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**UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES**  
GENÈVE

**CONSEIL**

**Trente huitième session ordinaire**  
**Genève, 21 octobre 2004**

**EXAMEN DE LA CONFORMITE DE LA LOI DE LA REPUBLIQUE DE TURQUIE  
RELATIVE A LA PROTECTION DES DROITS D'OBTENTEUR  
AVEC L'ACTE DE 1991 DE LA CONVENTION UPOV**

*Document établi par le Bureau de l'Union*

Introduction

1. Par lettre du 28 juin 2004, M. Türkekul Kurttekin, ambassadeur, Mission permanente de la République de Turquie (ci-après dénommée "Turquie") auprès de l'Office des Nations Unies à Genève, a transmis une lettre de M. Nihat Pakdil, directeur général de la Direction générale de la protection et du contrôle du Ministère turc de l'agriculture et des affaires rurales, datée du 24 mai 2004, demandant l'examen de la loi n° 5042 du 8 janvier 2004 de la Turquie, relative à la protection des droits d'obteneur (ci-après dénommée "loi"), du point de vue de sa conformité avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé "Acte de 1991"). Ces lettres sont reproduites dans l'annexe I du présent document. L'annexe II contient une traduction en anglais de la loi communiquée par le Gouvernement de la Turquie.

2. La Turquie n'a pas signé l'Acte de 1991. Conformément à l'article 34.2) de cet acte, elle doit donc déposer un instrument d'adhésion pour devenir partie contractante sur la base de l'Acte de 1991. Conformément à l'article 34.3) de l'Acte de 1991, un instrument de ce type ne peut être déposé que si l'État en question a demandé l'avis du Conseil au sujet de la conformité de ses lois avec les dispositions de la convention et si la décision du Conseil qui exprime cet avis est positive.

### Fondement de la protection des obtentions végétales en Turquie

3. En Turquie, la protection des obtentions végétales est régie par la loi n° 5042 sur la protection des droits d'obtenteur, qui a été adoptée par la Grande Assemblée nationale turque le 8 janvier 2004 et publiée au Journal officiel n° 25347 le 15 janvier 2004. Cette loi est entrée en vigueur le même jour. On en trouvera ci-après une analyse, dans l'ordre des dispositions de droit matériel de l'Acte de 1991.

#### Article premier de l'Acte de 1991 : Définitions

4. L'article 2 de la loi contient les définitions des termes pertinents employés dans celle-ci. En particulier, la définition de la "variété" est conforme à la définition figurant à l'article 1.vi) de l'Acte de 1991. La définition du terme "obtenteur" est aussi conforme à la définition figurant à l'article 1.iv) de l'Acte de 1991, tandis que les termes "employeur de l'obtenteur" et "ayant droit" sont visés respectivement par les articles 12 et 11 de la loi.

#### Article 2 de l'Acte de 1991 : Obligation fondamentale des parties contractantes

5. L'article premier de la loi précise l'objet de celle-ci, à savoir assurer la protection des obtentions végétales et des droits d'obtenteur, et donne effet à l'obligation fondamentale prévue à l'article 2 de l'Acte de 1991.

#### Article 3 de l'Acte de 1991 : Genres et espèces devant être protégés

6. Le second alinéa de l'article premier de la loi dispose que cette loi couvre toutes les plantes. Par conséquent, la loi donne effet à l'obligation fondamentale prévue à l'article 3 de l'Acte de 1991.

#### Article 4 de l'Acte de 1991 : Traitement national

7. L'article 4 de la loi dispose que, outre les ressortissants de la Turquie et les personnes physiques ou morales qui ont leur résidence ou leur siège en Turquie, les personnes ayant le droit de déposer une demande dans le cadre de la Convention UPOV bénéficient de la protection. La loi est donc conforme aux dispositions de l'article 4 de l'Acte de 1991 relatives au traitement national.

#### Article 5 de l'Acte de 1991 : Conditions de la protection

8. L'article 3 de la loi énonce les conditions de la protection. Il laisse la possibilité de prévoir des conditions de protection supplémentaires. Sous réserve qu'il soit précisé qu'il n'y a pas d'autres conditions que celles qui ont trait à la dénomination variétale appropriée, à l'accomplissement des formalités prévues par la loi et au paiement des taxes, la loi est conforme aux dispositions de l'Acte de 1991.

Articles 6 à 9 de l'Acte de 1991 : Nouveauté, distinction, homogénéité et stabilité

9. Les articles 5 à 8 de la loi énoncent les conditions de la protection conformément aux obligations découlant de l'Acte de 1991.

10. L'article 2 provisoire de la loi prévoit la protection des variétés connues par la mise en œuvre d'un régime transitoire en ce qui concerne la nouveauté pour les variétés de création récente, conformément à l'article 6.2) de l'Acte de 1991.

Article 10 de l'Acte de 1991 : Dépôt de demandes

11. Les articles 32 et 33 de la loi traitent des exigences de forme concernant le dépôt des demandes et sont en conformité avec l'article 5.2) de l'Acte de 1991.

Article 11 de l'Acte de 1991 : Droit de priorité

12. L'article 34 de la loi contient des dispositions relatives au droit de priorité, conformément à l'article 11 de l'Acte de 1991.

Article 12 de l'Acte de 1991 : Examen de la demande

13. Les articles 35 à 40 de la loi contiennent les dispositions essentielles de l'article 12 de l'Acte de 1991. Le sixième alinéa de l'article 39 de la loi dispose que les règles et procédures régissant la conduite de l'examen technique sont fixées par le règlement d'application.

Article 13 de l'Acte de 1991 : Protection provisoire

14. L'article 15 de la loi contient des dispositions relatives à la protection provisoire qui sont conformes à l'article 13 de l'Acte de 1991.

Article 14 de l'Acte de 1991 : Étendue du droit d'obtenteur

15. L'article 14 de la loi reprend en substance l'article 14 de l'Acte de 1991. Il est recommandé de modifier la définition de la "variété essentiellement dérivée" à la lettre a) en remplaçant les mots "est conforme à la variété initiale dans l'expression des caractères" par les mots "conserve l'expression des caractères essentiels" et à la lettre b) en remplaçant les mots "elle doit être essentiellement conforme à la variété initiale dans l'expression des caractères" par les mots "elle est conforme à la variété initiale dans l'expression des caractères essentiels".

#### Article 15 de l'Acte de 1991 : Exceptions au droit d'obtenteur

16. Les articles 16 et 17 de la loi contiennent des dispositions relatives aux exceptions au droit d'obtenteur qui sont conformes à l'article 15 de l'Acte de 1991. Le privilège de l'agriculteur n'est accordé qu'aux petits agriculteurs et pour les espèces cultivées énumérées à l'article 17.2). Une contradiction semble exister entre les dispositions des sous-alinéas a) et b) de l'article 17.3) : le sous-alinéa a) dispose qu'aucune restriction quantitative n'est applicable à l'exploitation agricole tandis que le sous-alinéa b) prévoit que seuls les petits agriculteurs peuvent bénéficier de la dérogation. Ce point devra être éclairci lors de l'élaboration du règlement d'application des dispositions relatives au privilège de l'agriculteur, comme le prévoit le dernier alinéa de l'article 17.

#### Article 16 de l'Acte de 1991 : Épuisement du droit d'obtenteur

17. L'article 31 de la loi contient des dispositions relatives à l'épuisement du droit d'obtenteur qui sont conformes à l'article 16 de l'Acte de 1991.

#### Article 17 de l'Acte de 1991 : Limitation de l'exercice du droit d'obtenteur

18. Les articles 18 à 29 de la loi contiennent des dispositions relatives aux licences obligatoires qui pourraient être concédées pour des raisons d'intérêt public après l'expiration d'un délai de trois ans à compter de l'octroi du droit d'obtenteur. Il est prévu de préciser davantage cette question lors de l'élaboration du règlement d'application des dispositions relatives à la licence obligatoire, comme le prévoit la dernière phrase de l'article 18 de la loi.

#### Article 18 de l'Acte de 1991 : Réglementation économique

19. La loi ne semble pas contenir de dispositions contraires à l'article 18 de l'Acte de 1991.

#### Article 19 de l'Acte de 1991 : Durée du droit d'obtenteur

20. L'article 10 de la loi contient des dispositions relatives à la durée du droit d'obtenteur qui sont conformes à l'article 19 de l'Acte de 1991.

#### Article 20 de l'Acte de 1991 : Dénomination de la variété

21. L'article 9 (Dénomination et utilisation des dénominations), l'article 33 (Conditions applicables aux demandes), l'article 41 (Désignation définitive d'une dénomination provisoire) et l'article 42 (Motifs de rejet des demandes) de la loi contiennent des dispositions relatives aux dénominations variétales qui reprennent les éléments essentiels de l'article 20 de l'Acte de 1991.

