant Breeder's Rights Board.

The National Plant Breeder's Rights Board (hereinafter referred to as "the Board") from paragraph 4 of this Article is appointed by the Minister of Agriculture, Forestry and Water Management (hereinafter referred to as "the Minister").

The Minister can establish other working bodies for the implementation of specific activities from paragraph 4 of this Article.

Article 2

For the purpose of this Law:

- 1) "Plant variety" (hereinafter referred to as "the variety") means 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” means a variety protected in accordance with the provisions of this Law;
- 3) “Person” means any natural or legal person;
- 4) “National person” means a person who has a domicile, or corporate domicile, in the Republic of Serbia;
- 5) “Foreign person” means a person who has a domicile, or corporate domicile, outside the Republic of Serbia;
- 6) “Breeder” means
- the person who bred, or discovered and developed, a variety,
 - the person who is the employer of the aforementioned person or who has commissioned the latter’s work, or
 - the successor in title of the first or second aforementioned person, as the case may be;
- 7) “Breeder’s right” means the right of the breeder provided for in this Law;
- 8) “Register of Applications for Plant Breeder’s Rights” means the register of all applications filed for protection of breeder’s rights;
- 9) “Register of Protected Plant Varieties” means the register of protected varieties and granted breeder’s rights;
- 10) “UPOV” means the International Union for the Protection of New Varieties of Plants.

Article 3

With respect to grant and protection of breeder’s rights in the Republic of Serbia foreign persons shall enjoy the same rights as national persons.

Article 4

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

Chapter II

CONDITIONS FOR THE GRANT OF THE BREEDER’S RIGHT

Article 5

The breeder’s right shall be granted in accordance with the provisions of this Law where a variety is new, distinct, uniform, and stable and given a denomination which is acceptable for granting protection.

Article 6

A variety shall be considered 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 or his successor, 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 not lose its novelty 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 the multiplication of the propagating material in the name of the breeder, provided that the multiplied propagating material is returned to the breeder, and that the multiplied propagating material is not used for the production of another variety;
- 3) by a contract on testing in trial fields or laboratory for the purpose of variety evaluation.

Article 7

A variety shall be considered 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.

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, 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.

Article 8

A variety shall be considered 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.

Article 9

A variety shall be considered 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.

Article 10

The applicant for a breeder's right shall propose the variety denomination in his application.

Any interested person may, within 90 days as of the date of publication of the proposed denomination and entry into the Register of Applications for Plant Breeder's Rights (hereinafter referred to as: "the Register of Applications"), file an objection to the proposed variety denomination.

The Institute shall notify the applicant about the objection referred to in paragraph 2 of this Article and invite him to submit a reply to the objector within 30 days as of the date of the receipt of notification.

In his reply to the objection, the applicant may propose a new denomination of the variety.

Where the proposed denomination does not comply with the provisions of this Law, the Institute shall order the applicant to submit a proposal for a new denomination within 30 days as of the date of receipt of the notification.

Where the applicant fails to submit a proposal for a new variety denomination within the prescribed time limit, the application shall be rejected.

Head of the Institute shall approve the denomination of a variety in the decision on the grant of the breeder's right.

Article 11

The variety shall be designated by a denomination which will be its generic designation. The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It 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.

Where the variety is already protected by a member of UPOV 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 by the breeder to the Institute. The Institute shall register the denomination so

submitted, unless it considers the denomination unsuitable within the Republic of Serbia. In the latter case, it shall require the breeder to submit another denomination.

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, in accordance with the provisions of paragraph 4 and 5, is obliged to use it, the Institute shall require the breeder to submit another denomination for the variety.

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 22 of this Law, except where, in accordance with the provisions of paragraph 4, prior rights 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.

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

The Institute shall ensure that the authorities of all the other Contracting Parties are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

Article 12

The Institute shall reject the application for variety denomination if it determines that the proposed denomination is a designation which:

- 1) does not enable the variety to be identified;
- 2) is contrary to Article 11 of this Law.

Article 13

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

When a variety denomination has been cancelled, the Institute shall notify the right holder thereof and invite him to submit a proposal for a new variety denomination within 30 days as of the date of receipt of such notification.

Chapter III

GRANT OF THE PLANT BREEDER'S RIGHT

1. Application

Article 14

The procedure for the grant of the breeder's right shall be initiated based on the application for the grant of the breeder's right filed by the breeder or his authorized representative to the Institute.

