



C/42/19

ORIGINAL: English

DATE: October 20, 2008

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Forty-Second Ordinary Session
Geneva, October 30, 2008

EXAMINATION OF THE CONFORMITY OF THE LAW ON
PROTECTION OF NEW VARIETIES OF PLANTS OF BOSNIA AND HERZEGOVINA
WITH THE 1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

Introduction

1. By letter dated October 2, 2008, addressed to the Secretary-General of the International Union for the Protection of New Varieties of Plants (UPOV), Mr. Milad Zeković, Director, Office of Bosnia and Herzegovina for Plant Health Protection, requested the examination of the Law on Protection of New Varieties of Plants of Bosnia and Herzegovina (hereinafter referred to as the "Law"), which was adopted by the Parliament on July 27, 2004 (B&H Official Gazette No. 46/04), for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act"). The letter is reproduced in Annex I to this document.
2. Annex II contains a translation into English of the Law provided by the Government of Bosnia and Herzegovina. The accuracy of the translation and the terminology used will, in a number of cases, require verification with the original of the Law. Until that verification is completed, it will not be known whether apparent inconsistencies with the 1991 Act are a result of inaccurate translation or arise in the original of the Law.

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

Basis for the Protection of New Plant Varieties in Bosnia and Herzegovina

4. The protection of new plant varieties in Bosnia and Herzegovina is governed by the Law. An analysis of the Law follows in the order of the substantive provisions of the 1991 Act.

Article 1 of the 1991 Act: Definitions

5. The definition of “breeder” in Article 2(a) and in Article 12 (first sentence) and paragraph 4 of the Law does not correspond to the definition of “breeder” in Article 1(iv) of the 1991 Act.

6. Article 2(a) of the Law refers to “Breeder of variety is a physical person who breeds, discovers or develops a variety independently or jointly with other physical persons.” [The term “physical” before “person” appears to exclude legal persons and that is not the case under Article 1(iv) of the 1991 Act.]

7. Article 2(a) of the Law (see also Articles 12(2) and (3) of the Law) refers to “discover or develops”. Article 1(iv) of the 1991 Act refers to the person who “discovers and develops”.

8. The translation of the definition of “variety” requires verification with the original of the Law.

9. Article 2 of the Law also provides the following definitions:

“[...]

b) Right holder is a physical or legal entity who is entitled to file an application for a variety protection (hereinafter referred to as: the Application)

c) Applicant is a physical or legal entity who has filed the application.

d) Breeding right holder is a physical or legal entity who has acquired the plant breeding right through protection.

[...]

g) Protected variety is a variety for which a decision on protection has been issued. It is defined by an official description of the variety, by a protected sample, and is denominated in the manner as prescribed by this Law.

h) Material of the protected variety is any seedling or the product of the protected variety, respectively, which could be used for further propagation of the variety.

i) Protected sample is an official sample of a seedling of the protected variety.”

10. The definitions of “right holder” in Article 2(b) of the Law, “applicant” in Article 2(c) of the Law and “Breeding right holder” in Article 2(d) of the Law require clarification in relation to the definition of breeder in Article 1(iv) of the 1991 Act. This clarification will entail consequent changes in other provisions of the Law.

11. The definition of “material” in Article 2(h) of the Law does not seem to cover the full scope of the term “harvested material” in Article 6(1), Article 14(2) and Article 16 of the 1991 Act, and as a consequence in the corresponding provisions of the Law (Article 5, Article 15 and Article 17). The 1991 Act is precise in relation to the material of the variety relevant for different provisions and only defines “material” for the purposes of paragraph (1) of Article 16 of the 1991 Act. Such a definition is not provided in Article 17 of the Law.

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

12. Subject to the decision concerning the Law and the analysis provided in this document, the first sentence of Article 1 of the Law provides that “[t]his Law establishes the procedure for protection of new varieties of plants and acquisition and protection of breeding rights” corresponding to the basic obligation of the Contracting Parties under Article 2 of the 1991 Act.

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

13. The second sentence of Article 1 of the Law provides that “[i]n accordance with the provisions of this Law, all the varieties of families and species of plants, including hybrids of families and species, may be protected.” Subject to the verification of the translation of this provision with the original of the Law, the Law seems to apply to all plant genera and species as provided in Article 3(2) of the 1991 Act.

Article 4 of the 1991 Act: National Treatment

14. Article 13(2) and (3) of the Law provides as follows:

“Foreign legal or physical entity shall enjoy the same rights in Bosnia and Herzegovina as a national legal or physical entity does, provided it arises from the international treaties and conventions signed or accessed by Bosnia and Herzegovina or, respectively, under the conditions of real reciprocity; the burden of proving the reciprocity is on the one who refers to it.”

“In the procedure before the Management, the foreign legal or physical entity exercises his or her right from this Law through his or her authorized person who is a physical person residing in Bosnia and Herzegovina or a legal entity seated in Bosnia and Herzegovina.”

15. Once Bosnia and Herzegovina becomes a member of UPOV, the provisions under Article 13(2) and (3) of the Law, would enable Bosnia and Herzegovina to comply with the national treatment provisions in Article 4 of the 1991 Act.

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

16. Articles 4 to 8 of the Law contain provisions on the conditions of protection. The accuracy of the translation of those provisions and the terminology used will, in a number of

cases, require verification with the original of the Law. Some examples are provided in the following paragraphs.

Novelty

17. In relation to the condition of novelty in Article 6(1) of the 1991 Act, the following terms require verification:

(i) whether the words “sold or economically exploited” and “sale or economic exploitation of the variety”, in Article 5(1) and (2) of the Law, correspond in the original to “sold or otherwise disposed of to others [...] for the purposes of exploitation of the variety”; and

(ii) whether the words “right holder” in Article 5(1) and (2) of the Law correspond in the original text to “breeder”.

18. In relation to the provision of Article 6(1)(ii) of the 1991 Act concerning the period of six years for “trees or of vines”, Article 5(1) of the Law refers to “many year leaf plants and grape vine”.

19. If the above original terms in Article 5 of the Law do not reflect the corresponding terms of Article 6(1) of the 1991 Act, Article 5 of the Law will need to be amended accordingly.

20. Article 5(3) of the Law provides as follows:

“Seedlings of the variety which is constantly used for breeding of other new variety, that is, hybrid, shall be considered to be delivered for profitable purposes, when the plants or their parts, belonging to other variety, are delivered.”

21. The accuracy of the translation of Article 5(3) of the Law should be verified, as the terminology used does not correspond to Article 6 of the 1991 Act of the UPOV Convention.

22. In relation to Article 6(2) of the 1991 Act, Article 53 of the Law implements a transitional novelty regime for “Varieties of recent creation”, as follows:

“1. The procedures for insurance of the variety which are in the course at the time of coming into force of this Law, shall be continued under this Law.

“2. Exceptionally from the provision of paragraph 1 of this Law, the variety, which is not new to the date of coming into force of this Law, can be protected, if:

- a) the application for protection of the variety was filed prior to coming this Law into force,
- b) the variety meets other requirements stipulated by Article 4 of this Law and
- c) is protected or in the procedure for protection in one of the signatory states, also signed or accessed by Bosnia and Herzegovina, and the procedure is completed with protection of the variety.

“3. In case of awarding the plant breeding right under paragraph 2 of this Law, the plant breeding right shall last another 20 years, at most, or 25 years, respectively, for wooden plants from the date of awarding the plant breeding right in the signatory state in which the variety was first protected.”