### Article 21 de l'Acte de 1991 : Nullité du droit d'obtenteur

22. Les articles 52 à 54 de la loi contiennent des dispositions relatives à la nullité qui reprennent les dispositions essentielles de l'article 21 de l'Acte de 1991. Il est recommandé de modifier l'article 52.b) pour que ce motif ne soit applicable que si l'octroi du droit d'obtenteur a été essentiellement fondé sur les renseignements et documents fournis par l'obtenteur. Il est aussi recommandé d'ajouter les mots "à moins qu'il ne soit transféré à la personne qui y a droit" à la fin de l'article 52.c).

### Article 22 de l'Acte de 1991 : Déchéance de l'obtenteur

23. L'article 47 (Obligations du titulaire après l'octroi du droit), l'article 48 (Inspection du Ministère et annulation d'office) et l'article 55 (Déchéance du droit d'obtenteur) de la loi contiennent des dispositions relatives à la déchéance qui reprennent celles de l'article 22 de l'Acte de 1991.

### Article 30 de l'Acte de 1991 : Application de la convention

24. La loi prévoit les recours juridiques appropriés pour l'application effective du droit d'obtenteur à l'article 56 (Actes constituant une atteinte aux droits conférés), à l'article 57 (Prétentions du titulaire et tribunaux compétents en cas de poursuites judiciaires), à l'article 58 (Indemnisation), l'article 59 (Manque à gagner), à l'article 60 (Recours en vue de l'obtention d'une rémunération), à l'article 61 (Requête en déclaration de non-atteinte aux droits et conditions applicables), à l'article 62 (Action en vue d'obtenir des preuves), à l'article 63 (Demande de mesures préventives et nature de ces mesures), à l'article 64 (Application du Code de procédure civile), à l'article 65 (Prescription), à l'article 66 (Atteintes et sanctions), à l'article 67 (Procédures et prescription), à l'article 68 (Tribunal compétent) et à l'article 69 (Publication de la décision du tribunal), ce qui satisfait à l'obligation découlant de l'article 30.1)i) de l'Acte de 1991.

25. La loi dispose que le détenteur de la variété dépose la demande de protection auprès du ministère (Ministère de l'agriculture et des affaires rurales) (article 32), qui procède à l'examen de la demande (article 35), publie la demande (article 36), crée le registre des droits d'obtenteur (article 70) et publie le bulletin des obtentions végétales (article 71). Bien que la loi ne désigne pas explicitement le ministère comme l'autorité chargée d'octroyer les droits d'obtenteur, elle est de toute évidence conforme à l'obligation visée à l'article 30.1)ii) de l'Acte de 1991.

26. En ce qui concerne l'obligation de veiller à ce que le public obtienne par une publication périodique des renseignements sur les demandes de droit d'obtenteur et les droits d'obtenteur conférés, ainsi que sur les dénominations proposées et approuvées, l'article 36 (Publication de la demande dans le bulletin), l'article 44 (Publication de la délivrance du titre) et l'article 71 (Bulletin des obtentions végétales) de la loi contiennent des dispositions qui satisfont à l'obligation de l'article 30.1)iii).

*Conclusion générale*

27. De l'avis du Bureau de l'Union, la loi incorpore en substance l'Acte de 1991 et permet à la Turquie de "donner effet" aux dispositions de cet acte, comme l'exige l'article 30.2) de ce dernier.

28. *Le Conseil est invité à*

*a) prendre note des renseignements ci-dessus;*

*b) prendre, quant à la conformité de la loi n° 5042 de la République de Turquie avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales, une décision positive, conformément à l'article 34.3) de cet acte, qui permette à la République de Turquie de déposer son instrument d'adhésion.*

*c) autoriser le secrétaire général à informer le Gouvernement turc de cette décision.*

[L'annexe I suit]

ANNEXE I

**Traduction d'une lettre datée du 28 juin 2004 (5132)**

**adressée par :** La Mission permanente de la Turquie auprès de l'Office des Nations Unies à Genève

**à :** M. Kamil Idris  
Secrétaire général  
Union internationale pour la protection  
des obtentions végétales (UPOV)  
34, ch. des Colombettes  
1211 Genève 20 (Suisse)

Monsieur le Secrétaire général,

J'ai le plaisir de vous adresser ci-joint la lettre de M. Nihat Pakdil, directeur général de la protection et du contrôle au Ministère de l'agriculture et des affaires rurales de la République de Turquie, concernant le souhait de la Turquie de devenir membre de l'Union internationale pour la protection des obtentions végétales (Convention UPOV), par laquelle il a demandé à cet égard l'examen de la conformité de la loi n° 5042 avec les dispositions de l'Acte de 1991.

Vous voudrez bien trouver ci-joint une copie certifiée conforme de la loi susmentionnée.

Veillez agréer, Monsieur le Secrétaire général, l'assurance de ma considération distinguée.

(Signé : Türkekul Kurttekin  
Ambassadeur et représentant permanent)

P.J. : comme indiqué.

**Traduction d'une lettre datée du 24 mai 2004**

**adressée par :** La République de Turquie  
Ministère de l'agriculture et des affaires rurales  
Direction générale de la protection et du contrôle

**à :** M. Kamil Idris  
Secrétaire général  
Union internationale pour la protection  
des obtentions végétales (UPOV)  
34, ch. des Colombettes  
1211 Genève 20 (Suisse)

Monsieur le Secrétaire général,

J'ai le plaisir de vous informer que la Grande Assemblée nationale turque a adopté le 8 janvier 2004 la loi sur la protection des droits d'obtenteur, qui a été publiée au Journal officiel n° 25347 daté du 15 janvier 2004 et qui est entrée en vigueur.

La Turquie souhaite devenir membre de l'Union internationale pour la protection des obtentions végétales (Convention UPOV du 2 décembre 1961, révisée à Genève le 10 novembre 1972, le 23 octobre 1978 et le 19 mars 1991 (Acte de 1991)).

Conformément aux dispositions de l'article 34.3) de l'Acte de 1991, je saurais gré au Conseil de l'UPOV d'examiner la conformité de la loi de la Turquie avec les dispositions de l'Acte de 1991.

Veillez agréer, Monsieur le Secrétaire général, l'assurance de ma considération distinguée.

(Signé : Nihat Pakdil  
Directeur général)

P.J. : version anglaise de la loi (26 pages au total)

[L'annexe II suit]



ANNEXE II / ANNEX II / ANLAGE II / ANEXO II

LAW NO. 5042 OF 8 JANUARY 2004 ON THE PROTECTION OF BREEDER'S RIGHTS  
FOR NEW PLANT VARIETIES

PART ONE  
General Provisions

CHAPTER ONE  
Objective, Scope, Definitions

Objective and Scope

ARTICLE 1- The purpose of this Law is to encourage the development of plant varieties, and to ensure protection of new varieties and breeder's rights.

This law covers all plants.

Definitions

ARTICLE 2- For the purposes of this Law following definitions shall apply:

- a) Ministry: Ministry of Agriculture and Rural Affairs
- b) Court: Specialized Courts on Intellectual Property Rights
- c) Breeder: the person who bred or discovered and developed a new plant variety.
- d) Holder of the Right: any breeder or his legal successors,
- e) Variety: 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 plant variety right are fully met, can be defined by the expression of the characteristics that results 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.
- f) Seed: vegetative and generative plant parts used for propagation of plants
- g) Propagation or reproduction: derivation of a new generation plants having the same characteristics with initial and parent plants.
- h) Production: cultivation of plants with the aim of obtaining product or propagating material.
- i) Propagating material: all plants or their parts used for propagating plants.

- i) Grant (Registration): entering the varieties covered by this Law in the Register of Breeder's Rights.
- j) Bulletin: Plant Varieties Bulletin
- k) Register: the registers where breeder's right applications and grant of rights are recorded.
- l) Catalogue: list published for varieties traded under relevant legislation.
- m) UPOV Convention: International Convention For The Protection of New Varieties of Plants

## CHAPTER TWO

### Conditions of Protection and Persons Benefitting from Protection

#### General Conditions

ARTICLE 3- Plant varieties that are found to be new, distinct, uniform and stable shall be protected by granting breeders right, provided that other requirements under this Law are met.

#### Persons Benefitting from Protection

ARTICLE 4- The protection under this Law shall be provided to persons who are the nationals of Republic of Turkey or natural or legal persons having their residences or offices within the territory of Republic of Turkey or those having the right to apply within the scope of the UPOV Convention.

In line with the reciprocity principle, natural and legal persons who does not meet the requirements given in paragraph 1 but are nationals of any other state that grants legal or actual protection to the nationals of Republic of Turkey shall also enjoy the same protection provided by this Law.

#### Novelty and the Cases that do not affect the Novelty

ARTICLE 5- The 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 public, by or with the consent of the breeder, for purposes of using exploitation of the variety, at home where the application has been filed earlier than one year before that date, and abroad earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

Following cases shall not affect the consideration of variety as new:

- a) Sales or statements that can be considered, against the holder of the right, as misuse of right,
- b) Sales or statements that are within the scope of a transfer contract of breeder's right.