With the application referred to in paragraph 1 of this Article, the breeder, or his authorized representative shall submit the information on the breeding history of the variety and at the request of the Institute the identity samples of the propagating material of the variety for the purpose of testing.

When the production of a variety requires the repeated use of another variety, i.e. of its components, the applicant may request in his application that the documents and results of component testing be treated as confidential.

Where two or more breeders have independently bred, or discovered and developed a variety, the breeder who was the first to file the application for breeder's right with the Institute shall avail himself of the first filing date.

The Minister shall more closely prescribe the form and the contents of the application envisaged in paragraph 1 of this Article, and the regulations related to paragraph 2 of this Article.

Article 15

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

When it determines that the application is not complete, the Institute shall, stating the reasons, invite the applicant to eliminate the determined defects within 30 days as of the date of receipt of such notification.

Where the applicant fails to eliminate the defects within the prescribed period of time, the application shall be rejected.

Article 16

Any application assessed as complete by the Institute shall be entered into the Register of Applications and shall be published in the official Gazette of the Institute.

The data from the Register of Applications are public, except for information to be treated as confidential in accordance with paragraph 3 of Article 14 of this Law.

The Minister shall more closely prescribe the form and the manner of keeping of the Register of Applications.

2. Right of Priority

Article 17

The breeder or his authorized representative who has duly filed an application for the grant of a breeder's right with the competent authority of another UPOV member, shall enjoy the right of priority for a period of 12 months. In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application.

In order to avail himself of the right of priority, the applicant shall submit to the Institute within 90 days of filing the application 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, and samples or other evidence that the variety which is the subject matter of both applications is the same.

If the Institute 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 day of filing shall not be included in the latter period.

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 Institute, any necessary information, document or material required for the purpose of the examination.

3. Examination of the Application

Article 18

The variety shall be examined with the aim to establish whether it fulfills the conditions for grant of breeder's right.

For the purposes of examination, the Institute may require the breeder to furnish all the necessary information, documents or material. The material should be submitted in the quantity and in the manner prescribed by the Minister.

Where the breeder fails to fulfill the requirements from paragraph 2 of this Article, his application shall be rejected.

Article 19

In the course of the examination, the Institute may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out.

In particular, the Institute may assign the variety testing upon a person who meets the requirements for the performance of such testing in terms of personnel, equipment and facilities (hereinafter referred to as: the trial contractor).

The Minister shall more closely prescribe the conditions from paragraph 2 of this Article.

The Minister shall establish the fulfillment of the conditions from paragraph 2 of this Article.

For the technical examination of a variety the Institute can use the examination results obtained in another UPOV member.

Article 20

The Institute shall conclude with the trial contractor a contract on variety testing.

4. Decision on Grant of the Breeder's Right

Article 21

Head of the Institute shall, based on the results of variety testing and the proposal of the Board, pass the decision on grant of the breeder's right or rejection of the application for grant of the breeder's right.

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

The data from the Register of Protected Plant Varieties are public.

The Minister shall more closely prescribe the contents and the manner of keeping of the Register of Protected Plant Varieties.

The list of protected varieties, also including the data on variety denomination, the breeder, his domicile, or corporate domicile, and other data shall be published in the "Official Gazette of the Republic of Serbia" and official Gazette of the Institute.

Article 22

The breeder's right to the protected variety shall expire 20 years after the grant thereof, i.e. 25 years after the grant thereof in case of trees and vines.

The date of the grant of the breeder's right shall be the date of the decision of the compliance with the conditions of protection.

5. Opposition

Article 23

A person who deems that an applicant is not entitled to the breeder's right or that he is not entitled to the right of priority, may file an opposition to the entry of the application into the Register of Applications, i.e. to the entry of the variety into the Register of Protected Plant Varieties with the Institute within 90 days from the date of publication of the application or from the date of publication of the decision concerning the grant of the breeder's right.

Article 24

The opposition to an entry into the Register of Protected Plant Varieties may be filed by person who deems that the applicant is not the breeder, that the variety is not new, distinct, uniform or stable or that the variety denomination fails to meet the conditions regarding the protected variety denomination.

The Institute may order additional testing of the variety for the purpose of assessing the statements cited in the opposition.