Distinctness

23. In relation to the condition of distinctness in Article 7 of the 1991 Act, it should be verified with the original of the Law if the terms:

(i) “identifiable” and “identified” in Article 4 and Article 6 of the Law correspond to the term “distinct” and “Distinctness”;

(ii) “variety which is generally known” correspond to the term “variety whose existence is a matter of common knowledge”.

Uniformity

24. In relation to the condition of uniformity in Article 8 of the 1991 Act, Article 7 of the Law contains the terms “characteristics which are of great importance for making it different from other varieties” instead of “relevant characteristics”.

Stability

25. In relation to the condition of stability of Article 9 of the 1991 Act, Article 8 of the Law refers to the term “invariable” instead of “stability” and to the terms “characteristics, being of utmost importance to distinguish it” instead of “relevant characteristics”.

Article 10 of the 1991 Act: Filing of Applications

26. Articles 13, 24 to 26 of the Law contain provisions on the filing of applications.

27. Article 25(1)(g) of the Law provides that the application shall contain the “description whether the variety was obtained by means of gene technology and, if so, attach the permit for testing this variety in accordance with the regulations of genetically changed organisms”. It should be noted that Article 18 of the 1991 Act provides as follows: “[t]he breeder’s right shall be independent of any measure taken by a Contracting Party to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Convention.”

Article 11 of the 1991 Act: Right of Priority

28. Article 27 of the Law contains provisions on the right of priority.

29. The provisions of the second sentence of Article 11(2) and of Article 11(3) of the 1991 Act have not been incorporated in the Law.

Article 12 of the 1991 Act: Examination of the Application

30. Articles 29 to 32 of the Law contain provisions on the examination of the application.

31. Article 31(1)(a) and (2) and (3)(a) and (5) of the Law contain the following elements which are not specified in Article 12 of the 1991 Act: “checking whether the variety falls under a systematic unit, i.e. a herb family or species specified in the application”; “The

professional evaluation is carried out on the basis of the results obtained from testing the variety in the field or in a laboratory”; “if the testing is carried out in comparative agroecological conditions by means of prescribed procedures and methods”; “the Management may use the results of testing of the variety obtained from other country which has comparative agroecological conditions”.

Article 13 of the 1991 Act: Provisional Protection

32. Subject to the amendments concerning the scope of the breeder’s right (see below), the clarification of the term “right holder” and verification if the term “adequate indemnity” corresponds in the original to “equitable remuneration”, Article 18(2) of the Law contains provisions of provisional protection corresponding to Article 13 of the 1991 Act.

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

33. Articles 14 and 15 of the Law contain provisions on the scope of the breeder’s right.

34. The accuracy of the translation of Article 15 of the Law should be verified with the original of the Law, the following examples concerning the use of different terms from the ones in Article 14 of the 1991 Act are provided for illustrative purposes:

- (i) “license” instead of “authorization”;
- (ii) “seedlings” instead of “propagating material”;
- (iii) “products” instead of “harvested material”;
- (iv) “appropriate opportunity to acquire the breeder’s right” instead of “reasonable opportunity to exercise his right”.

35. In addition to the above-mentioned verification of the translation in relation to the original of the Law, the following elements of Article 14 of the 1991 Act are missing:

(i) the act of “offering for sale” of Article 14(1)(a)(iii);

(ii) while there is no provision in the Law corresponding to Article 14(1)(b) of the 1991 Act “[t]he breeder may make his authorization subject to conditions and limitations”, Article 40 of the Law “Economic exploitation concerning licenses” seems to relate to commercial licenses;

(iii) the first sentence of Article 15(3) of the Law provides that “[t]he license of the holder for the undertakings mentioned in paragraph 1 is also necessary if it concerns”, the Law seems to exclude the application of the provisions in Article 14(2) of the 1991 Act, on “Acts in respect of harvested material”, to Article 15(3) of the Law concerning essentially derived and certain other varieties. Such an exclusion would be contrary to the corresponding provision in Article 14(5)(a) of the 1991 Act;

(iv) the provisions of Article 14(5)(c) of the 1991 Act.

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

36. The accuracy of the translation of Article 16 of the Law concerning the exceptions to the breeder's right should be verified with the original of the Law. Article 16 of the Law provides as follows:

"1. It shall be considered that the breeder's right is not breached if:

a) the protected variety is used or disposed with:

- 1) in private non-profitable purposes;
- 2) for testing or scientific purposes;
- 3) for breeding new varieties.

b) if the new variety is used for economic reasons from the third paragraph, item a) of this Article, except that this variety is a derived variety;

"c) the product of protected variety of certain species of plants, produced by the producers on own agricultural estate, is used for further seeding on the agricultural estate, and the producer exploiting this possibility shall pay the breeding right holder an appropriate compensation. The compensation is appropriate if it is significantly lower than the amount calculated for production of seedlings of the variety in the same region under the license.

"2. The producers using a possibility of further seeding shall pay the breeding right holder appropriate compensation in compliance with item c) paragraph 1 of this Article and shall give the breeding right holder, at his or her request, all the information concerning further seeding.

"3. Small land owners are exempted from payment of appropriate compensation to the breeding right holder under item c) paragraph 1 of this Article.

"4. The Management shall determine the plant species for which an appropriate compensation is paid to the breeding right holder under item c) paragraph 1 of this Article, as well as the criteria for smaller land owners."

37. The provisions of Article 16(1)(a)(3) and (1)(b) of the Law seem to relate to the breeder's exemption but do not correspond to the exception of the breeder's right of Article 15(1)(iii) of the 1991 Act.

38. The Law contains provisions on the optional exception under Article 15(2) of the 1991 Act in its Article 16(1)(c), (2), (3) and (4).

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

39. Article 17 of the Law entitled "Exceptions" seems to incorporate certain provisions of Article 16 of the 1991 Act entitled "Exhaustion of the Breeder's Right". The accuracy of the translation of Article 17 of the Law should be verified with the original of the Law.

40. The following provisions of Article 17 of the Law do not correspond to the provisions in the first sentence of Article 16 of the 1991 Act:

"The breeding right holder does not need a license for the undertakings provided for by Article 15 paragraph 1 of this Law or for production of protected variety derived from a protected variety, provided that he or she has given the seedlings of the variety by himself

or herself or by some other person authorized to do so, except that these undertakings comprise: [...]”

41. The 1991 Act is precise in relation to the material of the variety relevant for different provisions and only defines “material” for the purposes of paragraph (1) of Article 16 of the 1991 Act. Such a definition is not provided in Article 17 of the Law (see paragraph 11, above).

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

42. Article 41 of the Law contains provisions on a “forced license”. In Article 41(1) of the Law, reference is made to the reason of public interest corresponding to the requirement under Article 17(1) of the 1991 Act.

43. Article 41(8) of the Law provides that “the plant breeding right holder is entitled to compensation”. Article 17(2) of the 1991 Act requires that the breeder “receives equitable remuneration”.

Article 18 of the 1991 Act: Measures Regulating Commerce

44. Subject to the clarification in relation to Article 25(1)(g) of the Law (see paragraph 27 above), the Law does not seem to contain provisions which conflict with Article 18 of the 1991 Act.

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

45. Article 18(1) of the Law contains provisions on the duration of the breeder’s right corresponding to Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

46. Articles 10, 11 and 37 of the Law contain provisions on variety denominations. The accuracy of the translation should be verified with the original of the Law.

47. The provisions under Article 10(4) and Article 11(3) of the Law do not correspond with the provisions of Article 20(3) the 1991 Act in relation to the registration and/or refusal of the denomination.