- c) Acts, on behalf of the holder, under a propagating contract of material, provided that the breeder preserves the right on propagating material and material is not exploited for production of any other variety.
- d) Field or laboratory trials carried out, under a contract, in order to determine the characteristics of the variety or acts related with small size product processing trials.
- e) Acts arising from legal procedures for biological security or from the obligations such as entering tradable varieties in the official catalogue.
- f) Sales or disposal to the public, for consumption and without defining the variety concerned, of residual products resulting from production of variety or of harvested material of subproduct nature, or materials resulting as the consequence of acts under paragraph (c), (d) and (e) of this Article.

### Distinctness

ARTICLE 6-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 on the date of application or on the date of priority right.

A variety shall in particular be deemed to be a matter of common knowledge on the date of application provided that an application filed in any State has led to the granting of breeders right or entering the variety in the register.

Common knowledge may also be determined by taking into account the commencement of variety exploitation or existence of a variety in a variety catalogue of a professional institution or inclusion in a reference collection.

### Uniformity

ARTICLE 7 - A variety shall be deemed to be uniform if it is sufficiently uniform in its relevant characteristics, except those possible variations that are subject to propagation method used.

### Stability

ARTICLE 8-A variety shall be deemed to be stable if its relevant characteristics remain unchanged during the repeated propagation or at the end of particular propagation cycles.

### Denomination and Use of denominations

ARTICLE 9- Denomination of a protected variety shall be its generic designation.

The denominations shall consist of one or more words, meaningful or meaningless, word and figures, or letter and figures, provided that the variety can easily be recognized. The denominations submitted should not contain indications, which may hamper the entitlement

for marks for the products of the variety in question, in accordance with the legislation on Marks.

The applications shall be made with the denomination designated in the cases where the denomination is registered and used in Turkey or in a country that is a party to the UPOV Convention. Without prejudice to the provisions of Article 42, denominations used for the variety in other countries shall also be entered in Application Register and Breeder's Right Register.

The same denomination, which has already been used for a variety in Turkey or any other country party to the UPOV Convention or a similar denomination, which may cause confusion, shall not be designated for the same plant species or closely related species. This provision shall also apply to the denominations already registered in any country that is a party to the UPOV Convention.

Any person who offers for sale or markets propagating material of a protected variety is obliged to use the denomination of that variety. This provision shall also apply to the varieties covered under Article 14 paragraph 5(b).

Obligation to use the denomination shall apply even after the termination of the breeder's right.

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

Where a variety is offered for sale or marketed, the use of a designated denomination associated with a trademark, trade name or similar indications shall be permitted provided that the denomination of variety is written in such a way that it is easily recognizable.

### CHAPTER THREE Duration of Protection

#### Duration of Protection

ARTICLE 10- The duration of protection is 25 years from the grant of the right. For trees, vines and potatoes, the said period is 30 years from the said date.

Ending date of protection period shall be calculated as to run from the end of the calendar year.

PART TWO  
Holder, Scope and Restrictions of Right

CHAPTER ONE  
Holder of the Right and Rights Conferred to the Holder

Holder of Right

ARTICLE 11- The breeder and his legal successor shall be entitled to the breeder's right of a variety.

In case of breeders more than one person, the entitlement shall be vested jointly in them provided that there is no contrary agreement between respective parties.

Each holder of the right is entitled to do following on his own right, independently of other shareholders:

- a) He may exercise his right freely in proportion to the respective share held.
- b) He may exploit the variety in question after written notification to other holders of the right.
- c) He may take any measure necessary for protection of variety concerned.
- d) He may institute legal and criminal proceedings against 3rd persons in cases where infringement of the right which results from joint application to the Ministry or granting of the right.

In cases where the holder institutes legal or criminal proceedings against 3<sup>rd</sup> persons, the plaintiff shall inform other shareholders, within one month from date of the institution of the proceedings, in order to enable them to participate to the proceedings.

In case of transfer of right to 3rd parties, other shareholders have the priority purchase right. The transfer of right shall be made in writing and entered in the register. The Ministry shall inform other shareholders, within 2 months, of the situation to ensure them to exercise their priority purchase right. The priority purchase right shall be exploited within one month from the date of receipt of such notification.

In cases where transfer of the right with regard to exploitation of the variety to 3rd persons is not possible with the consent of all holders, the decision on the transfer of such right shall be taken by the Court.

Entitlement under Employment

ARTICLE 12- Where the varieties are bred or discovered and developed by employees during the execution of their duties, the breeder's right shall be vested in their employers unless otherwise provided by the contract or understood from the nature of the work.

The breeder's right shall be vested in the employers for the variety that has been bred, discovered or developed by the employee, using the information and equipment available at work, who were not required by the contract.

The employees who bred or discovered and developed the varieties may claim a certain amount of remuneration determined by breeder and employer by taking into account the economic value of the variety. When the parties do not agree on the level of remuneration, it shall be decided by the Court. The parties may determine the level beforehand and so include in the contract.

Which employees of public institutions and agencies will benefit from the breeder's right, to what extent and how, shall be determined by a Regulation to be adopted by the Ministry after receiving the observations of relevant ministries.

#### Entitlements Under Contracts other than Service Contracts

ARTICLE 13- For the varieties that have been bred or discovered and developed within the framework of employment contacts other than service contracts, the right shall be vested in the client unless otherwise provided by the contact.

#### Rights Conferred on the Holder

ARTICLE 14- Breeder's right shall confer on the holder following exclusive rights for protection of the variety:

- (a) production or reproduction.
- (b) conditioning for the purpose of propagation.
- (c) offering for sale.
- (d) selling or other marketing.
- (e) exporting or importing.
- (f) stocking .

In respect of harvested material obtained through the unauthorized use of propagating material of a variety under protection, authorization of the holder shall be required for any activity laid down in the first paragraph of this Article. However, authorization shall not be required if the holder has had reasonable opportunity but he has not exercised his right in relation to the said propagating material.

Provisions of paragraph 2 of this Article shall also apply in respect of products obtained directly from the harvested material through the unauthorized use of propagating material of the protected variety.

The holder may subject his rights referred in the provisions mentioned above to conditions and restrict these rights.

The provisions of abovementioned paragraphs shall also apply in relation to the varieties:

- (a) which are essentially derived from the protected variety, provided that the protected variety is not itself an essentially derived variety.

- (b) varieties which are not distinct from the protected variety.
- (c) varieties whose production requires repeated use of the protected variety.

Following cases cover the varieties which are essentially derived from other varieties as described in paragraph 5 (a) of this Article:

- (a) it shall be predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety. In both cases, essentially derived variety conforms to the initial variety in the expression of the characteristics that results from the genotype or combination of genotypes of the initial variety
- (b) it must be distinct from the initial variety, except for the differences which result from the act of derivation, and it must conform essentially to the initial variety in the expression of the characteristics that results from the genotype or combination of genotypes of the initial variety.

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

#### Acts between the Application and Grant

ARTICLE 15- Any person who effects the acts that require the authorization of the right and holder of the right should pay a reasonable compensation to the holder, in the time between the application date for the breeder's right and grant thereof, and after the right , specified in article 14, has been granted.

## CHAPTER TWO Restrictions on Exercise of Breeder's Right

### General Restrictions

ARTICLE 16- Breeder's rights shall not extend to the following acts:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes;
- (c) acts done for the purpose of breeding other varieties, except acts referred in Article 14 paragraph 5 of this Law.

### Derogation for Farmers

ARTICLE 17- for the purposes of protecting and safeguarding agricultural production, farmers are authorized to use for new production, on their own holdings, the product of the harvest which they have obtained by planting propagating material of a protected variety, except hybrid and sythetic varieties, without infringing the legitimate rights of breeder, provided that it is not contrary to paragraph 1 of Article 14.

The provisions of paragraph 1 shall apply to following species:

(a) Cereals

- 1- Wheat “Triticum spp”
- 2- Barley “Hordeum vulgare L.”
- 3- Red rice “Oryza sativa L.”
- 3- Oats “Avena sativa”
- 4- Rye “Secale cereale L.”
- 5- Tricale “Triticosecale”

(b) Grain Legumes

- 1- Common bean “Phaseolus vulgaris L.”
- 2- Chickpea milkvetch “Cicer arietinum L.”
- 3- Lentil “Lens Culinaris Medic”
- 3- Field pea “Pisum sativum L.”
- 4- Field bean “Vicia faba “

(c) Fibre Plants

- 1- Lucerne “Medicago sativa L.”
- 2- Sainfoin “Onobrychis Sativa L.”
- 3- Common vetch “Vicia sativa L.”
- 4- Clover “Trifolium spp.”

(d) Industrial Plants

- 1- Cotton “Gossypium spp.”
- 2- Tobacco “Nicotina tacacum L.”
- 3- Potato “Solanum tuberosum”
- 3- Rape “Brassica tuberosum L.”
- 4- Peanut “Arachic hypogaea L.”
- 5- Soybean “Glycine Max L.”

