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# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

## COUNCIL

### Sixteenth Extraordinary Session

Geneva, March 26, 1999

#### EXAMINATION OF THE CONFORMITY OF THE LAWS OF GEORGIA WITH THE 1991 ACT OF THE UPOV CONVENTION

*Document prepared by the Office of the Union*

#### Introduction

1. By letter dated March 1, 1999, Mr. Amiran Kavadze, Ambassador Extraordinary and Plenipotentiary and Permanent Representative of Georgia, requested the advice of the Council of UPOV on the conformity with the UPOV Convention of the Law on the Protection of Selection Achievements (hereinafter referred to as "the Law") which was adopted by the Parliament of Georgia on October 18, 1996. The Annex to this document contains a translation of the Law into English from Georgian, as submitted by the Georgian authorities and with slight editing by the Office of the Union. However, the translation remains problematic. It may be that a number of apparent problems of conformity with the Convention result from problems in translation. The Law is analyzed below for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as "the Convention").

2. Georgia did not sign the Convention. Under Article 34(2) of the Convention, it must deposit an instrument of accession in order to become a member State of UPOV on the basis of the Convention. Under Article 34(3), an instrument of that kind can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the Convention and if the decision of the Council embodying the advice is positive.

### Basis for the Protection of New Plant Varieties in Georgia

3. The protection of new plant varieties will be governed in Georgia by the Law and its implementing regulations. An analysis of the Law follows in the order of the substantive law provisions of the Convention. It should be noted that the Law provides a system of protection for “selection achievements,” which expression is defined so as to include animal breeds as well as plant varieties. No analysis of the provisions of the Law relating to animal breeds is made in this document.

4. Article 34 of the Law provides that if an international agreement to which Georgia is a party has established rules other than those contained in the Law, the international agreement would prevail. This provision (hereinafter called the “International Treaty Provision”) means that if Georgia accedes to the UPOV Convention any lack of conformity between the Law and the 1991 Act will be remedied.

### Article 1 of the Convention: Definitions

5. Article 1 of the Law contains a definition of “a variety of plant” which is similar to that in Article 1(vi) of the 1991 Act.

6. The definition of “a plant seed” appears confused; it is believed that this is the result of clerical errors. There should be separate definitions for “plant seed” and “plant material”. They should be as follows: “a plant seed” - a plant or part thereof, used for the purpose of reproduction of the variety; “plant material” - a plant or part thereof used for purposes other than reproduction of the variety.”

### Article 2 of the Convention: Basic Obligation of the Contracting Parties

7. As set out in its Article 3, the Law is dedicated to the protection and recognition of breeders’ rights through the grant of patents issued by the State Commission of the Ministry of Agriculture and Food of Georgia for Testing and Protecting Selection Achievements. The Law thus complies with Article 2 of the Convention.

### Article 3 of the Convention: Genera and Species to be Protected

8. Article 4(1) and (3) of the Law mention the list of botanical genera and species where the species to which the selection achievement belongs should be included to issue a patent. But no list has so far been provided by Georgia to the UPOV Office. At the time that Georgia deposits its instrument of accession, it must patent a minimum of 15 plant genera and species.

### Article 4 of the Convention: National Treatment

9. Article 33 of the Law provides that foreign nationals and legal entities shall enjoy the rights provided for by the Law on a par with the citizens and legal entities of Georgia. Upon the accession of Georgia to the 1991 Act, nationals and residents of member States of UPOV bound by the said Act will receive national treatment in conformity with Article 4 of the

1991 Act as a result of the International Treaty Provision. The Law thus enables Georgia to conform with Article 4 of the Convention.

Articles 5 to 9 of the Convention: Conditions of Protection; Novelty; Distinctness; Uniformity; Stability

10. The conditions for protection are set out in Article 4 of the Law in language which mirrors Articles 5 to 9 of the Convention and the UPOV Model Law. The Law can be taken to essentially conform with Articles 5 to 9 of the Convention.

Article 10 of the Convention: Filing of Applications

11. Article 32 of the Law provides that a patent holder or his representative shall be authorized to file an application for the legal protection of a selection achievement to the competent bodies of another State. In order to avoid conflict with the provisions of Article 10 of the Convention, “a patent holder” should be substituted for “the breeder” or “the applicant”. Apart from this, the Law contains no provisions which conflict with those of Article 10 of the Convention.

