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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

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Geneva, April 6, 2001

EXAMINATION OF THE CONFORMITY OF THE LAW OF YUGOSLAVIA WITH THE
1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

Introduction

1. By letter dated February 16, 2001, which is reproduced in Annex I to this document, Mr. Saša Vitošević, Federal Minister for Agriculture of Yugoslavia, indicated that Yugoslavia intends to accede to the Union and requested the advice of the Council of UPOV on the conformity with the 1991 Act of the UPOV Convention of the Law on Protecting Agricultural and Forest Plant Cultivars (hereinafter referred to as "the Law") which was adopted by the National Parliament, on June 30, 2000, in Belgrade. Annex II to this document contains a translation of the Law into English, as submitted by the Yugoslav authorities. The Law is analyzed below for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as "the Convention").

2. Yugoslavia 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 Yugoslavia

3. The protection of new plant varieties will be governed in Yugoslavia by the Law and its implementing regulations. An analysis of the Law follows in the order of the substantive law provisions of the Convention.

Article 1 of the Convention: Definitions

4. Article 2 of the Law contains a definition of “cultivar” which is similar to the wording in Article 1(vi) of the Convention. It should be clarified, however, that it is not the description of the properties of the given genotype or combination of genotypes that matters, but the expression of the characteristics resulting from them and that a cultivar, in order to comply with this definition, does not necessarily have to meet the conditions for protection. The definition of “breeder” is very similar to the wording in Article 1(iv) of the Convention. The definition of “priority day” should be brought in line with the requirement of Article 11 of the Convention and Article 7 of the Law which state that the period of priority shall be computed from the date of filing of the first application.

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

5. As set out in its Article 1, the Law regulates the protection of varieties of plants by granting the right, specified by the legislation of Yugoslavia. The Law thus complies with Article 2 of the Convention. It should be noted, however, that the 1991 Act of the Convention requires a new Contracting Party to offer protection to varieties of all plant genera and species at the latest ten years after it has become bound by the Convention. It is therefore suggested not to restrict the scope of the Law to agricultural and forest plants, but to specify the scope in the implementing regulation.

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

6. The Law does not specify the genera or species to which it is applied. When depositing its instrument of accession, Yugoslavia must provide a list of at least 15 genera or species to which the Convention must apply at the date on which it becomes bound by the Convention.

Article 4 of the Convention: National Treatment

7. Article 3 of the Law provides that foreign nationals and legal entities shall enjoy the same rights provided for by the Law as the citizens and legal entities of Yugoslavia. The Law is thus in conformity with Article 4 of the Convention.

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

8. The conditions for protection are set out in Articles 8, 9, 11, 12 and 13 of the Law in language containing elements of Articles 5 to 9 of the Convention and the UPOV Model Law except for the definition of novelty, which needs to provide that also the selling or disposal of

harvested material of the variety may be problematic. In the definition of stability, the case of a particular cycle of propagation is not mentioned and it is necessary to clarify that the characteristics have to remain unchanged after *repeated* propagation. It should be noted also that the Law uses here the wording “perennial plant species” which, in some cases, is not the same as “trees or vines.” Instead of the terms “well-known” or “widely known” used in the second sentence and in the third sentence of Article 11, it is suggested to apply the expression “matter of common knowledge” in order to stay in line with Article 7 of the Convention and the first sentence of Article 11 of the Law. It is important to clarify that Article 11 only provides an inclusive list of examples of cases of varieties of common knowledge.

Article 10 of the Convention: Filing of Applications

9. Article 3 of the Law provides that a breeder of a new variety or legal entity shall be authorized to file an application for the legal protection of a plant variety which satisfies the requirements of Article 10 of the Convention.

Article 11 of the Convention: Right of Priority

10. Article 7 of the Law permits a claim for priority based upon an earlier application, but the period of time during which the breeder can enjoy the right of priority is not specified. As required by Article 11(1) of the Convention, this period should be 12 months from the date of the earlier application. The Law requires the applicant to file proof of the earlier application, but the period of time limited to file such a document is specified as 30 days whereas Article 11(2) of the Convention gives a period of not less than three months for this purpose.

Article 12 of the Convention: Examination of the Application

11. Article 18 of the Law contains provisions relating to the examination of candidate varieties and conforms with Article 12 of the Convention.

Article 13 of the Convention: Provisional Protection

12. Article 31 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 Convention.

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

13. Article 28 of the Law does not contain the substance of Article 14 of the Convention which is the right to prevent others from carrying out the acts mentioned under Article 14 (1)(a) of the Convention. The appropriate rewording is necessary. In the list of acts which would require the authorization of the breeder (after suggested rewording) “stocking ...” is missing. Article 14(1)(b) of the Convention, which states that a breeder may make his authorization subject to conditions and limitations, is not provided for in the Law. Nor has the Law any provision in respect of the harvested material as required by Article 14(2) of the Convention. The first paragraph of Article 27 would no longer be needed after the rewording of Article 28 of the Law.