Conditions to give effect to the derogation provided for in paragraph 1 of this Article shall be applied on the basis of following criteria in order to safeguard the legitimate interests of the holder of the right and of the farmer:

- a) There shall be no quantitative restriction of the level of the farmer’s holding to the extent necessary for the requirements of the holding. Farmers’ own holding shall be considered to be any holding which the farmer actually exploits for plant growing, whether as his property or otherwise managed under his own responsibility and on his own account in particular in the case of leaseholds, or as a sharecropper.
- b) Only small farmers may benefit from the farmers derogation. Small farmers are those who grow maximum 92 tonnes of wheat or, in respect of those plant species referred in paragraph 2, who meet comparable appropriate criteria. Comparable appropriate criteria shall be laid down in the Regulation. These farmers are not required to pay any remuneration to the holder.
- c) Other farmers who are not under the scope of derogation shall be required to pay a certain amount of remuneration to the holder. The level of remuneration shall be determined by an agreement between the holder and the farmer concerned.
- d) Persons who are farmers under the scope of derogation or process the products, are obliged to provide any information and document to the holders on their request.



When necessary, the holder may ask the help of the Ministry. The Ministry, in that case, may provide, with a charge, relevant information and documents to the holder. If the Ministry refuses to provide such information and documents requested, it shall inform the holder, in writing, about the refusal decision together with the basis for refusal.

The rules and procedures for implementation of farmers derogation shall be laid down in a regulation to be adopted.

### CHAPTER THREE Compulsory Licences and Exhaustion of Breeder's Rights

#### Compulsory Licences

ARTICLE 18- Breeder's right may be subjected to compulsory licence, on the grounds of public interest, at the end of the 3rd year from the grant of breeder's right.

In cases where commencement of exploitation of the protected variety, increasing its exploitation or spreading of its exploitation are of great importance for national defence or public health purposes, public interest shall be deemed to be involved

In cases where the non exploitation of protected variety or its insufficient exploitation in terms of quality and quantity causes serious damage to the economic or technological development, public interest shall also be deemed to be involved.

Compulsory licence shall be decided by the Council of Ministers upon the proposal of the Ministry. In case, where the exploitation of the protected variety is important for national defence or public health, the proposal is prepared jointly by the Ministry and Ministry of Defence or the Ministry of Health.

The decision to grant compulsory license, may, on grounds of its importance for national defence, restrict the exploitation of the variety by one or several enterprises.

Exportation of a protected variety shall not be accepted as a basis for compulsory licence.

Implementation rules and procedures with regard to compulsory licence shall be determined by a Regulation.

#### Request for Mediation on Compulsory Licence

ARTICLE 19- A person desirous to apply for a compulsory license may in the first instance resort to the Ministry asking for its mediation with a view to obtaining a contractual license for the same variety.

For applying to the Ministry for mediation, the fee set forth in the regulation shall be paid. Following particulars shall be included in the application for mediation:

- a) Information about the applicant;

- b) Information on the variety, subject for mediation and the holder;
- c) Conditions justifying the grant of compulsory license;
- d) Scope of the license requested and reasons for such a request;
- e) Information sufficient enough for deciding whether the applicant is capable to efficient exploitation of the variety and whether he can supply a reasonable guarantee required by the holder for granting the license.

#### Mediation by the Ministry

ARTICLE 20- The Ministry shall decide on the request for mediation within one month from the date of application.

The Ministry shall accept to mediate when from the application for mediation and the documents attached to it, and after due investigation, it is convinced that there is in fact a situation requiring the grant of compulsory license, that the applicant is solvent and has all the necessary means for exploiting the variety.

The Ministry shall notify its decision on the mediation to the applicant and also to the holder with a copy of the application for mediation.

#### Mediation Procedure

ARTICLE 21 - When the Ministry accepts the mediation request, it shall make a call without delay for the participation of the parties in the contractual license negotiations in which it will act as mediator. The negotiations shall not last longer than two months.

Where, despite of two months term following the notification to the parties of the acceptance of the mediation request, it has not been possible to conclude a contractual license, the Ministry shall declare that its mediation and examination activities have come to an end and notify the interested parties thereof.

If the Ministry is convinced that the license agreement can indeed be concluded, it may accept the request for an extension of term to maximum 1 month to be filed jointly by the parties.

Prior to final decision to be reached by the Ministry, only the parties are entitled to have access to the documents related to the procedure of mediation and ask for copies thereof. The parties and the Ministry are obliged to comply with the rules of confidentiality in respect of the contents of the documents.

#### Effects of Mediation activities

ARTICLE 22 -When the negotiations where the Ministry has acted as mediator result in that the parties conclude an agreement on the license for exploitation of the variety, the licensee shall be given a term for commencing the exploitation.

The term given for commencing the exploitation of the variety shall not exceed one year and the following conditions shall be required for the activity of mediation to come to an end :

- a) The license agreed upon by the parties shall be an exclusive one and shall not constitute an obstacle for being subject to compulsory license.

- b) Filing of documents evidencing that the person, having applied for mediation, has the opportunity for commencing the exploitation of the variety and that as of its subject matter, a period is needed to commence the exploitation;
- c) Supply of a guarantee, in the amount set forth in the Regulation, to cover the liability that arises when the applicant for mediation fails to commence the exploitation of the variety within the term foreseen;
- d) Payment of the fee set forth in the Regulation.

Where on the basis of the documents submitted by the parties, the Ministry comes to a firm conviction that the requirements set forth in the second paragraph are met and that the parties have the will to immediately take action for commencing the exploitation of the variety, it will finalize the mediation procedure and enter the license granted, as a result of the mediation, in the Register.

The applicant is obliged to notify the Ministry of the preparations relative for commencing the exploitation of the variety and of the prevailing situation. The Ministry is entitled to inspect, if it deems it necessary.

The licensee having obtained the license through the mediation of the Ministry may request the court to suspend the procedure relative to the grant of compulsory license for the variety in question within the term foreseen for the commencement of variety exploitation.

Upon bringing evidence; that the decision for suspending the procedure for the grant of compulsory license has been reached on the basis of a considerable deceit or, on an opinion according to which the parties could not be in a position to carry out, on a serious and continuous basis, the activity for commencing the exploitation within the prescribed term, the court may cancel the decision of suspension.

At the end of the term, where the licensee, having obtained the license through the mediation of the Ministry, fails to commence the exploitation of variety, the Ministry may decide on the payment of a fee by the licensee to the licensor. The fee shall be calculated according to the license fee, the licensee has to pay the holder in a license agreement of a term equivalent to the term during which the variety was not exploited.

#### Request for Compulsory License

ARTICLE 23 – Upon expiry of a term of three months, from the expiry of the term foreseen in Article 21 or from the date of the decision of the Ministry refusing the request for mediation, or when the parties fail to conclude the license agreement within the term of the mediation activity conducted by the Ministry, the court may be asked to grant compulsory license.

The applicant for compulsory license may claim on the basis of the preceedingly conducted mediation procedure and the documents submitted to this effect that the conditions for the grant of compulsory license are fulfilled.

The applicant shall also indicate the opportunities he has for effectively exploiting the variety and the guarantee he will be in a position to produce in case the license is granted.

The following documents shall be enclosed to the application for compulsory license :

- a. Documents substantiating convincingly the application for compulsory license, in case documents related to the preceedingly conducted mediation procedure are not available.
- b. Documents attesting to guarantee the amount set forth in the Regulation for meeting the costs of the compulsory license transactions.
- c. Document attesting the payment of the fee set forth in the Regulation.

#### Engaging the procedure for compulsory license

ARTICLE 24- Where the conditions provided under Article 23 are fulfilled, the court shall engage the procedure pertaining to the request for compulsory license. A copy of the application and copies of each attached documents shall be sent to the holder. The holder may raise objections against said documents, within one month at the latest, as of the date of receipt of them.

Where an application for compulsory license has been filed as a consequence of the Ministry's refusal of the request for mediation, the term given to the holder for raising objections shall not be shorter than two months.

In the objection raised by the holder the documents related to the mediation procedure preceedingly conducted by the Ministry shall be taken into consideration and the evidences which have been put forward with regard to said procedure, but are not included among said documents, shall also be submitted. Copies of the evidences shall be sent by the court to the applicant.

#### Compulsory License Decision

ARTICLE 25-The court shall notify the objection raised by the holder, to the applicant for compulsory license. Within one month from the receipt of notification, refusal of the application or grant of the compulsory license shall be decided. This term shall not be extended. Where the holder has raised no objection against the application for compulsory license, the court shall rule without any further delay to grant the compulsory license.

The decision to grant the compulsory license shall include the scope, the remuneration, the term of the license which cannot be less than two years and more than 4 years, the guarantee produced by the licensee, the date when licence is to commence and other issues concerning the exploitation of the variety .

When the court decision is appealed against, in case where the evidences put forward by the holder for suspending the execution of decision are deemed adequate by the court, the exploitation of variety shall be postponed until the decision on license is finalized. The appeal shall not postpone the execution of the finalized decision.

### Suspending the Procedure for Compulsory License

ARTICLE 26- Following the filing of the application for compulsory license, the court shall engage the necessary procedure for reaching decision to grant a license. The court can suspend the compulsory license procedure for a maximum period of three months, at any time, and only for once, upon the duly motivated request, made jointly by the holder and the applicant. Upon the expiry of said term, the court shall notify the parties thereof and shall resume the procedure.