Article 11 of the Convention: Right of Priority

12. Article 7 of the Law permits a claim for priority based upon an earlier application in a UPOV member State to be made in an application in Georgia during the period of 12 months from the date of the earlier application as required by Article 11 (1) of the 1991 Act. Article 7 of the Law gives the applicant six months to file a certified copy of the earlier application (compared with the minimum of three months required by Article 11(2) of the 1991 Act) and three years to furnish documents, information and material (compared with the two years required by Article 11(3) of the 1991 Act). Article 7 of the Law thus meets the requirements of Article 11 of the 1991 Act.

Article 12 of the Convention: Examination of the Application

13. Articles 9, 10 and 11 of the Law contain detailed provisions relating to the examination of candidate varieties and conform with Article 12 of the 1991 Act.

Article 13 of the Convention: Provisional Protection

14. Article 18 of the Law provides measures designed to safeguard the interests of the breeder between filing and grant in terms which conform with Article 13 of the 1991 Act.

Article 14 of the Convention: Scope of the Breeder’s Right

15. Article 16(1) of the Law reproduces the substance of Article 14(1)(a) of the 1991 Act. Articles 19, 20 and 21 of the Law make clear that a breeder may make any license under the

right granted under Article 16(1) of the Law, subject to conditions and limitations as required by Article 14(1)(b) of the 1991 Act.

16. Article 16(2) of the Law extends the right of the breeder to “plant material obtained from seeds” of the variety as required by Article 14(2) of the 1991 Act and provides for the extension of the right to the varieties specified in Article 14(5) (i) and (iii) of the Convention. The extension to varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety is omitted however.

17. Attention should be drawn to the fact that the limitations of Article 14(5)(i) of the 1991 Act “where the protected variety is not itself an essentially derived variety”, is also omitted.

#### Article 15 of the Convention: Exceptions to the Breeder’s Right

18. Article 17 of the Law sets out the compulsory exceptions to the breeder’s right in terms which satisfy Article 15(1) of the Convention. The provisions envisage that the exception will exist only in relation to a limited list of plant genera and species and would seem to limit the farmer to the reproduction of propagating material of the variety through two generations.

#### Article 16 of the Convention: Exhaustion of the Breeder’s Right

19. The Law at present contains no provisions for the exhaustion of the breeder’s right although this gap is remedied by the International Treaty Provision.

#### Article 17 of the Convention: Restrictions on the Exercise of the Breeder’s Right

20. Article 23 of the Law contains provisions concerning the grant of compulsory licenses by the State Commission where the patent holder has no reasonable cause for not granting to the applicant the license for a selection achievement. The requirements for the grant of compulsory license can be taken to fall within the public interest condition of Article 17 of the 1991 Act.

21. Article 23 (2) of the Law further provides that when granting a compulsory licensee the State Commission shall fix the amounts to be paid by the compulsory licensee to the patent holder. It does not specify that the amount so fixed must constitute “equitable remuneration” as required by Article 17(2) of the 1991 Act. Any possible lack of conformity in this respect is remedied by the International Treaty Provision.

#### Article 18 of the Convention: Measures Regulating Commerce

22. The Law contains no provisions which conflict with Article 18 of the Convention.

#### Article 19 of the Convention: Duration of the Breeder’s Right

23. Article 3(6) of the Law provides that protection lasts 35 years in the case of fruit, forest and ornamental trees, grapevine and tea from the date of registration of the variety in the State

Register, and 30 years for all other varieties. These periods of protection are in each case 10 years longer than the minimum periods of protection required by the 1991 Act.

Article 20 of the Convention: Variety Denomination

24. Article 6 of the Law contains provisions concerning variety designations which satisfy the requirements of paragraphs (2) and (3) of Article 20 of the 1991 Act. There are no provisions of the Law which satisfy the requirements of paragraphs (1), (4), (5), and (7) of Article 20 of the 1991 Act. The provisions of the Law are effectively supplemented in respect of the substance of the said paragraphs (1), (4), (5), and (7) by the International Treaty Provision so as to enable the Law to conform fully with the 1991 Act.

Article 21 of the Convention: Nullity of the Breeder's Right

25. Article 28 of the Law contains provisions concerning nullity which reproduce the substance of Article 21 of the 1991 Act.