48. The provisions under Article 10(2)(j) of the Law “is contrary to the regulations on industrial ownership;” does not correspond to the provisions of Article 20(4) of the 1991 Act concerning “prior rights of third persons”.

49. There is no corresponding provision to Article 11(2) of the Law in the 1991 Act. Article 11(2) of the Law provides, as follows:

“The provision of paragraph 2 shall not be valid if a seedling of the protected variety is used for non-commercial purposes in private sector.”

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

50. Article 35 of the Law "Declaration of the decision null and void" contains reasons for nullity of the breeder's right. Elements of the reasons of nullity under Article 21(1) of the 1991 Act seem to be contained in Article 35(1)(a), (b) and (c) of the Law. Nevertheless, the accuracy of the translation should be verified with the original of the Law.

51. In order to correspond to the provision under Article 21(2) "Exclusion of other reasons" of the 1991 Act, the reasons of nullity under Article 35(1)(d), (e), (f) and (g) of the Law, which seem to relate to reasons for cancellation, should be moved to a separate article concerning the cancellation of the breeder's right.

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

52. Article 35 "Declaration of the decision null and void" of the Law, in its paragraph (1)(d), (e), (f) and (g), seems to contain reasons for cancellation of the breeder's right.

53. In order to correspond to the provision under Article 22(2) "Exclusion of other reasons" of the 1991 Act, the reasons for cancellation should be moved from Article 35 of the Law to a separate article concerning the cancellation of the breeder's right.

54. The accuracy of the translation should be verified with the original of the Law, in particular reference in Article 35(1)(g) to "Article 43" of the Law seems to relate to Article 42 of the Law. There seems to be also a repetition in Article 35(1)(d) and (e) of the Law, which does not appear in the corresponding provisions in Article 22(1)(a) and (b)(i) of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

55. In relation to the obligation to "provide for appropriate legal remedies for the effective enforcement of breeders' rights" (Article 30(1)(i) of the 1991 Act), Articles 45 to 51 of the Law refer to the available civil and administrative remedies, sanctions and fines. As explained in paragraphs 34, 35, 36, 37 of this document, the provisions of the Law concerning the scope and exceptions of the breeder's right require some clarifications and modifications in order to correspond to the provisions of the 1991 Act of the UPOV Convention. Those modifications will entail consequential changes in Article 46(3) and 50(1) of the Law concerning the infringement of the breeder's right. Consequential changes also should be expected in relation to Article 51 of the Law concerning administrative sanctions or fines in relation to non-compliance or misuse of variety denominations (see paragraphs 47, 48, 49, above).

56. In relation to the obligation under Article 30(1)(ii) of the 1991 Act, Article 33(1) of the Law provides that:

"If, on the basis of professional evaluation provided for by Article 31 of this Law, it is established that the applicant has met all the prescribed requirements, the Management shall issue the decision on protection of the variety and publish it in the Official Gazette of the Management."

57. In relation to the obligation under Article 30(1)(iii) of the 1991 Act, Article 19 of the Law provides that:

“1. The Management shall have the following competences:

[...]

“c) publish in the Official Gazette the information on applications including the proposal for a variety denomination,

“d) maintain negative decisions to the applications, registration and eventual changes in the registration of application, withdrawal of applications, decisions on variety protection and its eventual changes, and other official information,

[...]

“2) The Management publishes the information provided for by paragraph 1 of this Article in the Official Gazette of Management.”

58. Article 19 of the Law complies with the obligation to publish information concerning applications for and grants of breeders' rights and proposed denominations, as required by Article 30(1)(iii) of the 1991 Act.

59. As required by Articles 20(3) and Article 30(1)(iii) of the 1991 Act, the publication of decisions concerning breeders' rights should also contain the information on approved denominations.

General Conclusion

60. In the opinion of the Office of the Union, the analysis in this document suggests that the Law incorporates certain provisions of the 1991 Act. However, the analysis has identified a number of provisions of the 1991 Act which do not appear in the Law or which do not correspond to the 1991 Act. In addition, certain provisions in the Law appear to be internally inconsistent or require clarification. Furthermore, the analysis in this document provides some examples suggesting that the quality of the translation and the terminology used will require verification with the original of the Law.

61. In conclusion, it is recommended that, in order for the Government of Bosnia and Herzegovina to be in a position to give effect to the provisions of the 1991 Act, as required by its Article 30(2), the Law will need to incorporate the additional provisions and amendments as proposed in this document.

62. *The Council is invited to:*

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

(b) recommend that Bosnia and Herzegovina incorporate the additional provisions and amendments in the Law, as provided in this document, and recommend that once the additional provisions and amendments have been incorporated in the Law, the amended Law should be submitted to the Council for examination in conformity with Article 34(3) of the 1991 Act;

(c) request the Office of the Union to offer its assistance, at the earliest opportunity, to the Government of Bosnia and Herzegovina in drafting the necessary additional provisions and amendments to the Law; and

(d) authorize the Secretary-General to inform the Government of Bosnia and Herzegovina of that decision.

[Annexes follow]

C/42/19

ANNEX I

Letter from Milad Zeković, Director,
Office of Bosnia and Herzegovina for Plant Health Protection,
to the Secretary-General of UPOV

BOSNA I HERCEGOVINA
Ministarstvo vanjske trgovine i ekonomskih odnosa
Uprava Bosne i Hercegovine za zaštitu zdravlja bilja
Sarajevo



БОСНА И ХЕРЦЕГОВИНА
Министарство вањске трговине и економских односа
Управа Босне и Херцеговине за заштиту здравља биља
Сарајево

UZZB-04-5-50-844/08
Sarajevo, 02.10.2008.

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

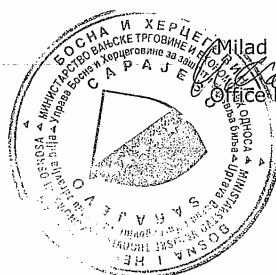
Dear Secretary-General Idris,

I have the pleasure to inform you that on 27 July 2004, the Parliament of the Bosnia and Herzegovina adopted the Law on protection of new plant varieties in B&H („ B&H Official Gazette“, No.46/04).

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

Pursuant to the provisions of Article 34(3) of the UPOV Convention, I would appreciate if the Council of UPOV could examine the conformity of the Law of Bosnia and Herzegovina with the provisions of the UPOV Convention.

Sincerely yours,



Milad Zeković, Director
Office B&H for Plant Health Protection

Trampina 4/III, 71000 Sarajevo, tel/fax: + 387 33 212 387; 217 032
e-mail: upravabihzzb@bih.net.ba

[Annex II follows]

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

LAW
ON PROTECTION OF NEW VARIETIES OF PLANTS
OF BOSNIA AND HERZEGOVINA

Pursuant to Article IV 4. a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at its 42nd session of the House of Representatives, held on 27 July 2004, and at the session of the House of Peoples, held on 9 July 2004, passed.

I - General Provisions

Article 1
Content of the Law

1. This Law establishes the procedure for protection of new varieties of plants and acquisition and protection of breeding rights. In accordance with the provisions of this Law, all the varieties of families and species of plants, including hybrids of families and species, may be protected.