### Legal nature of Compulsory License

ARTICLE 27- Compulsory license shall not be exclusive. However, it may be granted as an exclusive license provided that it satisfies the requirements of the purpose of granting .

In case of granting a compulsory license, the holder shall be paid a reasonable remuneration. The level of remuneration for the license shall be determined especially by taking into consideration the economic importance of the variety.

The holder of the right is obliged to supply the propagating material to compulsory licensee, within the term of the compulsory licence.

Where the holder infringes the mutual trust relationship established, as a consequence of compulsory license, between the holder and licensee, the licensee may ask for deduction, determined in accordance with the impact of infringement on exploitation of the variety, from the remuneration requested by the holder, .

Licensee or the holder may request the Court to amend the level of remuneration for compulsory license or conditions on the grounds of circumstances arised later and justifies such an amendment. He may particulary request the amendment if he concludes a contractual license with better conditions after the grant of the compulsory license.

After the compulsory license term has expired, extension of the term may be requested from the Court. If the court decides that circumstances determining the decision taken are still prevailing, the term for the license may be extended in accordance with second paragraph of Article 25.

Where the licensee sunstantially violates the obligations set forth in the compulsory license or does not continuously fulfil them, holder of the right, without prejudice to the compensation right, may apply to the Court for cancellation of the compulsory license.

### Transfer of Compulsory License

ARTICLE 28- A compulsory license may be transferred to another person. Transfer of compulsory license may only be valid provided that it is transferred together with the business or the part of the business where it is being valourized. The transfer of compulsory license shall be entered in the Register by the Ministry.

The beneficiary of compulsory license is not permitted to sub-license. Any actions performed to this effect shall be deemed to be invalid.

### Compulsory License for Essentially Derived Varieties

ARTICLE 29- In line with abovementioned rules, compulsory license may also be granted for essentially derived varieties on ground of public interest. In case of granting the compulsory licence for essentially derived varieties, the holder of the initial variety shall also be informed about the mediation procedure or the appeal. The decision on compulsory license for an essentially derived variety shall also include the indication of payment of a remuneration to the holder of the initial variety.

### Applicability of Provisions on Contractual License

ARTICLE 30- The relevant provisions for contractual licenses, referred in Articles 50 and 51, shall also apply to compulsory licence, provided that they are not contrary to the scope.

### Exhaustion of Breeder's Rights

ARTICLE 31- Since the breeder's right shall be considered as exhausted in cases where any material of the protected variety, or of a variety covered by the provisions of Article 14, or any material obtained from that material has been disposed of to others or otherwise marketed, by the holder or with his consent, in any part of Turkey. No claim can be made for later exercises of breeder's right about the said materials or products.

However, breeder's right may be claimed in cases where acts involve further propagation of the variety in question or involve an export of materials, for propagating purposes, to a country which does not protect varieties of the plant genus or species to which the variety belongs. If export material is for final consumption purposes again breeder's right shall be considered as exhausted.

The concept of material, referred in paragraph 1 of this Article, in relation to a variety, shall cover propagating material of any kind, harvested material including entire plants and parts of plants, and any product obtained directly from the harvested material.

## PART THREE

### Application, Grant, Publication, Objections and Fees

## CHAPTER ONE

### Conditions Governing the Applications and Objections to Applications

### The place for Applications

ARTICLE 32-

Owner of the variety shall apply the Ministry, in writing, in order to benefit from the protection provided under this Law.

### Conditions governing applications

ARTICLE 33- The application for a breeder's right to be granted shall contain the following information and documents:

- (a) Name and address of applicant or, where appropriate, his legal representative.
- (b) if the applicant is not the breeder himself, the name and address of the breeder and any relevant information and document indicating how the entitlement to the breeder's right came into his possession.
- (c) Turkish and Latin name of variety in the botanical taxon
- (d) the denomination proposed for the variety or provisional designation used by the breeder
- (e) if priority right is requested for a previous application the date and office of such application.
- (f) technical description of the variety.
- (g) where appropriate, details of any previous commercialisation of the variety.
- (h) the document proving that the application fee has been paid.
- (i) the geographic origin of the variety;

Rules and procedures governing the application shall be laid down in the Regulation.

### The right of priority

ARTICLE 34- If the applicant or his predecessor in title has already applied for a property right for the variety in a country party to the UPOV Convention, and the date of application is within 12 months of the filing of the earlier application, the applicant shall enjoy a right of priority for the earlier application as regards the application for the breeder's right in Turkey. In such a case the date of the application in any party to the UPOV Convention shall be deemed to be the date of application in Turkey.

In order to benefit from the right of priority of the first application, the breeder shall so inform, in the subsequent application, the Ministry in writing. Priority rights not exercised within the prescribed time-period shall be considered to be void.

The authority with which the subsequent application has been filed may require the breeder to furnish, within a period of not less than three months from the filing date of the subsequent application, certified copies and translations of the documents which constitute the first application, and samples or other evidence that the variety which is the subject matter of both applications is the same.

The Ministry, upon the request of the applicant, may provide up to two years period after the expiration of duration of priority to furnish any necessary information, document or material required for the purpose of technical examination. Where the first application is refused or withdrawn, the Ministry may decide to cancel the extension period and require the applicant to furnish the necessary information, document or material required for technical examination in 12 months after the date of rejection or withdrawal.

### Examination of Application

ARTICLE 35- The Ministry shall carry out formal and substantive examination of the application:

a) During formal examination of application, following shall be examined:

- 1) the application has effectively been filed pursuant to Article 32;
- 2) the application complies with the conditions laid down in Article 33.
- 3) where appropriate, a claim for priority complies with the provision laid down in Article 34.
- 4) the fees due pursuant to Article 46 have been paid within a time limit specified.

If the application is incomplete or incorrect, the Ministry shall give the applicant an opportunity to correct any deficiencies within 30 days from the date of receiving such a communication. If deficiencies are not corrected by the applicant within that period, application shall be considered as not been made.

b) During the substantive examination of the application, the following shall be examined:

- 1) the variety is new pursuant to provisions of Article 5,
- 2) the applicant is entitled to file an application
- 3) the proposed variety denomination is suitable pursuant to provisions of Article 9 and 42 (a).

If the Ministry finds, at the end of the examination, that there is an impediment to granting the breeder's right, it shall refuse the application. In 30 days from the date of such decision the Ministry shall inform the applicant, in writing, on the refusal decision together with its reasons.

All applications that are complete and accurate shall be entered in the register and given an application number. The date on which documents referred in Article 33 are received by the Ministry shall be deemed as the application date.

### Publication of Application on the Bulletin

ARTICLE 36- Within 30 days following the entering the application in the Register, the Ministry shall publish, on the bulletin, the documents required in paragraph 1 indents (a) to (e) of Article 33

### Objections to the Application

ARTICLE 37- Any objection to the application shall be lodged with the Ministry, within three months following the publication of the application on the Bulletin.

Objections shall be lodged, in writing, with a petition, associated with evidences and documents in support of objection lodged, on the grounds that the variety is not new, not uniform and not stable, or the applicant is not entitled as holder or the variety denomination is not suitable pursuant to Article 9 and subparagraph (a) of Article 42.



### Examination of Objection to Application

ARTICLE 38- Upon the expiry of the period for objection to the breeder's right application, the Ministry shall notify the applicant on the objections lodged and require the applicant to furnish, within 3 months, his observations against the objections and inform the Ministry whether he still maintains his application or claims amendment to the application. The period given to applicant may be extended for a maximum two months term provided that applicant so requests and this request is based on valid grounds.

Where applicant does not respond within the period given, the application is deemed to be withdrawn. If the applicant informs that he will maintain his application or amend it, the person who lodged objection shall be informed and required to provide information, within 30 days, on whether he maintains his objections.

When the objector still maintains his objections and the objection is made on the grounds that:

- a) the variety is not new, applicant is not entitled as holder, or the denomination proposed for the variety is not pursuant to Article 9 and paragraph (a) of Article 42, then the Ministry shall immediately arrange the examination.
- b) the variety is not distinct, not uniform or not steady, examination of objection shall be done in the course of technical examination.

The Ministry, itself, shall lay down the method of technical examination in order to carry out the examination as required by the grounds of objection.

The objector may be required to furnish, in support of his objection, additional information, document or propagating material that is the subject of technical examination. In such cases, provisions set forth in paragraph 4 and 5 of Article 39 shall apply.

If the objection is within the scope of paragraph 3(a) of this Article, within 30 days of Ministry decision, the decision may be brought before the court for appeal.

Within one month from notification of decision on the acceptance of the objection based on actual entitlement, authentic holder that files an application for the same variety may request the Ministry to consider the refusal date for previous application as his application date, if so Ministry shall accept this request.

## CHAPTER TWO Technical Examination, Grant, Publication, and Objections to Grant

### Technical Examination of Variety

ARTICLE 39- After the decision on arranging the technical examination of variety, the variety shall be subjected to technical examination in order to:

- a) verify that the variety belongs to designated botanical taxon.
- b) establish that the variety is distinct, uniform and steady,

c) prepare characteristics document if the variety complies with the conditions set in subparagraph (a) and (b)

The manner of examination shall be established by the Ministry and examination shall be conducted under the supervision of the Ministry. When planting tests or other necessary tests necessary for technical examination have already been conducted by the competent authority of a party to the UPOV Convention, technical examination may be based upon the results of these tests provided that the results of these tests are submitted to the Ministry. However these tests are expected to be conducted in countries with the same agricultural climatic conditions.