Article 22 of the Convention: Cancellation of the Breeder's Right

26. Article 29 of the Law contains provisions which reproduce the substance of Article 22 of the 1991 Act.

Article 30 of the Convention: Implementation of the Convention

27. Article 30(1)(i) of the 1991 Act requires adhering States to provide for appropriate legal remedies for the effective enforcement of breeders' right. Article 30 of the Law provides that a person performing actions considered by point 1 of this Article shall bear responsibility in keeping with the current legislation of Georgia. The Law thus fully conforms with the said Article 30(1)(i).

28. Article 30(1)(ii) of the 1991 Act requires adhering States to "maintain an authority entrusted with the task of granting breeders' rights...". Article 3 of the Law appoints the State Commission as the authority "to pursue a single policy in the sphere of the legal protection of selection achievements" in Georgia, and describes in detail the powers of the said Commission. The Law thus conforms fully with Article 30(1)(ii) of the 1991 Act.

29. Article 30(1)(iii) of the 1991 Act requires adhering States to publish information concerning applications and grants of breeders' rights and proposed and approved denominations. Article 3 of the Law requires and empowers the State Commission to "publish official information on granting a patent on selection achievements". Article 9(4) of the Law requires the particulars of accepted applications to be published in the official bulletin of the Commission. Article 13 of the Law contains comprehensive provisions concerning matters to be published in an official bulletin of the State Commission. These provisions entirely satisfy the requirements of Article 30(1)(iii) of the 1991 Act.

General Conclusion

30. The Law, in its main provisions, incorporates the substance of the Convention and deviates from it in the following aspects only:

- (a) filing of application (see paragraph 11);
- (b) scope of the Breeder's Right (see paragraph 15);
- (c) exhaustion of the Breeder's Right (see paragraph 19);

31. The Office of the Union suggests that the Council may wish

(a) to advise the Government of Georgia that the Law, after adoption of suitable regulations, provides the basis for an Act conforming with the Convention, and that it may then deposit an instrument of accession to the Convention;

(b) to further advise the Government of Georgia that it may wish to correct the (possible) deviations and inconsistencies at the earliest opportunity;

(c) to request the Office of the Union to offer its assistance to the Government of Georgia for the drafting of any regulations (if still required), the correction of the Law, and the preparation of a more satisfactory translation into one or more of the official languages of UPOV.

*32. The Council is invited to take note of the information given above and to adopt the decision set out in the preceding paragraph.*

[Two Annexes follow]

ANNEX I

From: The Mission Permanente de la Géorgie auprès de l'Office des Nations Unies et des Autres Organisations Internationales à Genève

To: Mr. Barry Greengrass  
Vice Secretary-General  
International Union for the Protection of New Varieties of Plants  
34, chemin des Colombettes  
CH-1211 Geneva 20

No. 6/15  
1 March, 1999

Dear Mr. Greengrass,

I have the honor to inform you, that on October 18, 1996, the Georgian Parliament adopted the Law on Protection of Selected Achievements (decree No. 451 a-Is).

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

Taking into consideration the above mentioned, pursuant to the provisions of Article 34(3) of the 1991 Act, I would highly appreciate if the UPOV Council could examine the conformity of the Georgian Law on Protection of Selected Achievements to the requirements of 1991 Act of UPOV Convention.

Accept, Mr. Greengrass, the assurances of my highest consideration.

Amiran Kavadze  
Ambassador

Enclosed: mentioned

[ANNEX II follows]

ANNEX II

LAW OF GEORGIA

ON PROTECTION OF SELECTION ACHIEVEMENTS

CHAPTER I

GENERAL PROVISIONS

Article 1  
Basic Concepts

Definition of the concepts used in the Law:

“the selection achievement” - a variety of plants or a breed of animal representing the result of the purposeful economic activity of a person;

“a variety of plant” - a group of plants which, irrespective of whether the conditions for the grant of a patent are fully met, is defined by the expression of the characteristics, resulting from a given genotype or combination of genotypes and distinguished from any other plant grouping by at least one of the said characteristics.

The variety may be represented by one or several plants, by some or several parts of a plant, provided such part or parts may be used for reproduction of whole plants of the variety.

The protected categories of the selection achievements are: breed, clone, line, F1 hybrid and population.

“a plant seed” - a plant or part thereof, used for the purposes different from those of the reproduction of a variety;

“a breed of animal” - group of animals, which possesses, regardless of the protective ability, the genetically conditioned biological and morphological properties; herewith, some of them have specific nature which distinguishes them from animals of other groups. Breed may be represented by male or female individuals, or by breeding material.

