



C(Extr.)/28/2

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**UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES**  
GINEBRA

**CONSEJO**

**Vigésima octava sesión extraordinaria**  
**Ginebra, 8 de abril de 2011**

**EXAMEN DE LA CONFORMIDAD DEL PROYECTO DE LEY DE PROTECCIÓN DE  
LOS DERECHOS DE OBTENTOR DE LA REPÚBLICA DE SERBIA  
CON EL ACTA DE 1991 DEL CONVENIO DE LA UPOV**

*Documento preparado por la Oficina de la Unión*

1. En una carta fechada el 22 de febrero de 2011, dirigida al Secretario General de la UPOV, y recibida el 4 de marzo de 2011 por medio de la Misión Permanente de la República de Serbia ante la Oficina de las Naciones Unidas y otras organizaciones internacionales con sede en Ginebra, su Excelencia el Sr. Sasã Dragin, Ministro de Agricultura, Silvicultura y Recursos Hídricos de la República de Serbia (en adelante denominada “Serbia”), solicitó el examen del “proyecto de Ley de Protección de los Derechos de Obtentor” (en adelante denominado el “proyecto de Ley”) a los fines de determinar su conformidad con el Acta de 1991 del Convenio de la UPOV (en adelante denominada el “Acta de 1991”). En el Anexo I del presente documento figura la carta. En el Anexo II figura una traducción al inglés del proyecto de Ley proporcionado por las autoridades serbias.

**ANTECEDENTES**

2. En el artículo 34.3) del Acta de 1991 se dispone que “[a]ntes de depositar su instrumento de adhesión, todo Estado que no sea miembro de la Unión o cualquier organización intergubernamental solicitará la opinión del Consejo acerca de la conformidad de su legislación con las disposiciones del presente Convenio. Si la decisión haciendo oficio de opinión es positiva, podrá depositarse el instrumento de adhesión.”

3. El Gobierno de Serbia inició el procedimiento de adhesión al Convenio de la UPOV mediante una nota fechada el 25 de febrero de 2008 en la que solicitaba la opinión del Consejo de la UPOV acerca de la conformidad del “proyecto de Ley de Protección de los Derechos de Obtentor” de 2008 (proyecto de Ley de 2008) con el Acta de 1991.

4. El Consejo, en su vigésima quinta sesión extraordinaria celebrada en Ginebra el 11 de abril de 2008, decidió:

“a) tomar nota del análisis efectuado en el documento C(Extr.)/25/5 y de la información suministrada por la Delegación de Serbia de que tiene la intención de:

i) modificar el párrafo 1 del artículo 22 del proyecto de Ley sobre la duración del derecho de obtentor, de modo que figure el siguiente texto: ‘el derecho de obtentor sobre la variedad protegida vencerá tras 25 años contados a partir de la fecha de concesión del derecho, o tras 30 años contados a partir de la fecha de concesión del derecho en el caso de los árboles y vides’,

ii) eliminar el párrafo 3 del artículo 29 del proyecto de Ley, y

iii) eliminar el artículo 35 del proyecto de Ley;

b) a reserva de la introducción de los cambios recomendados en el proyecto de Ley que se indican en el documento C(Extr.)/25/5 y de la sustitución de ‘90 días’ por ‘tres meses’ en el párrafo 2 del artículo 17, tomar una decisión positiva con respecto a la conformidad del proyecto de Ley de Protección de los Derechos de Obtentor de la República de Serbia con las disposiciones del Acta de 1991 del Convenio Internacional para la Protección de las Obtenciones Vegetales; de modo que, una vez incorporados los cambios en el proyecto de Ley y promulgada y en vigor esta última, la República de Serbia pueda depositar su instrumento de adhesión al Acta de 1991;

c) pedir a la Oficina de la Unión que ofrezca asistencia al Gobierno de la República de Serbia para incorporar en el proyecto de Ley los cambios que se señalan en el documento C(Extr.)/25/5; y

d) autorizar al Secretario General a que informe de dicha decisión al Gobierno de la República de Serbia.

(véase el párrafo 9 del documento C(Extr.)/25/10, “Informe”)

5. El 15 de abril de 2008, el Secretario General informó al Gobierno de Serbia sobre la decisión del Consejo.

6. El 14 de mayo de 2010, la Sra. Jelisaveta Djurickovic-Tuvic, Ministra Consejera, Representante Permanente Adjunta de la Misión Permanente de la República de Serbia ante la Oficina de las Naciones Unidas y demás organizaciones internacionales con sede en Ginebra, solicitó las observaciones de la Oficina de la Unión sobre la Ley de Protección de los Derechos de Obtentor que había aprobado la Asamblea Nacional el 29 de mayo de 2009 y que había entrado en vigor el 10 de junio de 2009 (Ley de 2009). La Oficina de la Unión señaló que la Ley de 2009 era distinta del proyecto de Ley que había servido de base a la decisión positiva del Consejo de 2008 sobre la adhesión al Convenio de la UPOV.