Where the examination can not be based on these test results:

- a) Ministry may entrust main administrative units or affiliated and related institutes with conduction such technical examination. When the examination is conducted by other institutes, the fee determined pursuant to the provision of Article 46 shall be paid.
- b) The Ministry may also entrust the applicant with conduction of such technical examination. The applicant, upon the request of the Ministry, shall submit the results of the breeding and other tests conducted by himself or any other one entrusted by him. The technical examination may be based upon the results of these tests.

New parts may be included or amendments may be done on the characteristics document of variety, referred in paragraph 1(c) of this Article, depending upon any changes in agricultural and botanical information. However, object of protection shall not be affected.

The Ministry shall require the applicant to submit all kinds of information, documents and material necessary for technical examination. If the applicant fails to submit required information, documents and material, within the time limit specified by the Ministry, application shall be refused unless there is a valid reason.

Rules and procedures governing the implementation of technical examination of the variety shall be laid down by the Regulation.

#### Examination Reports

ARTICLE 40- Where the institute which conduct the technical examination on behalf of the Ministry deems the results are sufficient to evaluate the characteristics of the variety, it shall submit the ministry an examination report constituting the results of the investigation of situations referred in Article 6, 7 and 8 and characteristics document for the variety.

Where the Ministry does not consider that the examination report to constitute a sufficient basis for final decision, it shall inform the applicant and carry out complementary examination on its own motion, or have this examination carried out. Any complementary examination, carried out until a decision on refusal or acceptance is taken, shall be considered to be part of the examination referred in subparagraphs (a) to (c) of Article 39 (1).

The results of the technical examination may only be used by the institutes conducting the technical examination in so far as this is permitted by the Ministry.

### Final Designation of Provisional Denomination

ARTICLE 41- In cases where a provisional denomination has been proposed in the application petition for the variety, the Ministry shall request the applicant, just before the registration phase, to submit a final denomination pursuant to the provisions of Articles 9 and 42(a). The applicant shall submit, within 30 days, final denomination for the variety.

When the Ministry approves the denomination, it shall communicate the denomination to countries party to the UPOV Convention and publish it on the Bulletin.

Objections may be lodged, within 3 months from publication date of the denomination in the Bulletin, against the denomination in accordance with provisions of Articles 9 and 42(a). Authorities of countries party to the UPOV Convention may address their observations on the denomination. Objections and observations shall be communicated to the applicant and he shall be given 30 days term to respond.

When a new denomination is proposed by the applicant, the procedures referred in paragraphs 2 and 3 of this article shall be repeated. If no response is received, in both cases, the application shall be refused. Motivated decision taken by the Ministry on acceptance or refusal of the objection shall be notified to the parties involved. A court appeal may be instituted within 30 days of notification.

### Reasons for Refusal of Applications

ARTICLE 42- The Ministry shall refuse suo sponte the application in the existence of one of the following:

- a) Proposed denomination for the variety:
  - 1) does not comply with provisions of Article 9, except paragraph 7 of Article 9.
  - 2) does not constitute a different denomination or it is insufficient in respect of linguistics, to recognize the variety.
  - 3) is against to public security and common moral values
  - 4) consists of figures indicating species, quality, quantity, objective, value, geographical origin or the production date which is the only case for the plant variety and seed sector.
  - 5) misleads or create confusion in respect of the properties of the variety, its value and geographical origin or the relationship between the variety and its breeder or between the variety and applicant,
  - 6) The denomination, is identical to or very similar to, leading to confusion, a variety of the same or of a related species is registered in Turkey or in any State party to the UPOV Convention, except the variety has no longer been cultivated or it is not commonly identified.
- b) Non-compliance with the provisions of Article 35
- c) non-compliance with the provisions of paragraph 5, Article 39.
- d) the conditions set out in Article 6, 7 and 8 are found, pursuant to the examination reports prepared in line with Article 40, not to be met
- e) violation of Article 41 (1).

### Grant

ARTICLE 43- When the Ministry establishes, on the basis of examination, the applicant is within the scope of Article 4 and has followed the procedures laid down in this Law, it shall enter the breeders right in the Register and supply the holder a certified Breeder's Right Document.

### Publication of the Grant

ARTICLE 44- The grant of the Breeder's right for a protected variety shall be published in the bulletin within 30 days from the date of grant.

### Objections to Grant

ARTICLE 45- Third persons may lodge, within 30 days from the date on which the breeder's right is published on the Bulletin, with the ministry, an objection to the grant of a right on the grounds that there were deficiencies in the procedures laid down in Articles 32, 33, 34, 36, 39,40,41 and 44.

During the course of examination conducted by the Ministry, if it is established that one of the procedures for granting the right has not been fulfilled, or a significant deficiency occurred in procedures, the Ministry may decide on that the granting procedure is invalid and go back to the point of procedure where the deficiency arised and renewal of the procedures.

## CHAPTER THREE Fees

### Fees

ARTICLE 46- The Ministry shall charge 2 types of fees, namely processing and annual fees.

a) Fees for processing shall be charged for the acts given below:

- 1- application fee .
- 2- technical examination fee.
- 3- fee for examination of denomination.
- 4- objection fee .
- 5- registration fee.
- 6- Mediation fee for compulsory licences.
- 7- Fees charged for the certified copies.
- 8- Publication fees.
- 9-Other fees

b) Annual fees shall be paid in advance in January for each year of the duration of the breeder's right protection.

Rules and procedures governing the implementation of fees shall be laid down in the Regulation.

PART FOUR  
Obligations of the Holder After Grant, Inspections by Ministry and  
Cancellation of Breeder's Right *suo sponte*

Obligations of the Holder After Grant

ARTICLE 47- The holder shall be required, during the term of the right, for the maintenance of genetic forms of protected variety or where appropriate its genetic parts.

The Ministry shall investigate whether, within the protection period, the variety or where appropriate its genetic parts are maintained. The holder, upon the request of the Ministry, is obliged to provide information, documents and material necessary to assess the continuing maintenance of genetic forms of the variety to the Ministry or an institution designated by Ministry.

When there are suspicions about the maintenance of genetic form of the variety and these suspicions can not be eliminated by the information, document and material referred in paragraph 2 of this Article, the Ministry shall request an examination to be conducted for maintenance of genetic forms of the variety. This examination shall constitute the comparison between material submitted by the holder and samples and information on the characteristics document of the variety, by conducting growing and other tests.

When the examination conducted indicates that the holder failed in the maintenance of genetic form of the variety concerned, the observation of the holder shall be requested before cancellation of breeder's right pursuant to provisions of Article 48.

The holder shall submit, within the period prescribed, the Ministry or a competent institute entrusted by the Ministry, appropriate amount of sample of protected variety or, where appropriate, its genetic parts as for the sample of the variety or renewal of the existing sample or enabling a comparative examination, for the protection of the variety, with other varieties to be conducted.

If required by the Ministry, the holder shall maintain, on behalf of the Ministry, the sample of the variety.

Inspection by Ministry and Cancellation suo sponte

ARTICLE 48- Where it is established that the holder doesnot fulfill the obligations laid down in paragraph 1 of Article 47, or the variety has lost its uniformity and steadiness characteristics, breeder's right may be cancelled suo sponte by the Ministry.

The breeder's right shall also be cancelled suo sponte by the Ministry in following cases:

- a) the holder didnot provide the information, documents and material required under Article 47 (2) within the time limit specified by the Ministry.
- b) In cases where although Court has calcelled the variety denomination, the holder did not proposed a new denomination for the variety, within the time limit specified by the Ministry.

Cancellation of breeder's right shall enter into force from the date of registration in Bulletin.

Cancellation decision shall be published on the bulletin within 30 days from the date of its entry in the Register.

## PART FIVE

Transfer and Inheritance of Right Conferred by Application and Grant, Determination of Security Right, Seizure and Contractual Licences

### CHAPTER ONE

Transfer and Inheritance, Security and Seizure

#### Transfer and Inheritance, Security and Seizure

ARTICLE 49- The right conferred by an application for a variety or registration under this Law may be transferred to third parties, and is subject to inheritance. Exercise of these rights due to death is also possible.

The inheritance or transfer of an application or a registration right shall be entered in the Register and published upon payment of the fee to be determined in accordance with Article 46.

The right conferred by such an application and registration may be the subject of legal or contractual security right and seizure. Upon a request of one of the parties, respective rights shall be entered in the Register and published. Related provisions of the Turkish Civil Code no. 4721 of 22 November 2001 and the Bankruptcy and Execution Law no. 2004 of 9 June 1932 shall have effect with respect to security rights and seizure.

The transactions on the application and registration rights between the parties who are alive shall be done in writing.