Article 2
Terms meaning

1. The terms used in this Law shall have the following meanings:
 - a) Breeder of variety is a physical person who breeds, discovers or develops a variety independently or jointly with other physical persons.
 - b) Right holder is a physical or legal entity who is entitled to file an application for a variety protection (hereinafter referred to as: the Application)
 - c) Applicant is a physical or legal entity who has filed the application.
 - d) Breeding right holder is a physical or legal entity who has acquired the plant breeding right through protection.
 - e) Breeding right is a common expression provided for by Article 15 of this Law.
 - f) A variety is a group of plants or parts thereof, provided that complete plants can be again produced from them within the lowest botanic classification which can, regardless of whether it meets other requirements for protection, be:
 - 1) defined by its characters originating from a certain genotype or a combination of genotypes,
 - 2) distinguished among any other groups of plants at least by one of these characters, and
 - 3) considered as a systematic unit if these characters are not changed in the course of plant propagation.
 - g) Protected variety is a variety for which a decision on protection has been issued. It is defined by an official description of the variety, by a protected sample, and is denominated in the manner as prescribed by this Law.

- h) Material of the protected variety is any seedling or the product of the protected variety, respectively, which could be used for further propagation of the variety.
- i) Protected sample is an official sample of a seedling of the protected variety.
- j) The relevant bodies, in the light of the provisions of this Law, are: the Management of Bosnia and Herzegovina for protection of plants health (hereinafter referred to as: the Management) and relevant bodies of the Entities and Brčko District of Bosnia and Herzegovina (hereinafter referred to as: the relevant bodies of Entities and Brčko District).

Article 3
Commission for addition to the National variety list

The procedure for protection of a new variety, applications register for protection of a new variety (hereinafter referred to as: Applications Register) and the Protected Varieties Register are maintained by the Commission for addition to the National variety list (hereinafter referred to as: the Commission) as a body within the Management.

II – REQUIREMENTS FOR VARIETY PROTECTION

Article 4
Protection of varieties

- 1. A variety is protected by acquisition of the breeding right.
- 2. Any variety may be protected, provided it is:
 - a) new
 - b) identifiable
 - c) uniformed
 - d) invariable and
 - e) denominated in compliance with the provisions of this Law.

Article 5
A new variety

- 1. It shall be considered that a variety is new on the date of application if it has been sold or economically exploited with the permission of the right holder in Bosnia and Herzegovina at the most for one year prior to the date of filing the application, and for four years out of Bosnia and Herzegovina, prior to the date of filing the application; in the event of many year leaf plants and grape vine not more than six years prior to the date of filing the application.
- 2. Sale or economic exploitation of variety, in the light of the preceding paragraph, shall not be considered to be the:
 - a) use or delivery of the variety for profitable aims without permit or knowledge of the right holder;
 - b) contracted right assignment of the variety;
 - c) contracted economy, propagation, seed processing or warehousing of the seedlings or products of the variety for the right holder, provided the right holder has kept the sole right of ownership of the propagated seedlings, products of the variety or the products from the same;

- d) testing of the variety in the field or laboratory and, respectively, experimental production for the purpose of determination of the use value if so done by the right holder or his/her authorized person;
 - e) official testing of the variety for registration in the Register of Varieties or the risk assessment of the genetically changed varieties;
 - f) sale of products originating as by-products or, respectively, surpluses in development of a new variety, provided that these products are intended for final use and that on this occasion the variety is not specified.
3. Seedlings of the variety which is constantly used for breeding of other new variety, that is, hybrid, shall be considered to be delivered for profitable purposes, when the plants or their parts, belonging to other variety, are delivered.

Article 6 **Identified variety**

1. A variety is identifiable if it is possible to distinguish it clearly from any other variety which is generally known to the date of filing the application.
2. A variety shall be generally known, in particular if:
 - a) it was to that date protected in any country or registered in the List of Varieties;
 - b) an application to protect it or register it in the List of Varieties has been filed in any country to that date and the procedure is finished by the variety protection or its registration in the List of Varieties;
 - c) the seedlings of the variety or its product has already been on the sale or used for profitable purposes.

Article 7 **Uniformed variety**

The variety is uniformed if it has sufficiently and specifically expressed those characteristics which are of great importance for making it different from other varieties, despite the aberrations which may be expected for the specificity of its propagation.

Article 8 **Invariable variety**

A variety is invariable if its characteristics, being of utmost importance to distinguish it, after more successive propagations and, respectively, in case of particular cycle of propagation, are not changed.

Article 9 **Protected variety**

The protected variety shall be denominated which is a sign of its difference.

Article 10

Name registration

1. Any designation which makes it possible to distinguish it, may be registered as the name of the protected variety and it may be a word, a combination of words, a combination of words and numbers or combination of letters and numbers, unless it was otherwise prescribed by this Law.
2. As the name of a protected variety, there shall not be a designation which:
 - a) is not appropriate for the language reasons;
 - b) makes it impossible to identify the variety;
 - c) consists only of numbers, except where it is already a routine practice;
 - d) is the same or similar to the name of any generally known variety of the same species or related species of plants while in use; this provision is also exceptionally valid after termination of use of this variety, if this variety was specifically denominated;
 - e) makes confusion in regard to the sources, characters, value, use, identity or geographical origin, respectively.
 - f) consists of botanic or general name, family or species, or includes such a name which could bring in a confusion;
 - g) includes the words such as “variety, cultivated species, form, hybrid, cross-species” or translation of these words;
 - h) makes confusion in regard to the plant variety breeder or the right holder;
 - i) is contrary to public order or morale;
 - j) is contrary to the regulations on industrial ownership;
3. If a certain variety is already protected or registered in the Variety List, or if the application was filed to be protected or registered in any signatory state of the international treaties or conventions of which Bosnia and Herzegovina is also a signatory or accessed it. Only the name of the variety which was registered, entered on the Variety List or stated in the application in other country, may be registered in Bosnia and Herzegovina.
4. Exceptionally, a certain variety may be registered in Bosnia and Herzegovina under some other name only if the use of the original name is inappropriate for the language reasons or because it was contrary to the public order and morale.
5. At the proposal of the Commission, the Management shall define the related variety under paragraph 2.d) of this Article and a more detailed requirements for registration of the variety.

Article 11

Name of protected variety

1. The use of the name of a protected variety is binding. The seedlings of the protected variety may be on sale only if the name of the protected variety is stated.
2. The provision of paragraph 2 shall not be valid if a seedling of the protected variety is used for non-commercial purposes in private sector.

3. The protected variety shall be designated with the same registered name in all countries, except in case of aberration under Article 10 paragraph 4 of this Law.
4. In addition to registered name, the trademark or, respectively, other designation can also be used in sale of seedlings of the protected variety, provided that the registered name is quite visible and identifiable.
5. The name of the protected variety or the name which can be replaced with this name shall not be used for some other variety of the same or related plant.

III –HOLDERS OF RIGHT TO PROTECT VARIETY AND ACQUISITION OF BREEDER’S RIGHT

Article 12 Holders of the right to protect variety

Holder of the right to protect variety and acquisition of breeder’s right is the variety breeder or his/her legal heir.

2. If more persons have jointly created, bred, discovered or developed a variety, the joint right to protect the variety and acquire the right belong to them and, respectively, their heirs.
3. If more persons individually created, bred, discovered or developed a variety, the breeder’s right belongs to the one who filed the application first.
4. If the breeder is employed by a legal entity, and their mutual rights and duties are governed by the employment contract, the right to acquisition is determined in accordance with this contract. On the contrary, it is implied that the provisions from the regulations on the rights of industrial ownership from work relationship referring to the patents shall be applied.