7. El 18 de mayo de 2010, la Oficina de la Unión envió a la Misión Permanente sus observaciones sobre la Ley de 2009.

8. El 29 de junio de 2010, Su Excelencia el Sr. Sasã Dragin, Ministro de Agricultura, Silvicultura y Recursos Hídricos, informó al Secretario General que su Ministerio tomaría en consideración las observaciones de la Oficina de la Unión y presentaría lo antes posible un proyecto de Ley al Consejo para que éste lo examinara.

#### **BASE DE LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES EN SERBIA**

9. En Serbia, la protección de las obtenciones vegetales quedará regida por las disposiciones de la Ley de 2009, modificada. En el proyecto de Ley del Anexo II se expone la Ley de 2009 en la forma en que será modificada. A continuación se analiza el proyecto de Ley en el orden en que figuran las disposiciones fundamentales del Acta de 1991.

#### Artículo 1 del Acta de 1991: Definiciones

10. Las definiciones que constan en el artículo 2 del proyecto de Ley están en conformidad con las definiciones correspondientes del artículo 1 del Acta de 1991.

#### Artículo 2 del Acta de 1991: Obligación fundamental de las Partes Contratantes

11. En la primera frase del artículo 1 del proyecto de Ley se establece que “[la] presente Ley regulará las condiciones, la manera y el procedimiento de protección de los derechos de obtentor”, en concordancia con la aplicación fundamental prevista en el artículo 2 del Acta de 1991.

#### Artículo 3 del Acta de 1991: Géneros y especies que deben protegerse

12. En el tercer párrafo del artículo 1 del proyecto de Ley se dispone que “[la] presente Ley se aplicará a todos los géneros y especies vegetales”. Esa disposición está en conformidad con lo dispuesto en el artículo 3.2)ii) del Acta de 1991. Cabe observar que, de conformidad con lo estipulado en el artículo 36.1)ii) del Acta de 1991, al depositar su instrumento de adhesión, Serbia deberá efectuar una declaración en el sentido de que la Ley se aplica a todos los géneros y especies vegetales.

#### Artículo 4 del Acta de 1991: Trato nacional

13. Las disposiciones del artículo 2.3)4)5) y del artículo 5 del proyecto de Ley están en conformidad con los requisitos previstos en el artículo 4 del Acta de 1991.

#### Artículos 5 a 9 del Acta de 1991: Condiciones de la protección, novedad, distinción, homogeneidad y estabilidad

14. En los artículos 6 a 10 del proyecto de Ley se establecen disposiciones sobre las condiciones de la protección que están en conformidad con las de los artículos 5 a 9 del Acta de 1991.

15. En el artículo 52 del proyecto de Ley se contempla un régimen de transición en lo que respecta a la novedad para las “variedades de reciente creación” que refleja el artículo 6.2) del Acta de 1991.

#### Artículo 10 del Acta de 1991: Presentación de solicitudes

16. En los artículos 15 a 17 del proyecto de Ley se establecen disposiciones sobre la presentación de solicitudes. No parece haber en el proyecto de Ley disposición alguna que sea incompatible con el artículo 10 del Acta de 1991.

#### Artículo 11 del Acta de 1991: Derecho de prioridad

17. En el artículo 18 del proyecto de Ley se establecen disposiciones sobre el derecho de prioridad que están en conformidad con lo dispuesto en el artículo 11 del Acta de 1991.

#### Artículo 12 del Acta de 1991: Examen de la solicitud

18. En los artículos 19 a 21 del proyecto de Ley se establecen disposiciones sobre el examen de la solicitud que están en conformidad con las disposiciones del artículo 12 del Acta de 1991.

#### Artículo 13 del Acta de 1991: Protección provisional

19. En el artículo 28 del proyecto de Ley se establecen disposiciones sobre la protección provisional que están en conformidad con las disposiciones del artículo 13 del Acta de 1991.

#### Artículo 14 del Acta de 1991: Alcance del derecho de obtentor

20. En el párrafo 4 del artículo 25 del proyecto de Ley se incorpora la disposición facultativa contemplada en el artículo 14.3) del Acta de 1991. En el artículo 25 del proyecto de Ley se establecen disposiciones sobre el alcance del derecho de obtentor que están en conformidad con las disposiciones del artículo 14 del Acta de 1991.

#### Artículo 15 del Acta de 1991: Excepciones al derecho de obtentor

21. En el párrafo 1 del artículo 26 del proyecto de Ley se establecen disposiciones relativas a las excepciones obligatorias al derecho de obtentor que están en conformidad con lo dispuesto en el artículo 15.1) del Acta de 1991.