### CHAPTER TWO

Contractual Licenses

#### Contractual License

ARTICLE 50- Right resulting from application and registration may be the subject of a contractual license to have effect within the entirety of the national boundaries. Licenses may be exclusive or non-exclusive.

Unless otherwise agreed upon in the Contractual license, the licence is non-exclusive. The licensor may exploit the protected variety on his own as well as he may grant other licenses for the same variety to third persons.

In case of exclusive licences, licensor shall not grant licenses to others and he shall exploit the variety only when he has specifically reserved such right.

The rights conferred by an application or grant of the right may be exercised through a court action instituted by the holder against the licensee who violates the terms of the license agreement prescribed in paragraph 1 of this Article.

Unless otherwise agreed upon in the Contact, holders of contractual licenses may not transfer their rights conferred by a license to other parties nor grant sub-licenses.

Unless otherwise agreed upon in the Contact, holders of contractual licenses shall have the right to exercise their rights to exploit the variety concerned within the entirety of the national boundaries, for the whole term of the variety protection.

Contractual Licence shall be in writing. Contractual licence shall be entered, upon the request of one of the parties, in the register and published in the Bulletin by the Ministry.

In cases of infringement of rights by third person, the holder of an exclusive licence may institute, in his own name, proceedings which can be instituted by the holder under this Law, unless otherwise agreed upon in the Licence Contract.

The holder of non-exclusive license shall not be entitled to institute such proceeding.

In the case of an infringement, the holder of a non-exclusive license may request, by a notice through a notary public, the holder to institute such proceedings. In the event the holder refuses to initiate or within three months of the reception of the notice fails to institute proceedings, the holder of non-exclusive license holder shall have the right to institute proceedings, in his own name, by enclosing thereto, his notice to the holder in this regard and shall inform the holder that he has already instituted the proceeding. The licensee may, in the face of likelihood of serious damage, request the court to issue an injunction for precautionary measures without waiting the expiry 3 months period.

#### Obligation Arising from transfer of a Right and Grant of a Licence

ARTICLE 51- In cases where a person, who transferred rights conferred by an application or grant of the right, with a charge or free of charge, is subsequently understood not to be entitled, or application is refused or cancelled or invalidity decision achieved, he shall be liable for compensation of the transferee and licensee.

The time-period within which a compensation may be claimed shall run as from the date of receipt of information on refusal, cancellation or invalidity decision or non-entitlement.

The transferor or licensor shall be liable, at any time, for their acts effected in bad faith. Bad faith shall be deemed to exist where the other party has not been informed of the existence of reports or decisions available or known to the transferor or licensor concerning the application filed for breeder's right or protection provided for the variety concerned; and where the documents including declarations on such reports or decisions have not been specifically mentioned in the contract.

PART SIX  
Grounds for Invalidity and Termination of Right

CHAPTER ONE  
Invalidity

Grounds for Invalidity

ARTICLE 52- 1. The Court shall declare the breeder's right invalid in the presence of following grounds: (a) where the variety does not meet the requirements laid down in Articles 5 and 6 at the time of application or right of priority. (b) where the conditions laid down in Articles 7 and 8 were not fulfilled (c) where it was understood that the breeder's right has been granted to a person who is not entitled to it, except those referred in Articles 11, 12 and 13.

Application for Invalidity

ARTICLE 53-Persons with a legal interest, may request, within the period of protection of the right from the court the invalidation of the right for the variety concerned. In accordance with subparagraph ( c) of Article 52, this invalidity request may only be claimed by the person who is the actual holder of the right.

Effects of Invalidity

ARTICLE 54- A (Court) Decision ruling that the breeder's right is invalid, shall have retroactive effect and thus, within the context of invalidation, the legal protection secured under this Law shall be deemed not to have been borne at all.

Such an invalidation decision shall be entered in the register and shall form a provision against others.

The retroactive effects of invalidity, without prejudice to claims for compensation for damage caused by acts of bad faith on the part of the holder, shall not extend to following cases :

- a) Any final decision for infringement of the right reached and enforced prior to the decision of invalidity;
- b) Contracts concluded and executed prior to the decision of invalidity.

However, reimbursement, in whole or in part, of sums paid under the contract may be claimed on grounds of legitimate reasons and of equity.



CHAPTER TWO  
Termination of Breeder's Right

Causes for Termination of Breeder's Right

ARTICLE 55- A breeder's right shall terminate upon:

- a) expiry of the term of protection.
- b) surrender, by the holder, of the right.
- c) non-payment of yearly fees and additional fees, within the prescribed time-periods.

The subject matter of a breeder's right having terminated shall become public property as from the moment when the ground for termination materializes. Such cases shall be published, by the Ministry, in the Bulletin.

The holder may surrender breeder's right. The surrender shall be declared in writing to the Ministry. The surrender shall have effect as of the date of entry in the Register.

The holder cannot surrender his right without having the consent of the holders and licensees of rights entered in the Register.

Where a third party claims the ownership of the right, surrender of right cannot be requested without the consent of the concerned third party.

In case of non-payment of yearly fees, the ground for termination of a breeder's right shall be deemed to materialize as of the date when the payment is due.

Where a right terminates for non-payment of yearly fees; with the holder of right bringing evidence of force majeure for reasons of which the said fee could not be paid, the right shall be revalidated.

The claim related to force majeure shall be put forward within six months as from the publication, in the bulletin, of the announcement pertaining to the termination of right. This request shall be published in the bulletin. The parties involved may express their observations on the matter within 30 days from the date of publication.

Revalidation of right shall be upon the decision of the Ministry and published in the Bulletin. The revalidation of right shall not affect the acquired rights of third parties who have secured such rights as a result of the termination of the right.

Where a right is revalidated, the holder of the right shall be obliged to pay the fees he failed to pay and the additional fees.

## PART SEVEN

### Acts Constituting Infringement of Rights Conferred, Proceedings and Competent Court

#### CHAPTER ONE

##### Acts Constituting Infringement of Rights

##### Acts Constituting Infringement of Rights Conferred

ARTICLE 56- The following acts shall be considered as infringement of breeder's rights:

- a) Exploitation of the rights referred in Article 14 without the consent of the holder
- b) Despite having aware or being in a position to know that propagating material of a protected variety is produced by virtue of the infringement of the exclusive rights of the holder, preparing the propagating material for propagation, reproduction, offering for sale, selling or other marketing, importing or exporting, or storing the variety for these purposes.
- c) Extension of the scope of exploitation rights granted by contractual license or compulsory license or transfer them to third persons without permission.
- d) Violation of paragraphs 4 and 5 of Article 9.
- e) Usurpation of right
- f) Involving in acts foreseen above or assisting or encouraging them or facilitating in any way and under any circumstances, their occurrence
- g) Refraining from declaring the source from where and the manner the products, found in his possession, manufactured or commercialised , unlawfully, were obtained.

#### CHAPTER TWO

##### Legal Proceedings

##### Claims of the Holder and Competent Courts for Legal Proceedings

ARTICLE 57- A holder of a right whose rights are infringed may, in particular, appeal to the Court for the following:

- a) the cessation of the acts in infringement of right conferred by the breeder's right.
- b) remedies of infringement and compensation of material and moral damages incurred,
- c) confiscation of products manufactured directly or as a consequence of the infringement of rights conferred and of means directly used in manufacturing such products,
- d) recognition of ownership over the products and means confiscated in accordance with subparagraph (c) of this Article. In such cases, the value of said products shall be deducted from the amount of compensation awarded. Where the value of said products happen to be above the amount of compensation determined in accordance with subparagraph (b), the holder shall repay the excedentary balance to other party.
- e) precautionary measures for preventing the continued infringement of rights; modification of the shapes of the products and means, or, where inevitable for the preclusion of acts of infringement, the destruction of the products and means confiscated according to subparagraph (c).

f) the disclosure, by means of publication, to the public and to those related, of the court's judgment rendered against the party infringing the rights who shall bear the costs for such publication.

The competent court, for the institution of legal proceedings by the holder, is the court of the domicile of the plaintiff or of the place where the offence was committed or of the place where the act of infringement produced effect.

Where the plaintiff is not domiciled in Turkey, the competent court is Ankara courts

The Competent Court, for the institution of proceedings by third parties against the applicant or the holder, is the court of domicile of the defendant. Where the applicant or patent right holder is not domiciled in Turkey, the provisions of the 3rd paragraph of this Article shall apply .

Where several courts are competent, the court before which the proceedings are first initiated shall be the competent court.

Where the Ministry is the plaintiff or defendant, the competent court is the court where the headquarters is located.

#### Compensation

ARTICLE 58 - A person who, without the consent of the holder, produces, sells, distributes or markets under any form or imports for these purposes or keeps in his possession for commercial purposes, a protected variety or exploits it shall be liable to remedy the unlawful situation and to compensate the damages he has caused.

A person exploiting, in any way, a protected variety, who has been informed by the holder of the existence and infringement of the right, and who has been requested to cease such infringement, or where such exploitation constitutes a faulty behaviour, shall be liable to compensate the damages he has caused.

#### Non-realized Income

ARTICLE 59- The damage suffered by the holder includes, not only the value of the effective loss, but also the income non-realized as a consequence of the infringement of the right.