The protected categories of animal breed are: type and line.

“the pedigree animal” - an animal considered for tile reproduction and propagation of the breed;

“the breeding material” - a pedigree animal, its gametes or zygotes (embryo);

“the marketable animal” - an animal which is used for the purposes different from those of the reproduction of the breed;

“a selection achievement protected by a certificate” - a breed of animals or a variety of plants, which is registered in the State Register of protected selection achievements;

“the applicant” - a natural or a juridical person (employer), who has filed an application for a selection achievement;

“an induced mutant” - a body which, as a result of mutation caused by reaction of chemical or physical factors, has different characteristics and properties;

“backcross” - the product of cross-breeding, when hybrid is crossed with one of the parents for the second time;

“clone” - vegetatively reproductive generation of one plant.

## Article 2

### Legislation of Georgia on Protection of Selection Achievements

Legislation of Georgia on protection of selection achievements consists of this Law and other legislative acts.

## Article 3

### The Legal Protection of Selection Achievements

1. The right to a selection achievement shall be protected by the Law and confirmed by a patent certifying the exclusive right.

2. The patent shall certify the exclusive right of a patentee to the use of a selection achievement.

3. In accordance with this Law, the State Commission of the Ministry of Agriculture and Food of Georgia for Testing and Protecting Selection Achievements (hereinafter referred to as “the Commission”) shall pursue a single policy in the sphere of the legal protection of selection achievements. The Commission accepts and considers applications for new varieties, conducts expert examination and trials, takes control over the risk factors related to the use of selection achievements created under the biotechnology, keeps the State Register of Protected Selection Achievements, and the State Register of Selection Achievements Admitted for Use, issues a patent certifying the exclusive right, publishes official information on granting of patents on selection achievements.

4. A selection achievement, on which the Commission has issued a patent, shall be registered in the State Register of the Protected Selection Achievements.

5. The scope of the legal protection of the rights provided for by the patent for a selection achievement shall be determined by a totality of essential features fixed in the description of the selection achievement.

6. The term of validity of a patent is 30 years from the date of the registration of selection achievements in the State Register, as for such cultures as grape varieties, woody,

fruit and forest trees, decorative, tea, subtropical and forest species, including rootstock cultures it shall be 35 years.

## **CHAPTER II**

### **THE CONDITIONS FOR PROTECTION OF SELECTION ACHIEVEMENTS AND THE PROCEDURE FOR THE REGISTRATION OF AN APPLICATION FOR THE ISSUE OF A PATENT**

#### **Article 4**

#### **The Conditions for Protection of Selection Achievements**

1. A patent certifying the exclusive right to a selection achievement is issued in the case if it meets the protection criteria and the species to which this breed belongs is included in the list of botanical and zoological genera and species.

2. The protection criteria of a selection achievement include:

a) novelty

A variety or breed shall be regarded as new, if the seeds of this variety of plants or pedigree material of a given selection achievement have not been sold or transferred to other persons in any other way by a plant breeder or his legal successor (employer) for the use of the selection achievement, on the territory of Georgia - earlier than one year before the date of filing an application for the issue of a patent, on the territory of another State - earlier than four years before filing the application, and earlier than six years before this date as this concerns grapes, woody, decorative, fruit and forest trees;

b) distinctiveness

A selection achievement, according to its basic properties, shall differ from any other widely known selection achievement existing by the time of the filing of an application.

A breed shall be regarded as widely known, if the data about it are indicated in the official catalogues or the reference stock, or are strictly described in the publications.

The filing of an application for a patent or publication shall also make a selection achievement widely known since the date of its filing, provided that a patent has been issued for this selection achievement, or, that a selection achievement has been admitted for use.

c) homogeneity

One and the same variety plants or animal breeds, according to morphobiological properties, shall be sufficiently homogeneous with account of some deviations typical of the process of their specific reproduction;

d) stability

A selection achievement shall be regarded as stable, if its basic properties remain unchanged in the process of repeated propagation or at the end of each cycle of propagation in case of a special cycle.

3. If a selection achievement is included in the State Register of Selection Achievement Admitted for Use, and the genera and species, to which the selection achievement belongs, have been included in the list of botanical and zoological genera and species and put in the State Register after the registration, the right considered under Article 18, and the requirements of points 1 and 2 of this Article shall not be applied to such species.