22. En los párrafos 2 a 6 del artículo 26 del proyecto de Ley se establecen disposiciones sobre la excepción facultativa que se contempla en el artículo 15.2) del Acta de 1991, a saber:

“Excepciones al derecho de obtentor

Artículo 26

[...]

En lo que respecta a una variedad perteneciente a una especie incluida en la lista de especies de plantas agrícolas que conllevan excepciones al derecho de obtentor, se considerará que no lesiona el derecho de obtentor el agricultor que, dentro de límites razonables y a reserva de la salvaguardia de los intereses legítimos del obtentor, utiliza para los fines de reproducción o de multiplicación, en su propia explotación, el producto de la cosecha que haya obtenido por el cultivo, en su propia explotación, de la variedad protegida o de una variedad cubierta por el párrafo 5.1) y 2) del artículo 25 (en adelante las ‘semillas conservadas en finca’).

Las variedades frutales, ornamentales, de hortalizas y árboles forestales no estarán incluidas en la lista de plantas agrícolas mencionada en el párrafo 2 del presente artículo.

Los productores agrícolas, a excepción de los pequeños productores agrícolas, estarán obligados a pagar al titular del derecho de obtentor una remuneración razonable por utilizar las ‘semillas conservadas en finca’ con arreglo a las condiciones del mercado, que será considerablemente inferior al nivel de remuneración de las semillas adquiridas.

Los productores agrícolas estarán obligados a transmitir por escrito al obtentor, a petición de este último, todos los datos necesarios en relación con el uso de las ‘semillas conservadas en finca’.

El Ministro estipulará la lista de especies de plantas agrícolas mencionada en el párrafo 2 del presente artículo, así como los elementos necesarios para determinar quiénes son los pequeños productores agrícolas mencionados en el párrafo 4 del presente artículo.”

Artículo 16 del Acta de 1991: Agotamiento del derecho de obtentor

23. En el artículo 27 del proyecto de Ley se establecen disposiciones relativas al agotamiento del derecho de obtentor que están en conformidad con las disposiciones del artículo 16 del Acta de 1991.

Artículo 17 del Acta de 1991: Limitación del ejercicio del derecho de obtentor

24. En los artículos 31 a 35 del proyecto de Ley se establecen disposiciones sobre la limitación del ejercicio del derecho de obtentor que están en conformidad con las disposiciones del artículo 17 del Acta de 1991.

Artículo 18 del Acta de 1991: Reglamentación económica

25. No parece haber en el proyecto de Ley disposición alguna que sea incompatible con el artículo 18 del Acta de 1991.

Artículo 19 del Acta de 1991: Duración del derecho de obtentor

26. En el artículo 23 del proyecto de Ley se establecen disposiciones sobre la duración del derecho de obtentor que están en conformidad con lo dispuesto en el artículo 19 del Acta de 1991.

Artículo 20 del Acta de 1991: Denominación de la variedad

27. En los artículos 11 a 14, en el artículo 17 y en el artículo 20 del proyecto de Ley se establecen disposiciones sobre la denominación de variedades que están en conformidad con lo dispuesto en el artículo 20 del Acta de 1991.

Artículo 21 del Acta de 1991: Nulidad del derecho de obtentor

28. En el artículo 37 del proyecto de Ley se establecen disposiciones sobre la nulidad del derecho de obtentor que están en conformidad con las disposiciones del artículo 21 del Acta de 1991.

Artículo 22 del Acta de 1991: Caducidad del derecho de obtentor

29. En el artículo 38 del proyecto de Ley se establecen disposiciones sobre la caducidad del derecho de obtentor que están en conformidad con lo dispuesto en el artículo 22 del Acta de 1991.

Artículo 30 del Acta de 1991: Aplicación del Convenio

30. En lo que respecta a la obligación de “prever los recursos legales apropiados que permitan defender eficazmente los derechos de obtentor” (artículo 30.1)i) del Acta de 1991), en los artículos 40 y 41 del proyecto de Ley se dispone lo siguiente:

“Demanda por violación de los derechos de obtentor

Artículo 40

La persona que viole los derechos de obtentor deberá responder de los daños y perjuicios ocasionados, en cumplimiento de la legislación general que contempla la indemnización por daños y perjuicios.

Además de una indemnización por daños y perjuicios, el titular de un derecho de obtentor cuyo derecho haya sido violado podrá solicitar que se prohíba a la persona que haya violado su derecho seguir ejecutando las actividades que constituyen la violación, así como que se publique a expensas del demandado la sentencia en la que se establece la violación.