The non-realized income shall be calculated in accordance with one of the following evaluation methods, depending on the option of the holder who has suffered damage:

- a) According to the income that the holder might have possibly generated if the competition of the infringing party did not exist;
- b) According to the income generated by the infringing party from the exploitation of the right;
- c) According to a license fee that would have been paid if the party, infringing the right, would have lawfully exploited the variety under a licensing contract.

In calculating the non-realized income, circumstances having effect on the case, such as, in particular the economic value of the variety, the term of protection remaining at the time of infringement, the type and number of licences granted in respect of the variety shall be taken into consideration.

Where the court establishes that the holder of right, has not fulfilled his obligation to exploit the variety, in compliance with the provisions of this Law, the non-realized income shall be calculated according to paragraph 2(c) of this Article.

#### Appeals for Remuneration

ARTICLE 60 - Applicant or the holder of right may institute a proceeding, of private nature, for payment of a reasonable remuneration by those exploiting the variety.

Proceeding for remuneration to be paid by farmers, other than those within the scope of farmers derogation, may also be instituted by the professional organisations of breeder's rights.

In the calculation of remuneration, referred in Article 15, the amount that would have been paid if a contractual licence had been concluded shall not be exceeded.  
The appeal shall be instituted within 1 year from being informed about the act that requires payment of remuneration.

#### Proceedings for non-infringement of rights and its conditions

ARTICLE 61- Any interested person may institute proceedings against the holder of a variety to obtain a judgement of non-infringement of breeder's rights.

Prior to the institution of proceedings, the holder may be requested, through the notary public, to express his observation on whether the activities, with respect to the protected variety, carried out or that will be carried out forms an infringement to breeder's rights.

Where the holder upon receiving such a notice does not respond within one month of receiving the notice, or the content of the response is not found acceptable by the requesting party, the appealing party may institute proceedings according to the first paragraph.

Persons, against whom action of infringement has been brought in respect of the breeder's right, cannot institute proceedings with respect to first paragraph.

Institution of proceedings shall be communicated to all holders who are entitled and entered in the Register.

The actions referred to in this Article may also be instituted jointly with a claim for invalidity of the right.

#### Action for Securing of Evidences

ARTICLE 62 - Any person entitled legally to bring action as prescribed by this Law, may appeal the court to determine the acts that can be considered as infringement of the breeder's right.

### Request for Precautionary Measures and Nature of Precautionary Measures

ARTICLE 63- Any person who has already instituted a proceeding or will institute it as prescribed by this Law, may appeal the court to order precautionary measures provided that they can prove the existence of acts in Turkey of actual exploitation of the variety or serious and effective preparations to exploit it in Turkey which would constitute an infringement.

The request for precautionary measures may be filed before or with the institution of proceedings or be filed later. The request for precautionary measures shall be examined separately from the proceeding.

Precautionary measure shall be in nature to enable securing of the judgement and particularly provide the following:

- a) cessation of the acts of infringement of the breeder's rights,
- b) injunction to arrest within the borders of Turkey, including the customs, free ports or free trade areas and keep in custody, and preserve the produced or imported goods which have infringed the breeder's rights.

### Enforcement of Code of Civil Procedures

ARTICLE 64- With respect to securing of evidences, precautionary measures and other relevant matters, the provisions of the Code of Civil Procedures no.1086 of 18 June 1927 shall apply.

### Prescription of Time-Limit

ARTICLE 65- The provisions of the Code of Obligations no.818 of 22 April 1926 on prescription of time-limit shall apply in respect of the requests, concerning private law, resulting from this Law.

## CHAPTER THREE Penalties and Procedural Provisions

### Infringement Cases and Penalties

ARTICLE 66- Infringement cases and penalties to be imposed in those cases are given below:

whosoever effects, intentionally, one of the acts set out in subparagraphs (a), (b), (e) and (f) of Article 56 shall be sentenced to 13 months to 2 years of imprisonment or shall be fined heavily 5 billion to 10 billion Turkish Liras or both, and businesses of those who involved in commercial activities shall be terminated for at least 1 year and they shall be prohibited from such an activity for the same period.

b) whosoever violates, intentionally, subparagraphs (c), (d), (e) and (g) of Article 56 shall be fined heavily 5 billion to 10 billion Turkish Liras.

whosoever introduces, on contrary to realities, himself as the applicant or holder shall be fined heavily 5 billion to 10 billion Turkish Liras.

In cases where the employee of the businesses effected, directly or upon an order, one of the acts set out in subparagraphs (a), (b) and (c) of Article 56 during fulfilment of their duties, employees, the owner of the business, his representative or operator or anybody managing actively the business, who didnot prevented such acts, shall be sentenced with the same penalties. If one of the acts referred in Article 56 is effected while a natural person carries out his work, the natural person shall be jointly liable for the costs and fines.

#### Procedures and Prescription

ARTICLE 67- Legal proceedings for infringement cases referred in Article 66 shall be subject to complaint of the holder. The Ministry, unions of breeder's rights, consumer associations and establishments under the jurisdiction of Law no.5590 of 8 March 1950 on "Chambers of Commerce and Industry", "Chambers of Commerce", "Chambers of Industry", "Chambers of Maritime Trade", "Commodity Exchanges", "the Union of Chambers of Commerce, Industry, Maritime Trade and Commodity Exchanges" of Turkey and Law no.507 of 17 July 1964 on Confederation of Turkish Trades and Craftsmen have also the right to complain where the act specified in Article 66( c) is effected.

The complaint shall be made within two years of the date of being informed of the act and the actor. Complaints shall be considered urgent. The procedure under Law no. 3005 of 8 June 1936 on the Code of Procedures for Flagrant Offences shall apply to such offences.

For the enforcement of the provisions of Article 66, Article 344 paragraph 1(8) of Law no.1412 of 4 April 1929 on Criminal Procedures shall not apply..

### CHAPTER FOUR Specialized Courts

#### Competent Court

ARTICLE 68- The competent court, for the institution of legal proceedings prescribed in this Law, is the specialized courts on intellectual and industrial property rights.

Upon the request of the Ministry of Justice, the High Council of Judges and Prosecutors shall determine which of the Civil Courts of the First Instance and the Criminal Courts of the First Instance shall have competence as special courts and indicate their respective jurisdictions.

#### Publication of the Court's Decision

ARTICLE 69 - Where a court judgment becomes res judicata, provided it has a legitimate ground or interest the successful party may request the publication, in full or in summary, of the final judgment in a daily paper, or by similar means, the costs of which are to be met by the other party.

The nature and extent of the publication shall be determined in the judgment. The right of publication shall be void, if not exercised within three months after the judgment becomes res judicata.

PART EIGHT  
Other and Final Provisions

Breeder's Right Register

ARTICLE 70- The Ministry shall establish Breeder's Right Register constituting Application and Breeder's right registers.

Any person may examine the documents relating to the application, grant of breeder's rights, and any other documents on the Register.

The owner of the variety the production or reproduction of which requires repeated use of other varieties may request for withholding of all documents and tests, relating to the variety, from the inspection of register.

Plant Varieties Bulletin

ARTICLE 71- The bulletin to be published by the Ministry shall include at least the following:

- (a) applications for the breeder's right
- (b) the denomination proposed or, where appropriate, provisional designation of the variety
- (c) surrender of application
- (d) refusal of application
- (e) registration of breeder's right and registered denomination
- (f) changes in the identity of holder or his procedural representative;
- (g) Expiration of right
- (h) Licences
- (i) Official notices
- (j) Other issues

The Ministry shall publish an annual report, containing information on, in respect of the protected variety, owner of the variety, protection period, dates of grant and denomination and other information that the Ministry finds necessary.

Regulations

ARTICLE 72- The regulations relating to rules and procedures governing enforcement of this Law shall be prepared by the Ministry within 6 months from the entry into force of this Law.

ARTICLE 73- Subparagraph (a), Article 5 of the Law no.308 of 21 August 1963 on Seed Registration, Control and Certification shall be replaced by the following:

a) Registration; indication of morphological, biological and agricultural characteristics of varieties, bred, by field trials and laboratory analysis, and after it is established that it distinct from existing and new, the entering in the register for certification purposes.

#### Legislation Repealed and Amended

Article 74- Subparagraph (s), (t) and (u) of Article 5 and paragraph 3 of Article 6 of Law no. 308 are hereby repealed.

PROVISIONAL ARTICLE 1 - As of 26 February 1994, the breeder of a variety which is established to be new, distinct uniform and steady, takes the advantage of Article 6(3) of Law no. 308, and applies the Ministry within 6 months from entry into force of this Law and fulfils other requirements specified therein, he shall be protected under this Law.

PROVISIONAL ARTICLE 2- When examination on novelty is carried out for the applications made within 1 year from entry into force of this Law, one year period given, in respect of domestic exploitation, in Article 5 shall be taken as 5 years only once.

#### Entry into Force

ARTICLE 75- This law shall enter into force upon publication.

#### Enforcement

ARTICLE 76- The provisions of this Law shall be enforced by the Council of Ministers

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