Article 13 Requirements to acquire breeder’s rights

1. The breeder’s right referred to by the preceding Article can be acquired by the right holder who is a citizen of Bosnia and Herzegovina, other physical person residing permanently in Bosnia and Herzegovina and a legal entity seated in Bosnia and Herzegovina.
2. Foreign legal or physical entity shall enjoy the same rights in Bosnia and Herzegovina as a national legal or physical entity does, provided it arises from the international treaties and conventions signed or accessed by Bosnia and Herzegovina or, respectively, under the conditions of real reciprocity; the burden of proving the reciprocity is on the one who refers to it.
3. In the procedure before the Management, the foreign legal or physical entity exercises his or her right from this Law through his or her authorized person who is a physical person residing in Bosnia and Herzegovina or a legal entity seated in Bosnia and Herzegovina.

IV – BREEDER’S RIGHT

Article 14 Breeder’s right

A breeder acquires the breeder’s right when a variety is protected.

Article 15 License

1. The license of the breeder’s right is necessary for carrying out the following actions in regard to seedlings of a protected variety

- a) production or propagation,
- b) preparation of protected variety material for propagation
- c) selling or other forms of sale,
- d) export or import, and
- e) keeping the material of protected variety for the purposes mentioned in the preceding paragraphs.

2. In addition to the actions referred to in paragraph 1, the license of the right holder is also necessary in case of the products of protected variety only if:

- a) the product is the result of unauthorized use of seedlings of the protected variety, and
- b) the holder did not have appropriate opportunity to acquire the breeder’s right in seedlings of this variety.

3. The license of the holder for the undertakings mentioned in paragraph 1 is also necessary if it concerns:

- a) the varieties derived from the protected variety, except if the protected variety is derived in itself;
- b) the varieties which he or she could not distinguish from the protected variety;
- c) the varieties or, respectively, hybrids of which the breeding requires a permanent use of the protected variety.

4. A certain variety is considered to be a derived variety, if:

- a) its origin is a prevailing original variety or the variety which is mainly derived from the original variety,
- b) it can be distinguished from the original variety, and
- c) it is, by its expressed essential characteristics, which define the genotype or a combination of genotypes of the original variety, similar to the original variety, except in differences which are the result of derivation.

Article 16

1. It shall be considered that the breeder's right is not breached if:
 - a) the protected variety is used or disposed with:
 - 1) in private non-profitable purposes;
 - 2) for testing or scientific purposes;
 - 3) for breeding new varieties.
 - b) if the new variety is used for economic reasons from the third paragraph, item a) of this Article, except that this variety is a derived variety;
 - c) the product of protected variety of certain species of plants, produced by the producers on own agricultural estate, is used for further seeding on the agricultural estate, and the producer exploiting this possibility shall pay the breeding right holder an appropriate compensation. The compensation is appropriate if it is significantly lower than the amount calculated for production of seedlings of the variety in the same region under the license.
2. The producers using a possibility of further seeding shall pay the breeding right holder appropriate compensation in compliance with item c) paragraph 1 of this Article and shall give the breeding right holder, at his or her request, all the information concerning further seeding.
3. Small land owners are exempted from payment of appropriate compensation to the breeding right holder under item c) paragraph 1 of this Article.
4. The Management shall determine the plant species for which an appropriate compensation is paid to the breeding right holder under item c) paragraph 1 of this Article, as well as the criteria for smaller land owners.

Article 17 Exceptions

The breeding right holder does not need a license for the undertakings provided for by Article 15 paragraph 1 of this Law or for production of protected variety derived from a protected variety, provided that he or she has given the seedlings of the variety by himself or herself or by some other person authorized to do so, except that these undertakings comprise:

- a) further propagation of the protected or derived variety, or
- b) export of material of the protected or derived variety, which can be used for further propagation, to the country in which the plant families or species, to which this plant species belongs, is not possible to protect. This provision is not valid if the exported material is intended for final use.

Article 18 Period of breeder's right

1. Unless this Law prescribes otherwise, the period of breeder's right lasts from the date of its acquisition to the end of twentieth calendar year, and when hop, grape vine and species of trees are concerned it last to the end of twenty-fifth calendar year which follows the year of the right acquisition.

2. Regardless to the provisions of paragraph 1, the right holder from Article 12 of this Law, who has already filed a complete application, is entitled to the adequate indemnity, if anybody, during the procedure to protect the variety, contrary to Article 15 of this Law, economically exploited or disposed of the variety applied for protection. The right holder may claim the indemnity only for the period from the date of publication of the application in the “Official Gazette of the Management of Bosnia and Herzegovina for protection of herbal health” to the date of acquisition of the breeder’s right.
3. The breeder’s right ceases to exist:
- a) by termination note of the holder of breeder’s right;
 - b) by expiration period, as determined in paragraph 1 of this Article;
 - c) by ceasing or, respectively, cancellation of the decision by which it was acquired.

V – PROCEDURE OF VARIETY PROTECTION

1. Bodies

Article 19

Competences and tasks of the Management

1. The Management shall have the following competences:
 - a) conduct an administrative procedure for a new variety protection and the variety denomination registration in compliance with this Law and the Law on General Administrative Procedure,
 - b) maintain the Application Register and Protected Varieties Register,
 - c) publish in the Official Gazette the information on applications including the proposal for a variety denomination,
 - d) maintain negative decisions to the applications, registration and eventual changes in the registration of application, withdrawal of applications, decisions on variety protection and its eventual changes, and other official information,
 - e) cooperate with the international organizations and associations, the state bodies and, respectively, non-governmental organization from the region of the protected new varieties,
 - f) participate technically and professionally with authorized agencies of foreign countries in the area of testing varieties and checking the maintenance of varieties,
 - g) exchange the results of testing of varieties and other information from its competence with the relevant bodies in other countries,
 - h) checking the fulfillment of obligations of the protection holder, and
 - i) perform other duties in the area of varieties protection.

- 2) The Management publishes the information provided for by paragraph 1 of this Article in the Official Gazette of Management.

Article 20

Commission

1. Council of Ministers of Bosnia and Herzegovina (hereinafter referred to as: the Council of Ministers) appoints the Commission consisting of nine members, out of which three members of the Commission are proposed by relevant bodies of Entities each, two by the Management and one by Brčko District.

2) The position of the Commission is to be an expert in the procedure for variety protection, and based on the examination of application and enclosed documents it proposes a decision to the Management concerning the variety protection.

2. Registers
Article 21
Content of Register

1. The Management maintains the Applications Register and the Protected Varieties Register in compliance with the regulations.

2. The Register contains the information from the documents which serves as a basis for registration in both registers. The documents are collected in a collection of documents which is an attachment to both registers.

3. The Application of Register shall in particular contain:

- a) data on the applicant, breeder and eventual authorized representative,
- b) date of complete application,
- c) specification of plant species,
- d) proposal of temporary designation of the variety or, respectively, proposal of denomination of variety,
- e) in case of claiming priority right, specifies the country in which the application has already been filed and the date of receiving the complete application in that country,
- f) proposal for suspension or termination of the procedure, respectively,
- g) notes of courts' decisions in regard to the rights to file application.

4. The Register of insured varieties contains, in particular:

- a) plant variety and registered name of the variety, all synonyms are also entered with the name,
- b) official description of the variety or reference to the documents which contains official description of the variety and they are an integral part of the Register,
- c) in case of the variety of which breeding requires a constant use of certain additions for production of seedlings of the protected variety, the addition should specify,
- d) name and surname of breeding right holder, the breeder and any representative in the procedure,
- e) date of acquisition and termination of the variety protection and the reasons thereof,
- f) name and address of the person to whom the right to economically exploitation was transferred by the license contract,
- g) name and address of the person who was awarded a forced license, specifying the requirements for awarding and the date of termination of the right,
- h) notes on courts' decisions regarding the breeding right.