Article 5

An Application for the Issue of a Patent

1. The right to the presentation of an application for a patent to the Commission shall belong to the author of the selection achievement or his legal successor (employer).

2. If a selection achievement has been bred, created or revealed during the performance of official assignment or official duties, the right to file an application for a patent belongs to the employer, unless the contrary is provided by the agreement concluded between the breeder and the employer.

3. The application may be presented by several applicants, if they have bred the selection achievement in common.

The application may be presented by the representative, who by dint of the powers based on the letter of attorney deals with cases associated with the receipt of patents.

The employees of the Commission shall have no right to file an application for patents for selection achievements, with the exception of the employees, who, before starting their work in the Commission, used to participate in the creation of the selection achievements and their creative contribution is proved.

4. The application for a patent shall contain:

- a) the request for a patent;
- b) the technical questionnaire concerning the selection achievement;
- c) the document that confirms the payment of a fixed duty, or exempts from the duty;

5. The form and the content of the listed documents are to be established under the Law.

6. An application shall concern one selection achievement.

7. If the applicant is an employer, in accordance with the requirement of point 2 of this Law, the application shall be appended with the copy of the agreement concluded with the author of the selection achievement.

8. The application shall be presented either in Georgian or any other languages. If the application is submitted in other than the Georgian language, the application shall be appended with translations into Georgian. The application about the request for a patent is registered in the Georgian language according to the form constituted by the Commission.

#### Article 6

##### The Name of a Selection Achievement

1. A selection achievement shall have its name offered by the applicant and approved by the Commission. If the Commission does not approve the name, the applicant is obligated, within the stated term to present a new name. The name of a selection achievement shall make it possible to identify this achievement; it shall be brief and differ from the names of the existing selection achievements of the same or related botanical and zoological species, it shall not contradict to the principles of humanity and morality, it shall not consist of the figures only, mislead about its properties and origin, its significance, the breeder's personality.

2. Any person who makes use of the protected selection achievement shall use the name registered in the State Register of Protected Selection Achievements.

3. The name of a selection achievement, with the consent of the Commission, may be altered only in exceptional cases.

#### Article 7

##### The Priority of a Selection Achievement

1. The priority of a selection achievement shall be established according to the date of the receipt by the Commission of the application for a patent.

2. If two or more applications for one and the same selection achievement are filed on one and the same date, a priority shall be fixed according to the earlier date of the dispatch of the application, if the date of the dispatch is the same as well, then priority shall be given to the application that has been registered earlier in the Commission.

3. If the application received by the Commission was preceded by an application filed with one of the foreign States with which Georgia had concluded an agreement on the legal protection of selection achievements, the applicant shall enjoy the priority of the first application during 12 months from the date of presentation of the application to the Commission.

4. In the application addressed to the Commission the applicant shall indicate the date of priority of the first application. Within six months from the date of receipt of the application by the Commission, the applicant shall be obligated to present the copy of the first application certified by the competent organization of the respective State and its translation into Georgian. In this case the applicant shall have the right to submit to the Commission the

additional documents and the material needed for tests within three years from the date of filing the application with the foreign State.

Article 8  
Appeal Against the Decision of the Commission

The decision of the Commission on approval or refusal on the issuance of a patent, or on regarding the patent as invalid or cancelled may be protested in the court.

CHAPTER III

EXAMINING THE PROTECTABILITY OF A SELECTION ACHIEVEMENT

Article 9  
Preliminary Expert Examination of the Application for a Patent

1. A preliminary expert examination of the application for a patent shall be conducted within a month from the date of priority. During the preliminary expert examination the experts shall fix the date of priority and verify the necessary documents whether they comply with the current requirements.

2. In the process of preliminary expert examination, the applicant shall be authorized to supplement, or clarify or correct the application materials.

3. If, in accordance with the requirements of the preliminary expert examination, the necessary clarifications and supplements have not been introduced within the fixed period, or the documents missing on the date of receipt of the application have not been submitted, the application shall not be accepted for consideration and the applicant shall be notified about this.

4. The applicant shall be authorized, within three months from the date of receipt of the notification, to appeal against the negative decision of the preliminary expert examination in the expert's council of the Commission.

In the case of a positive decision taken by the preliminary expert examination, the applicant shall be notified about the receipt of the application and about the publication of the accepted application in the official bulletin of the Commission.