Vencimiento del plazo para presentar la demanda por violación de los derechos de obtentor

Artículo 41

La demanda por violación de los derechos de obtentor podrá presentarse ante el tribunal competente en un plazo de tres años contados a partir de la fecha de recepción de información relativa a la violación de los derechos de obtentor.

Una vez vencido el plazo de cinco años posterior a la fecha en que haya tenido lugar la violación de los derechos de obtentor, no podrá presentarse la demanda.”

31. En lo que respecta a la obligación prevista en el artículo 30.1)ii) del Acta de 1991, en el artículo 3 y en el párrafo 1 del artículo 22 del proyecto de ley se contempla lo siguiente:

“Decisión de conceder derechos de obtentor

Artículo 22

Teniendo en cuenta los resultados del examen y a propuesta del Consejo de Expertos, el Ministro dictará una resolución sobre la concesión del derecho de obtentor o el rechazo de la solicitud de concesión de derecho de obtentor en un plazo de 30 días a partir de la fecha en que el Consejo de Expertos haya formulado la propuesta.

Consejo de Expertos para la protección de los derechos de obtentor

Artículo 3

El Ministerio responsable de la política agrícola (en adelante ‘el Ministerio’) ejecutará las actividades relativas a la protección de los derechos de obtentor en la República de Serbia estipuladas por la presente Ley.

A los fines de supervisar las condiciones existentes en el ámbito de la protección de los derechos de obtentor, examinar cuestiones especializadas, proporcionar opiniones y formular sugerencias de tipo profesional, así como participar en la ejecución de tareas de proyectos en el ámbito de los derechos de obtentor, el Ministro de Agricultura (en adelante ‘el Ministro’), en cumplimiento de la reglamentación que rige la administración estatal, dictará una resolución en la que se establecerá un grupo de trabajo especial, el Consejo de Expertos para la protección de los derechos de obtentor (en adelante ‘el Consejo de Expertos’).”

32. Los artículos 20 (párrafo 1), 21 (párrafo 1) y 22 (párrafo 7) del proyecto de Ley se ajustan a la obligación de publicar información relativa a las solicitudes de derecho de obtentor y a los títulos concedidos, así como a las denominaciones propuestas y aprobadas, según se exige en el artículo 30.1)iii) del Acta de 1991.

### Conclusión general

33. En opinión de la Oficina de la Unión, el proyecto de Ley recoge las disposiciones sustantivas del Acta de 1991. A la luz de lo antedicho, una vez que se modifique la Ley de 2009 en la forma expuesta en el proyecto de Ley que figura en el Anexo II, sin cambios, y la Ley modificada entre en vigor, Serbia estará en condiciones de “dar efecto” a las disposiciones del Acta de 1991, como se estipula en su artículo 30.2).

34. *Se invita al Consejo a:*

a) *tomar nota del análisis expuesto en el presente documento;*

b) *tomar una decisión positiva en relación con la conformidad del proyecto de Ley de Protección de los Derechos de Obtentor de la República de Serbia con las disposiciones del Acta de 1991 del Convenio Internacional para la Protección de las Obtenciones Vegetales, de modo que, una vez que la Ley de 2009 haya sido modificado en la forma expuesta en el proyecto de Ley que figura en el Anexo II, sin cambios, y la Ley modificada haya entrado en vigor, Serbia pueda depositar su instrumento de adhesión al Acta de 1991; y*

c) *autorizar al Secretario General a informar de dicha decisión al Gobierno de la República de Serbia.*

[Siguen los Anexos]



ANEXO I

Carta del Ministro de Agricultura, Silvicultura y Recursos Hídricos de la República de Serbia  
dirigida al Secretario General de la UPOV

[Traducción por la Oficina de la Unión de una carta con fecha 22 de febrero de 2011]

Enviada por: S. E. Sr. Sasã Dragin, Ministro de Agricultura, Silvicultura y Recursos Hídricos de la República de Serbia

Destinatario: Sr. Francis Gurry, Secretario General de la Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV)

Tengo el agrado de informarle de que el Ministerio de Agricultura, Silvicultura y Recursos Hídricos de la República de Serbia, tras las consultas celebradas con la Oficina de la Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV) en relación con las modificaciones propuestas en la Ley de Protección de los Derechos de Obtentor de la República de Serbia, ha tenido en consideración las modificaciones propuestas por la Oficina de la Unión y somete el proyecto de Ley a examen del Consejo de la UPOV.

Le agradecería que el Consejo de la UPOV examinara en su próxima sesión la conformidad de la Ley de Protección de los Derechos de Obtentor de la República de Serbia con las disposiciones del Acta de 1991 del Convenio de la UPOV.

(Firmada)

Documento adjunto: Ley de Protección de los Derechos de Obtentor

[Sigue el Anexo II]

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]