5. The Management shall keep the collection of documents concerning individual cases in original or copies for at least five years following the withdrawal or negative decision to the application or, respectively, for five years following termination of breeder's right.

6. The Management shall determine in more details the content and method of maintenance of the Register.

Article 22
Data Publicity

1. Applications Register and Varieties Protection Register are public.
2. The Management shall enable any person who has proved the legal interests to have insight into the following documents and collection of documents:
 - a) the documents relating to the applications,
 - b) the documents relating to acquired breeding rights,
 - c) the documentation relating to the official testing of variety.
3. Exceptionally from the provisions under paragraph 2 of this Article, the applicant, in case of hybrids, may require that the documentation, concerning component parts of variety, being in the procedure of protection, is not accessible for public.

3. Costs of procedure
Article 23
Costs

1. In the procedure for protection of a new variety and for the maintenance of the breeding right, the applicants or, respectively, the breeding right holders shall pay the prescribed fees, the costs of technical and professional checking of justification of the application, the costs of testing the variety and the costs relating to publication and other actions.
2. The Council of Ministers of Bosnia and Herzegovina shall prescribe the amount of fees and costs under paragraph 1 of this Article and the amount of fees provided for by Article 39.

4. Course of procedure for variety protection

Article 24
Application

1. The procedure for variety protection begins with the application filed by the applicant to the Management.
2. The Management makes decision in the administrative procedure.
3. An appeal may be filed against the administrative acts of the Management. The appeal shall be filed, within 30 days from the date of receiving the decision, to the Ministry of foreign trade and economic relations of Bosnia and Herzegovina.

Article 25
Content of application

1. The application shall be lodged on the prescribed form and shall contain the following:
 - a) information concerning the applicant or his representative or agent;
 - b) data relating to the breeder, if he or she is not the applicant by himself or herself;
 - c) Latin and national name of species to which the variety belongs;

- d) proposed name of the variety or, respectively, a temporary designation of the variety;
 - e) the country in which the application has already been filed and the date of receipt of application in that country, if the application claims priority right;
 - f) technical description of the variety which can be an attachment to the application; and
 - g) description whether the variety was obtained by means of gene technology and, if so, attach the permit for testing this variety in accordance with the regulations of genetically changed organisms;
2. a more detailed form and content of the application, and the documents which shall be attached to the application are prescribed by the Management.

Article 26 **Correction of application**

1. The Management examines whether the application is complete and properly filled in and whether the evidence of paid fee is attached.
2. If the application is incomplete or improperly filled in or if the prescribed fee has not been paid in, the Management shall call the applicant to supplement it within 30 days from the date of its receipt. If the applicant does not meet the requirements stipulated by the Management within the given period, such an application shall be deemed not to be filed.
3. The applicant is given a receipt. The complete application is registered in the Application Register and published in the Official Gazette of the Management. The date of receipt of the application or the date of receipt of the supplement which makes the application complete, is entered as the date of receipt of the complete application.
4. The extract from the complete application is published in the Official Gazette following the expiry of three months from the date of its filing.

Article 27 **Priority rights**

1. The applicant who filed the application for protection of a new variety in any signatory state of the international treaties or conventions signed or accessed by Bosnia and Herzegovina, can, following the provision of evidence of a complete application filed for the same variety in other country, achieve priority right. In this case, the application filed in Bosnia and Herzegovina shall be deemed to be filed on the date when the complete application was filed in foreign country.
2. The priority right under the preceding paragraph shall be expressly requested by the applicant in the application.
3. The applicant can accomplish the priority right in Bosnia and Herzegovina within 12 months, at latest, from the date of filing the first complete application abroad.

Article 28 **Appeal**

1. Anyone who has a legal interest may appeal the application, published in the Official Gazette on the basis of Article 26 paragraph 4 of this Law, to the Management while the procedure for protection of the variety is in the course.
2. The appeal may relate only to meeting the requirements under Articles 5, 6, 7, 8 and 10 of this Law.
3. The appeal shall be in writing and explained. Relevant evidence shall be attached to the appeal and prescribed court fee shall be paid.
4. The management shall immediately submit the received appeal to the applicant and called upon him or her to reply to the appeal not later than 30 days from the receipt of the appeal.
5. The Management shall inform the appellant on its opinion in regard to the appeal not later than three months following their filing.

Article 29 **Review of the application**

The Management shall review whether the content of the application is appropriate, and shall check, on the basis of the data stated in the application, whether the variety is new and whether the applicant is entitled to acquisition of the breeding right. If it is determined in the course of reviewing the content that the requirements under Article 5 and 12 of this Law are not met, such an application is rejected.

Article 30 **Name of variety**

1. The Management also evaluates the appropriateness of the proposed name of the variety. In case that the proposed name of the variety is contrary to the provisions of Article 10 of this Law, the Management shall call the applicant to propose new name for the variety. The proposal shall be given not later than three months from the date of receipt of the call.
2. In the course of protection of a variety, the Management shall exclusively use the name of the variety which was registered in the Application Register for protection of a new variety.

Article 31 **Professional evaluation**

1. Any variety which meets the requirement of Articles 26 and 29 of this Law shall be subject to a professional evaluation for the purpose of:
 - a) checking whether the variety falls under a systematic unit, i.e. a herb family or species specified in the application,
 - b) ascertaining whether the variety is different, unified and invariable (Articles 6, 7 and 8 of this Law) and

- c) preparation of an official description of the variety if it meets the requirements under items a) and b) of this paragraph.
2. The professional evaluation is carried out on the basis of the results obtained from testing the variety in the field or in a laboratory.
3. The testing of variety may be carried out by:
 - a) The Management or, respectively, the Management recognized professional institution in Bosnia and Herzegovina or abroad, if the testing is carried out in comparative agroecological conditions by means of prescribed procedures and methods;
 - b) the applicant, at the request of the Management.
4. In the event that the Management does not carry out testing alone, it shall ensure a professional supervision over testing the variety.
5. In professional evaluation of a variety, the Management may use the results of testing of the variety obtained from other country which has comparative agroecological conditions, provided that the testing was carried out within the international systems of testing, and whether the evidence of results were issued according to the international treaties made or entered into by Bosnia and Herzegovina.
6. Council of Ministers, at the request of the Management and in cooperation with relevant bodies of the Entities and Brčko District, prescribes a more detailed requirements, procedures and methods for testing the variety.

Article 32
Professional evaluation of variety

1. The applicant shall submit to the Management, within a prescribed period, necessary information, documents and, respectively, seedlings for making a professional evaluation of the variety for the purpose referred to by Article 31 paragraph 1 of this Law.
2. If the applicant fails to meet the requirements under paragraph 1 of this Article without a justified reason, the application shall be refused.

Article 33
Decision

1. If, on the basis of professional evaluation provided for by Article 31 of this Law, it is established that the applicant has met all the prescribed requirements, the Management shall issue the decision on protection of the variety and publish it in the Official Gazette of the Management.
2. The data from the effective decision on protection of the variety or, respectively, on refusing the application, are entered in the Application Register.
3. Together with the effective decision on insurance of the variety, the holder is issued a certificate on acquisition of breeding right, which is valid from the date of effectiveness of the decision.

4. On the basis of the effectiveness of the decision on protection of a variety, the relevant data are entered in the Protected Variety Register.

5. Council of Ministers, at the proposal of the Management, prescribes the form and content of the certificate on acquisition of the breeding right.