Article 10  
The Expert Examination of a Selection Achievement as to its Novelty

1. Any interested person is authorized, within six months from the date of publication of information about the application, to send to the Commission his claim about the novelty of the stated selection achievement. The Commission shall notify the applicant who, on his side, shall have the right, within three months, to send to the Commission his motivated objection about the issues raised in the claim.

2. The Commission, on the basis of the available materials, shall take a decision and inform the applicant.

3. If a selection achievement fails to comply with the novelty criterion, a decision shall be taken to refuse to issue a patent.

#### Article 11

##### Tests of a Selection Achievement for its Distinctiveness, Homogeneity and Stability

1. Tests of a selection achievement for distinctness, homogeneity and stability shall be carried out according to the methods and within the periods fixed by the Commission.

2. The applicant shall be obligated to present for tests the necessary quantity of seeds, sapling or pedigree materials and send to the address and within the period indicated by the Commission.

3. The Commission, on the basis of the corresponding agreement, shall have the right to use the results of the tests carried on by the competent bodies of other States with which the appropriate agreements have been concluded, and by other organizations under agreements concluded with the Commission, and also to apply the data presented by the applicant.

4. If a selection achievement corresponds to the protection criteria and the name of this achievement meets the requirements of Article 6 of this Law, the Commission shall take a decision on the issue of a patent and the applicant, in cooperation with the Commission, shall describe the selection achievement.

#### Article 12

##### The Fee

The fee, established for implementation of the activity in relation to the issue of a patent for a selection achievement, is paid to the Commission. The list regarding the activities for implementation of which the fee is paid, its amount, the period of payment, the rule for reduction, exemption from, or refund of the fee is defined by the Ministry of Agriculture and Food of Georgia.

#### Article 13

##### Publication

The Commission issues a special official bulletin where they publish the information about filing the application for the issue of a patent, granting the license for the use of a selection achievement and on introduction of changes into these data.

## CHAPTER IV

### PROTECTION OF A SELECTION ACHIEVEMENT

#### Article 14

#### Registration of a Selection Achievement

The following records shall be made in the State Register of Protected Selection Achievements:

- a) the genus and species of the plant or animal;
- b) the name of the selection achievement;
- c) the date of registration of the selection achievement and its registration number;
- d) the name and address of the owner of the selection achievement;
- e) the name, patronymic and surname of the author of the selection achievement and his address;
- f) the document certifying the transfer of the patent to another person, indicating the name, patronymic and surname of that person and his address;
- g) the data on licenses;
- h) the date of expiration, or termination of the patent's validity (with indication of reasons).

#### Article 15

#### The Patent

1. A patent, certifying the exclusive right to a selection achievement, shall be handed over to a person, whose right is certified under the regulation set forth by this Law. All the authors shall be indicated in the patent.
2. In the event of the loss of the patent or damage inflicted on it, a duplicate may be issued.

#### Article 16

#### The Right of the Patent Holder

1. The exclusive right of the patent holder implies that any person shall be obliged to receive a permission from the patent holder to perform the following acts with selection achievements protected by a patent:

- a) production and reproduction,

- b) conditioning for the purpose of propagation (reproduction);
- c) storage,
- d) sale and other types of marketing,
- e) exportation from the territory of Georgia,
- f) importation onto the territory of Georgia.

2. Right of the patent holder shall also extend to plant material obtained from seeds and to the marketable animals, which have been put on the market without the permission of the patentee.

3. It is necessary to obtain the permission of the patent holder in order to perform the actions referred to in point 1 of this Law with the seeds of a variety and the pedigree material of a breed, which are essentially derived from varieties or breeds protected by the patent, or, which require the repeated use of protected varieties for the production of seeds.

4. A variety is essentially derived from a selection achievement if :

a) it inherits the most essential characteristics of the selection achievement protected by a patent preserving, as it does, the basic characteristics reflecting the genotype or the combination of genotypes;

b) it corresponds to the genotype or genotype combinations of a selection achievement protected by the patent, with the exception of deviations which may be caused by the use of such methods as the individual selection from the initial variety or breed, the selection of induced mutant, backcross, and genetic engineering.