At the request by the Institute, the plaintiff shall within 30 days submit additional information and documents which his objection has been based on.

Where the plaintiff fails to fulfill the request envisaged in paragraph 3 of this Article, the opposition shall be rejected.

Chapter IV

RIGHTS OF THE BREEDER

1. Scope of the Breeder's Right

Article 25

The breeder shall have the right to have his name i.e. title cited in the application, documentation, registers, public documents and publications.

Subject to Articles 26 and 27, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- 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 breeder shall determine the conditions for granting such authorization.

Subject to Articles 26 and 27, 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 breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

Each Contracting Party may provide that, subject to Articles 26 and 27, the acts referred to in items 1) to 6) of paragraph 2 in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph 3 through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

The provisions of paragraphs 2 to 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.

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;
- 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 the 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.

2. Exceptions to the Breeder's Right

Article 26

The authorization of the breeder 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 6 apply, acts referred to in Article 25 paragraphs 2 to 4 in respect of such other varieties.

In relation to varieties included in a list of agricultural plant species prescribed by the Minister, the breeder's right 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 6 section 1) and 2) of Article 25 (hereinafter "farm saved seed").

When using farm saved seed the farmers are obliged to pay to the breeder reasonable remuneration for the use of farm saved seed which is significantly lower than the level of remuneration of the purchased seed. Small farmers are exempted from the obligation to pay remuneration for the use of the farm saved seed. The criteria for small farmers will be prescribed by the Minister.

The breeder is entitled to request necessary information in writing from farmers in relation to the farm saved seed.

Varieties of fruit, ornamentals, vegetables and forest trees shall be excluded from the provisions of paragraph 2 of this Article.

3. Exhaustion to the Breeder's Right

Article 27

The breeder's right shall not extend to acts concerning any material of the protected variety, which has been sold or otherwise marketed by the breeder, or with the authorization of the holder of the breeder's right, in the Republic of Serbia, unless such acts involve:

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

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

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

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 an appropriate remuneration from any person who has carried out acts which, once the right is granted, required the right holder's authorization.

Chapter V

ASSIGNMENT OF RIGHTS, CONTRACTUAL AND COMPULSORY LICENSES

1. Assignment and contractual licenses

Article 29

The breeder may assign his rights with respect to the protected variety.

The contractual license must be in written form and include provisions on the scope of the rights, the terms of the license and the amount of remuneration agreed upon.

The breeder shall submit the contractual license to the Institute for entry into the Register of Protected Plant Varieties.

Article 30

Where the holder of a breeder's right refuses to grant a contractual license or sets unjustified conditions for such a license, the Institute may, following the evaluation of each individual case, grant a compulsory license only for reasons of public interest at the request of any interested person, if the breeder, alone or through another person, fails to exploit or inadequately exploits the protected variety in the Republic of Serbia.

The interested person shall be under the obligation to prove that, prior to filing the request referred to in paragraph 1 of this Article, he has tried to obtain from the breeder the authorization for the acts covered by Article 25 of the Law under reasonable economic conditions and terms, and that he was not granted such authorization within a reasonable period of time.

The interested person referred to in paragraph 1 of this Article may only be a person who proves to dispose of capacities and facilities necessary for economic exploitation of a protected plant variety.

Article 31

The request for the grant of a compulsory license may not be filed prior to the expiration of the period of four years from the filing date of the application, i.e. 3 years from the date of the grant of a breeder's right, whichever of the periods expires later.

The compulsory license shall not be granted if the holder of a breeder's right proves that there are reasons justifying his failure to exploit or adequately exploit the protected variety.

Article 32

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, the remuneration shall be determined by the competent court.

Article 33

The Institute may cancel the compulsory license when the person who has been granted the license fails to fulfill the conditions under which the license was granted.

Article 34

The breeder shall be under the obligation to deliver, at the request of the Institute and following the payment of an appropriate remuneration, the quantity of the propagating material necessary for the exploitation of the compulsory license, to the person to whom the compulsory license has been granted.

Chapter VI

TERMINATION OF THE BREEDER'S RIGHT

Article 35

The breeder's right shall terminate before the expiration of the term referred to in Article 22 of this Law when the breeder dies or ceases to exist, i.e. has no heirs or successors in rights, as of the date of death or ceased existence.