5. Termination of the plant breeding right

Article 34

Decision on termination of the plant breeding right

1. At the request of the breeding right holder under Article 18 paragraph 3 a) of this Law, the Management shall issue a decision in the administrative procedure confirming that the plant breeding right has been terminated at the request of the holder. The plant breeding right shall terminate on the following day from the date of receipt of the written statement by the holder.

2. Based on the effective decision under the preceding paragraph, the termination of the plant breeding right shall be published in the Official Gazette of the Management.

Article 35

Declaration of the decision null and void

1. The Management, in the administrative procedure, shall declare the decision on protection of a variety null and void only in the cases if it is subsequently ascertained that:

- a) the variety was not new on the date of receiving a complete application (Article 5 of this Law) or it could not be distinguished (Article 6);
- b) the variety was not uniformed on the date of receipt the complete application (Article 7) and invariable (Article 8 of this Law), and the variety was protected primarily on the basis of the information and documents submitted by the applicant;
- c) the plant breeding right was awarded to the person who was not entitled to it, and the right holder did not request a forced transfer in accordance with Article 37 of this Law;
- d) the holder does not meet the requirements stipulated by Article 44 of this Law or, respectively if ascertained that the variety is no more uniformed (Article 7 of this Law) or invariable (Article 8 of this Law)
- e) the holder does not submit, at the written request of the Management and within the prescribed period of time, the seedlings for checking or the documentation on selection for maintenance of the variety in accordance with Article 44 of this Law;
- f) the holder does not submit, at the written request of the Management and within the prescribed period of time, the proposal of a new name in accordance with Article 38 paragraph 1 of this Law;
- g) the holder does not duly pay the prescribed annual fee for maintenance of validity of the plant breeding right under Article 43 of this Law.

Article 36

Forced transfer of the right

1. If the application for protection of a new variety is submitted by a person who is not entitled to it, and the plant breeding right has been awarded, the right holder may initiate a procedure before the Management for a forced transfer of the right.

2. The request for a forced transfer provided for by the paragraph 1 can be filed from the date of publication of the application for protection of a new variety in the Official Gazette of the Management, not later than five years from the date of publication of the application.
3. If the unduly acquired right was transferred to the third party, in case of paragraph 1 of this Article, the transfer of these rights shall be cancelled.
4. Exceptionally from the provisions of paragraph 3 of this Article, the holder of any right to use the variety may continue to use the variety, if he obtained this right in good faith prior to the beginning of the procedure under paragraph 1 of this Article, provided he pays to the right holder adequate compensation.

Article 37 **Erasure from the Register**

1. The registered name of the variety is erased from the Application Register and the Protected Variety Registration under the following conditions:
 - a) if so required by the applicant or, respectively, the plant breeding right holder proves to have legal right to this action; the application shall specify the reasons for erasure and a proposed new name;
 - b) if it is subsequently established that the name of the variety was registered despite the reasons for its refusal under Article 10 of this Law;
 - c) if the holder or any other person is banned to use this name.
2. The Management forthwith informs the applicant or, respectively, the breeding right holder about the proposal or the request for erasure of the name and the application, and call him or her to propose a new name of the variety, not later than three months. After the procedure under Article 30 of this Law is carried out and the prescribed requirements are met, the proposed name is registered in the relevant register and published in the Official Gazette of the Management. At the same time, the former name is erased from the register.

7. Reinstating **Article 38** **Reinstating**

1. In case that the plant breeding right holder or any other party to the procedure could not, for justified reasons, pay the fee or meet the other obligations towards the Management within the prescribed time which is a reason for loss of the right to protect variety under Article 36 of this Law, he or she can request a reinstating in the course of the procedure of a variety protection.
2. The reinstatement application shall be filed within eight days from the date when the reason causing the failure ceases, and in case that the party learns subsequently for the failure, then the application is filed from the date when the party learns and within the period of three months, following the cease of the reason for failure to meet the obligations, but not later than one year from the date of expiry, a period to which the obligation should be met. The request shall be attached with an explanation and the evidence of the prescribed fee payment.

3. If the reinstatement application is met, the Management determines a new time period for the applicant to fulfill the obligation. The time period to fulfill the obligation shall not be longer than the period of the delay to fulfill the obligation, and shall be from the date of receiving the notice of meeting the application.

4. The reinstatement applicant is not entitled to request any injury, if from the date of loss of the right to the date of reinstatement, anybody, in good faith, exploited or entered a contract for exploitation of the protected variety.

IV – TRANSFER OF PLANT BREEDING RIGHT AND ASSIGNMENT OF PLANT BREEDING RIGHT EXPLOITATION

Article 39 Transfer of plant breeding right

1. A plant breeding right holder may transfer through an agreement the whole or a part of the plant breeding right to another person.

2. The right holder or the applicant may transfer the right to application for a new variety protection or, respectively, the rights arising from the application.

3. Transfer contract of the rights referred to in paragraphs 1 and 2 of this Article shall be in writing or otherwise it shall be void.

4. Rights transfer under paragraphs 1 and 2 shall not affect the previous rights of any third persons.

5. Transfer of plant breeding rights has no legal effect on third persons until the agreement is registered in the register.

6. A proposal for registration the transfer contract can be given by any party to the agreement.

Article 40 Economic exploitation of land

1. Plant breeding right holder may transfer to a third person, through a license contract, partly or wholly the right of economic exploitation of the protected variety.

2. The license contract is registered in the relevant register at the request of one of the parties to the contract.

3. The license contract which is not registered in the relevant register under paragraph 2 of this Article has no legal effect towards third persons.

4. The form, the method of making and the content of the license contract and the legal protection are governed by the regulations of the law of obligations.

Article 41
Forced license

1. If there is a public interest and if the plant breeding right holder alone or somebody else authorized by him or her does not carry out economic exploitation of the protected variety to a sufficient extent and does not assign to anybody the exploitation right or, respectively, some unjustified requirements are set for the assignment, the forced license may be assigned to somebody else.
2. The forced license can be awarded only to a person who proves to dispose technological and production abilities necessary for efficient exploitation of the protected variety and needed resources.
3. The forced license cannot be possibly awarded if the plant breeding right holder has evidenced that there are justified reasons for non-exploitation or not sufficient exploitation of the protected variety.
4. The forced license cannot be possibly awarded if, from the date of awarding of the plant breeding right to the date of filing the application for awarding a binding license, less than three years passed.
5. The forced license gives the license holder the right to perform undertakings stipulated by Article 15 of this Law partly or wholly for the purpose of supply the national market.
6. The forced license can be awarded for the period of at least two years and four years, the most. The forced license is possible to renew if, after studying again the requirements of paragraph 1, it is ascertained that there are still reasons for awarding the forced license.
7. The Management, at administrative procedure, makes decision on the application for awarding or extension of the forced license. Prior to making decision in regard of awarding or extension of the forced license, the Management shall have the opinion of interested parties.
8. In case of awarding the forced license, the plant breeding right holder is entitled to compensation.
9. The compensation amount under paragraph 8 shall be agreed between the plant breeding right holder and the person who was awarded the forced license. If the agreement has not been reached, the compensation amount shall be determined by the Management.
10. The Management may request the plant breeding right holder to provide the forced license holder with initial quantity of seedlings for use of the variety based on the forced license. The plant breeding right holder is entitled to adequate compensation for the seedlings.
11. In case of awarding the forced license, the plant breeding right holder may request from the professional institution, authorized to perform professional control of seedlings production, data of production of seedlings of the protected variety,

VII – OBLIGATIONS OF PLANT BREEDING RIGHT HOLDER AND THIRD PERSONS

Article 42 Fee

1. For maintenance of the plant breeding right, the plant breeding right holder is obliged to pay the Management annual fee for maintaining valid the plant breeding right.
2. The fee shall be paid at the beginning of every calendar year for the current year of protection but not later than 31 January.
3. If the fee for maintenance of the plant breeding right is not paid even in the subsequent period of time, as determined by the Management and it shall not be longer than 6 months after receiving notice, the right shall cede to be valid.