Article 17  
Actions Which are not Recognized as a Breach of  
the Patentee's Rights

The following actions shall not be recognized as a breach of the right of a patent holder:

a) actions performed on a protected selection achievement for personal and non-commercial purposes;

b) the use of a protected selection achievement as initial material for creation of new varieties or breeds, actions in respect of these varieties and breeds indicated in point 1 of Article 16, with the exception of the cases provided for by point 2 of the same Article;

c) the use of the locally raised vegetative materials obtained in an enterprise for two years as seeds for growing a variety on its territory. (The list of species of plants shall be determined by the Ministry of Agriculture and Food);

d) reproduction of marketable animals for the purposes of their use at a given enterprises;

e) any actions. with seeds, vegetative and pedigree materials and marketable animals which have been introduced into the market with the consent of the patent holder.

Article 18  
Protection of a selection Achievement Before  
Adoption of a Patent

1. The applicant is granted a right to protect a selection achievement from the date of receipt of the application by the Commission to the date of issue of a patent.

2. After the receipt of a patent, the patentee shall be authorized to get compensation from the person who has performed the actions indicated in point 1 of Article 16 of this Law without the consent of the applicant during the period of the temporary protection of the selection achievement.

3. The applicant, before the receipt of a patent, shall be permitted to sell or transfer seeds and pedigree materials for scientific purposes alone, or give them to production with the aim of creating the stock of seeds and pedigree materials.

4. If the applicant or another person with his consent breach the above-named requirements, the right considered under point 2 of this Article shall not be applicable.

CHAPTER V

THE USE OF A SELECTION ACHIEVEMENT

Article 19  
License Agreement

Under the conditions set by the license agreement, a patent holder (licensor) shall transfer the right to the use of a selection achievement to another person (licensee).

Article 20  
The Licensee's Right

A licensee shall be authorized to use a selection achievement and perform the actions envisaged by point 1 of Article 16 of this Law.

A licensee may not assign a license to the third persons and shall not have the right to grant a sub-licenses unless this is provided by the license agreement.

Article 21

Limitations Imposed on the Licensee Under The Conditions of the License Agreement

A license agreement, the conditions of which do not derive from the rights provided under the patent and impose limitations on the licensee's rights, shall be regarded as cancelled.

Article 22

A License

1. A patent holder is authorized to publish in the official bulletin of the Commission the statement to the effect that any person, in agreement with him, shall have the right to use a selection achievement.

2. The Commission shall make record on granting an open license with an indication of the amount of payments in the State Register of Protected Selection Achievements.

3. The amount of the fee for keeping the patent in force shall be reduced by 50 per cent since January 1 of the year that succeeds the year of the publication of the application for granting an open license.

4. Upon the application of the patent holder and given the consent of all the owners of the license, the Commission shall make a record about the termination of the license validity in the State Register of Protected Selection Achievements.

Article 23

The Issue of a License Without The Consent of a Patent Holder

1. After expiration of three years period from the date of the receipt of a license, the Commission may issue a license without the consent of a patent holder, provided only the following conditions are observed:

a) the patent holder does not produce a selection achievement, or produces less than the needed amount, or produces it outside Georgia,

b) there are no reasonable excuses that prevent the patent holder from granting to the applicant the license for a selection achievement,

c) the person who requests the license has proved that financially and in other respects he is competent to make effective use of the license.

2. The Commission, without consent of the patent holder, shall fix the payments which the owner of the license is obliged to make to the patent holder.

3. The licensee is given right to perform actions indicated in point 1 of Article 16 of this Law, so that the patent holder shall retain all the rights granted by the patent for a selection achievement.

4. The patent holder is obligated to transfer to the licensee seed and breed materials of the breed for use.

5. The term of validity of the license shall be fixed by the Commission for four years without the consent of the patent holder. This term may be prolonged, if the inspection confirms that the conditions for the issue of the license continue to exist. The Commission shall annul the license if its owner violates the conditions for its issue.

## CHAPTER VI

### THE RIGHTS OF THE AUTHOR OF A SELECTION ACHIEVEMENT

#### Article 24

#### The Right of the Author of a Selection Achievement

1. The author of a selection achievement is a natural person, whose creative labour has been used to create, breed and reveal a selection achievement.

2. The author of a selection achievement is authorized to receive remuneration from the patent holder (employer) for the use of a selection achievement.

3. Disputes regarding authorship shall be settled in court.

#### Article 25

#### Remuneration of the Author a of Selection Achievement

1. The author of a selection achievement shall be authorized to receive remuneration from the patent holder (employer) for the use of the breed, created and revealed selection achievement in the period of the patent's validity. The amount and terms of the payment of the remuneration shall be defined by the agreement concluded between the patent holder and the author of the selection achievement.

