

Seminar on Propagating and Harvested
Material in the context of the
UPOV Convention

Geneva, October 24, 2016

**Experiences Concerning Propagating
Material and Harvested Material**

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**Federal Supreme Court, 14 February 2006,
File No. X ZR 39/04**

Basis of action: one Community pvr
 one national pvr

Unauthorized propagation in France, potted plants produced
in the Netherlands, imported into by and sold through DIY
chain (defendant) in Germany

Questions to be answered by the Court:

Are potted plants sold to end consumer harvested material?

Should the plaintiff have tried to enforce his Community right
in France first as the “source” of infringement was located in
France?

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Additional question not discussed:

Should the plaintiff had protected the variety 2 not only in Germany but in other countries including France giving him “reasonable opportunity to exercise his rights in relation to the propagating material” in France thus excluding the justification to enforce its German pvr in the distribution chain?

Regulation (EC) No. 2100/94 on

**Art. 13 Rights of the holder of a Community plant
variety right and prohibited acts**

1. A Community plant variety right shall have the effect that the holder or holders of the Community plant variety right ... shall be entitled to effect the acts set out in paragraph 2.
2.
3. The provisions of paragraph 2 shall apply in respect of harvested material only if this was obtained through the unauthorized use of variety constituents of the protected variety, and unless the holder has had reasonable opportunity to exercise his right in relation to the said variety constituents.

German Plant Variety Protection Act (Sortenschutzgesetz)

Section 10 Effect of plant variety protection

- (1) Subject to the provisions of sections 10a and 10b, plant variety protection shall have the effect that only the holder of the plant variety right shall be entitled.

Section 10 (continued)

1.
 - a)
 - b)

2. to carry out acts in accordance with No. 1 with other plants or parts of plants, or products obtained directly therefrom, if propagating material was used in their production without the consent of the holder of the plant variety right, and the holder of the plant variety right did not have an opportunity to exercise his/her variety protection right with regard to this utilisation.

**Court of Appeal, Frankfurt, 19 May 2016
File No. 6 U 89/15**

Basis of action: Community pvr for forage peas
Community pvr for oats

Defendant sold peas and oat grain of protected varieties originating from licensed production. The plaintiff alleged that peas and oat grains were sold as seeds rather than as material to be further processed. The defendant argued that the seeds were harvested material originating from licensed production and thus free of any rights of plaintiff. The Court had to decide which circumstances qualify the plant material as harvested material or as propagation material.

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Any questions? Please contact
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