Article 43 Maintenance of protected variety

1. Over the period of protection, the holder shall maintain the protected variety or, respectively, its hereditary components unchanged.
2. At the request of the Management, the holder shall, within a determined time, submit to the Management or an authorized institution the data, documentation or seedlings needed for checking the maintenance of the variety.
3. If the examination finds that the holder does not maintain the variety, the Management shall initiate procedure to cancel the plant breeding right.

Article 44 Sample of seedlings

1. At the request of the Management or an authorized institution, respectively, the holder shall, within a specified time, provide an appropriate sample of seedlings of the requested variety or, respectively, its hereditary components for:
 - a) variety protection or renewal of the variety sample,
 - b) making comparative examination of other varieties which are in the procedure of protection.
2. The Management may authorize the plant breeding right holder to keep and renew by him/herself the protected sample of seedlings.

Article 45 Data

1. Whoever without agreement or contrary to the agreement with the plant breeding right holder carries out economic exploitation or, respectively, disposes the seedlings of the protected variety shall give all the data to the holder in regard to it.

2. If the data are not given voluntarily, the plant breeding right holder can request the Management to issue a decision which orders the infringer to submit the data.

VIII – COURT PROTECTION

Article 46

Breaching the rights

1. Whoever breaches the right of the applied for or, respectively, protected new variety shall be responsible for damage under general regulations concerning the damage compensation.

2. The person whose right has been breached may request, in addition to the injury, that the person who breaches the right be banned any further breaches.

3. Breaching the plant breeding right is any unauthorized economic exploitation of the protected variety.

Article 47

Sue

1. A sue against breaching the plant breeding right can be filed within three years when the plaintiff learned for infringer or, respectively, for breaching. Following the expiry of the period of five years, a sue cannot be filed any more.

2. The sue is filed with a regular court.

IX – SUPERVISION

Article 48

Supervision

1. The supervision of adherence to the provisions of Articles 11, 15, 16 and 46 of this Law shall be done by agricultural and forestry inspectors.

2. When the agricultural and forestry inspectors, in carrying out the supervision, reasonably suspect that the violation has been done, they shall temporarily confiscate the objects used or intended for violation or they originate from the violation.

3. The agricultural and forestry inspectors shall surrender the temporarily confiscated objects to the relevant body for conducting the violation proceedings with a proposal to start proceedings.

Article 49

Violation of plant breeding right

1. If the plant breeding right holder evidence probable that the export of a certain seedlings of the protected variety from Bosnia and Herzegovina or import into Bosnia and Herzegovina is a violation of his or her plant breeding right, the phytosanitary inspectors may, at his request, determine at the border:

- a) that the holder or his or her authorized person may review the material;
- b) that the material be confiscated, exclude from the sale and keep at a safe place.

2. In the proposal referred to paragraph 2, the right holder shall give to the phytosanitary inspectors a detailed description of the material of the protected variety, satisfactory evidence concerning the plant breeding right and its probable violation. At the request of phytosanitary inspection, the holder shall deposit a bail for eventual damage which could arise from these measures.

3. A phytosanitary inspector shall forthwith inform the exporter on the measures made or, respectively, the importer and the receiver of the material of the protected variety, if the import of material of the protected variety in Bosnia and Herzegovina is concerned. The phytosanitary inspector shall revoke the measure made if the right holder does not file a sue within seven days or does not initiate some other procedure for justification of the measures undertaken.

X – PENAL PROVISIONS

Article 50

1. The legal entity shall be fined KM 5,000 for the violation if, without permission of the plant breeding right holder, produces or propagate the seedlings of the protected variety by this Law, if prepares the seedling of the protected variety for propagation, if put on sale, import or export the seedlings of the protected variety or if keeps the material of the protected variety for the above purposes (Article 15 of this Law).

2. The responsible person of the legal entity shall be fined KM 1,000 for the violation under paragraph 1.

3. An individual who makes such a violation in connection with independent performance of the business activity shall be fined KM 5,000 for the violation under paragraph 1 of this Article.

4. The physical entity shall be fined KM 1,000 for the violation under paragraph 1 of this Article.

Article 51

1. The legal entity shall be fined KM 3,500 for the violation:

- a) if, contrary to the paragraph 1 of Article 11 of this Law, the material of protected variety is circulated, without specifying the registered name of the protected variety or if the name is not correctly stated;
- b) if, contrary to the paragraph 5 Article 11 of this Law, uses the name of the protected variety by this Law, or the name which can be easily mistaken for this name, for some other variety of the same or relative variety.
- c) if, contrary to the paragraph 2 Article 16 or 46, respectively, of this Law, does not give the requested data to the holder.

2. The responsible person of the legal entity shall be fined KM 700 for the violation of the preceding paragraph.
3. The individual shall be fined KM 500 for the violation of the first paragraph of this Article whose violation is in connection with independent performance of business activity.
4. The physical entity shall be fined at least KM 500 for the violation under paragraph 1 of this Article.

XI – TRANSITIONAL AND FINAL PROVISIONS

Article 52 Pre-protected varieties

1. The variety which has been, until this Law comes in force, protected under the former valid regulations, enjoy the protection under this Law until the expiry of the acquired plant breeding right.
2. The plant breeding right for the variety under paragraph 1 can be declared void and shall be cancelled only if it is ascertained that when awarding this right, the requirements in regard to identity, uniformity or invariability of the variety, respectively.

Article 53 Procedures in the course

1. The procedures for insurance of the variety which are in the course at the time of coming into force of this Law, shall be continued under this Law.
2. Exceptionally from the provision of paragraph 1 of this Law, the variety, which is not new to the date of coming into force of this Law, can be protected, if:
 - a) the application for protection of the variety was filed prior to coming this Law into force,
 - b) the variety meets other requirements stipulated by Article 4 of this Law and
 - c) is protected or in the procedure for protection in one of the signatory states, also signed or accessed by Bosnia and Herzegovina, and the procedure is completed with protection of the variety.
3. In case of awarding the plant breeding right under paragraph 2 of this Law, the plant breeding right shall last another 20 years, at most, or 25 years, respectively, for wooden plants from the date of awarding the plant breeding right in the signatory state in which the variety was first protected.

Article 54 Regulations passed pursuant to this Law and deadline for their passing

The regulations pursuant to this Law shall be passed within 12 months from the date of coming this Law into force. The Council of Ministers can, at a proposal of the Management, and in addition to the regulations provided for by individual articles of this Law, also pass other regulations necessary for implementation of this Law.

Article 55
Regulations implemented until new ones are passed

Until new regulations are passed pursuant to this Law, the existing regulations in this area shall be implemented, if not contrary to this Law.

Article 56
Coming into force of this Law

This Law comes into force on the eighth day from the day of its publishing in the “Official Gazette of BiH” and shall be published in the Official Gazettes of the Entities and Brčko District of Bosnia and Herzegovina.

PA BiH No. 99/04
9 September 2004
Sarajevo
Chairman of the House of Representatives
Parliamentary Assembly BiH
Martin Raguž
Chairman of House of Peoples
Parliamentary Assembly BiH
Goran Milojević

[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]