1. Nullity of the Breeder's Right

Article 36

The Institute shall declare a breeder's right granted by it null and void, *ex officio* or at the proposal of the interested party when it is established:

- 1) that the variety was not new or not distinct at the time of the grant of the breeder's right;
- 2) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the variety was not sufficiently stable or was not uniform at the time of the grant of the breeder's right;
- 3) that 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.

After declaring the decision on the grant of a breeder's right null and void, the Institute shall delete that variety from the Register of Protected Plant Varieties.

2. Cancellation of the Breeder's Right

Article 37

The Institute may cancel the breeder's right and enter the data thereof in the Register of Protected Plant Varieties if:

- 1) it is established that the variety is no longer uniform or stable;
- 2) the breeder renounces to it by written declaration addressed to the Institute as of the date stated or as of the date of receipt of the declaration;
- 3) the breeder fails to provide the Institute with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- 4) the breeder fails to propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination within 30 days;
- 5) the breeder fails to pay the annual fees to keep his right in force.

Chapter VII

FEES

Article 38

The fees for the testing of varieties in trial fields and laboratory and the annual fees for a breeder's right shall be paid by the breeder.

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

Chapter VIII

JURIDICAL PROTECTION OF THE BREEDER

Article 39

A person that violates the rights of the breeder provided in this Law shall be responsible for the damage according to the general provisions on damage compensation.

The breeder whose right has been violated may, in addition to damage compensation, also request an injunction to prohibit the committing or continuation of committing an infringement of the breeder's right by suspension of the activity resulting in such

infringement, and that the expenses of the proceedings for infringement be charged to the defendant.

Article 40

The complaint against the violation of the breeder's right may be filed within three years after the date when the prosecutor has become aware of the violation.

The complaint can not be filed after five years following the violation.

Proceedings according to complaints for infringement of the breeder's right shall be treated expeditiously, and will be done by competent Court.

Chapter IX SUPERVISION

Article 41

The Ministry shall perform the supervision over the implementation of this Law and the regulations passed on the basis of this Law, also as activities carried out by the Institute.

The Institute has the obligation to inform the Ministry about the activities carried out by the Institute.

Chapter X PENALTY PROVISIONS

Article 42

Any person commits an offence and shall be liable to a fine of 300,000 to 3,000,000 CSD if he:

- 1) willfully offers for sale or markets propagating material of a variety protected in Republic of Serbia without using the registered variety denomination;
- 2) willfully makes use of the registered variety denomination of a variety protected in Republic of Serbia for another variety of the same plant species or closely related species;
- 3) fails to comply with the decision of the inspector taken for the implementation of this Law.

The responsible person in a legal entity shall be liable to a fine of 50,000 to 200,000 CSD for the commercial offences referred to in paragraph 1 of this Article.

In case of offences referred to in paragraph 1 of this Article, in addition to the fine, any legal person may also be prohibited to conduct a certain business activity, i.e. the responsible

person in the legal entity may be prohibited to discharge certain duties for a period from six months to three years.

Article 43

Any person shall be liable to a fine of 100,000 to 1,000,000 CSD if he fails to deliver, at the request of the competent authority, the quantity of propagating material necessary for the exploitation of the compulsory license referred to in Article 34 of this Law.

Responsible person in a legal entity shall be liable to a fine of 10,000 to 50,000 CSD in case of the offences referred to in paragraph 1 of this Article.

Chapter XI

TRANSITIONAL AND FINAL PROVISIONS

Article 44

All Applications for plant breeder's rights that have been submitted prior to the date of entry into force of this Law, and for which the grant of breeder's rights has not been completed shall be granted in keeping with the provisions of this Law.

Article 45

Notwithstanding Article 6, a variety may still be considered new on the date of entry into force of this Law, and the application for the said variety could be filed within the 5 years following the date of entry into force of this Law if the variety:

- 1) has been entered in the Official Register of Varieties Admitted to Trade, or
- 2) has been the subject of a breeder's right in a member of UPOV, or is the subject of an application in a member of UPOV, provided that the application subsequently leads to the granting of the breeder's right, or
- 3) is the subject of proof acceptable to the Institute concerning the existence and the date on which the variety ceased to be new under the provisions of Article 6.

Article 46

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 RS", no. 101/05 / second law) shall be applied, provided that they are not contrary to the provisions of this Law.

Article 47

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

Article 48

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]