2. If a variety and breed has been created or revealed by several authors, the remuneration shall be distributed on the basis of their agreement.

3. The remuneration shall be paid to the author within six months after the expiration of every year in which the selection achievement has been used, or within the period considered by the agreement.

4. For the delayed payment of the remuneration, the patent holder (employer) shall pay to the author a penalty for every day of default of payment in an amount fixed by the agreement.

CHAPTER VII

THE STATE REGULATION OF THE CREATION AND USE OF SELECTION  
ACHIEVEMENTS

Article 26

The Stimulation by the State of the Creation and Use of a Selection Achievement

1. The program financing of the selection work shall be performed for the purposes of stimulation of the creation and use of selection achievements.

2. The program includes special bonuses for the stimulation of popular and scientific selections, for the creation of productive and high quality species, for the development of selective technologies, for the introduction of domestic and international experiences, for the organizational and economic support of the selective activity.

Article 27

The Preservation of a Selection Achievement

1. The patent holder shall be obligated to sustain the variety or breed (hybrid) within the entire period of the patent's validity in order to preserve the characteristics indicated in the description of the variety or breed made on the date of their registration in the State Register of Protected Selection Achievement.

2. The patent holder shall be obligated, upon the inquiry, to present variety seeds or pedigree material for control tests to the Commission, and make it possible to carry on inspections on the spot.

Article 28

Annulment of a Patent

1. Any person shall be authorized to address to the Commission an application that the patent be declared null and void .

2. The Commission shall be obliged to consider the application and take a decision on this matter within six months. The term for taking a decision may be extended if additional tests are required.

3. The Commission shall recognize the patent as void, if:

a) it was issued on the basis of unconfirmed data on the homogeneity and stability of a selection achievement, submitted by the applicant,

b) the selection achievement failed to comply with the novelty and distinctiveness criterion on the date of the issue of the patent,

c) the person referred to in the patent as a patent holder had no legal basis for receipt of the patent.

Article 29  
Cancellation of a Patent

A patent shall be cancelled by the Commission, if:

- a) the selection achievement no longer complies with the conditions of the homogeneity and stability;
- b) the patent holder has failed to submit within 12 months, at the request of the Commission, seeds and pedigree material documents and information needed to verify the maintenance of the selection achievement, or has failed to make it possible to carry on inspection of the selection achievement on the spot;
- c) the patent holder has failed to pay the fee for keeping the patent in force within the fixed period;
- d) the name of the selection achievement is being canceled but the patent holder has failed to offer another suitable name.

Article 30  
Infringing the Other Rights of a Patent Holder  
and Plant or Animal Breeder

1. A natural or juridical person shall be deemed to be guilty of infringing the rights of a patent holder, if he:

- a) confers on the produced and sold seeds and pedigree material, the name that differs from the registered name of the given selection achievement;
- b) confers on the produced and sold seeds and pedigree material a name of the registered selection achievement, although the produced and sold seeds and pedigree material are not the seeds and pedigree material of this selection achievement;
- c) confers on the produced and sold seeds and pedigree material the name so similar to the name of the registered selection achievement that they could be confused;
- d) makes unreliable records in the State Register of a Protected Selection Achievement and in the accounting documents or gives instructions on their entry;
- e) forges documents or issues false documents for the implementation of the provisions of this Law or gives instructions on forging or making such documents;
- f) presents the documents containing inauthentic information about selection achievements;
- g) sells seeds and pedigree material without certificates.

2. A person performing actions considered by point 1 of this Article shall bear responsibility in keeping with the current legislation of Georgia.

Article 31  
Dispute Settlement

Disputes over implementation of this Law shall be examined in court.

**CHAPTER VIII**

**INTERNATIONAL COOPERATION**

Article 32  
The Right to File an Application in Another Country

A patent holder or his representative shall be authorized to file an application for the legal protection of a selection achievement to the competent bodies of another State.

Article 33  
The Rights of Foreign Nationals and Legal Entities

Foreign nationals and legal entities shall enjoy the rights provided for by this Law on a par with the citizens and legal entities of Georgia.

Article 34  
The Operation of International Agreements

If an international agreement to which Georgia is a party has established rules other than those contained in the present Law, the rules of the international agreement shall be applicable.

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