14. Article 28 of the Law also extends the right of the breeder to the varieties specified in Article 14(5) (i), (ii), and (iii) of the Convention. Taking into consideration some difficulties which may have been encountered in the translation from Serbian into English, the wording of Article 10 of the Law can be taken as similar to the definition of essentially derived variety, as it is in Article 14(5)(b) of the Convention.

Article 15 of the Convention: Exceptions to the Breeder's Right

15. Article 29 of the Law sets out compulsory exceptions to the breeder's right in terms of Article 15(1) of the Convention. It is, however, important to provide for the right to carry out the acts mentioned under Article 14(1) of the Convention in respect of varieties bred by using a protected variety as far as it is not an essentially derived variety.

Article 16 of the Convention: Exhaustion of the Breeder's Right

16. It is not clear whether Article 30 of the Law contains the substance of Article 16 of the Convention. It is suggested to reword it in line with the Convention and to clarify that it concerns any material, not only propagating material.

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

17. Article 37 of the Law contains provisions concerning the grant of compulsory licenses by the authorities. The requirements for the grant of compulsory licenses seem to be very general and it is suggested to restrict them to cases of public interest. It could be recommended to transfer the very detailed provisions in the last part of Article 37 to the implementing regulations.

18. Article 37 of the Law further provides that when granting a compulsory license the authorities shall fix the amounts to be paid by the compulsory licensee to the patent holder. It specifies that the amount so fixed must constitute equitable remuneration as required by Article 17(2) of the Convention.

Article 18 of the Convention: Measures Regulating Commerce

19. The Law contains no provisions which conflict with Article 18 of the Convention, but one general comment should be added. Article 22 imposes conditions on the marketing of varieties. Protection of varieties should be independent of market regulations. Furthermore, experience shows that there may be cases in which breeders, for various reasons, may not consider protection necessary for their varieties, or, for example, where the period of protection for old varieties has expired and they can still be marketed. The requirements might hamper commercialization unnecessarily.

Article 19 of the Convention: Duration of the Breeder's Right

20. Article 32 of the Law provides that protection last for 25 years in the case of “perennial crops” and 20 years for all other varieties. These periods of protection are the same as required by the Convention with the same remark concerning “perennial crops” as mentioned in paragraph 8. Furthermore it should be clarified that the period starts with the date of the grant of protection.

Article 20 of the Convention: Variety Denomination

21. Articles 14 to 17 of the Law contain provisions concerning variety denomination which satisfy the requirements of Article 20 of the Convention. A reference to denominations falling under prior rights of third persons should be included in the Law.

Article 21 of the Convention: Nullity of the Breeder's Right and
Article 22 of the Convention: Cancellation of the Breeder's Right

22. Articles 34 and 38 to 40 of the Law should be reorganized in such a way that one Article would contain provisions for nullity and another for cancellation. The provisions do not at present reproduce the substance of Articles 21 and 22 of the Convention or effectively distinguish between annulment and cancellation. The reference to Article 18(2) in Article 40 of the Law should be checked.

Article 30 of the Convention: Implementation of the Convention

23. Article 30(1)(i) of the Convention requires adhering States to provide for appropriate legal remedies for the effective enforcement of breeders' rights. Articles 43 to 45 of the Law oblige the State to protect the right of the owner and specify the procedures to be performed. Articles 46 to 48 of the Law provide that a person and legal entities performing actions considered illegal shall bear responsibility in keeping with the current legislation of Yugoslavia. The Law thus conforms with Article 30(1)(i).

24. Article 30(1)(ii) of the Convention requires adhering States to “maintain an authority entrusted with the task of granting breeders' rights ...”. Articles 2 and 4 of the Law appoint the Federal Agency, specified by the legislation of Yugoslavia as the competent authority in the sphere of legal protection of plant breeder's rights in Yugoslavia. The Law thus conforms with Article 30(1)(ii) of the Convention.

25. Article 30(1)(iii) of the Convention requires adhering States to publish information concerning applications and grants of breeders' rights and proposed and approved denominations. Article 21 of the Law empowers the Federal Agency to publish official information on the granting of the breeder's right in the Official Register. These provisions satisfy the requirements of Article 30(1)(iii) of the Convention.

General Conclusion

26. The Law, in its main provisions, incorporates much of the substance of the Convention. However, it requires extensive redrafting and reorganizing.

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

(a) to advise the Government of Yugoslavia that the Law does not incorporate some important provisions of the Convention;

(b) to request the Office of the Union to offer its assistance to the Government of Yugoslavia in drafting the necessary amendments to the Law, and the preparation of a more satisfactory translation into one or more of the official languages of UPOV;

(c) to further advise the Government of Yugoslavia that, upon the adoption of the necessary amendments to the satisfaction of the Office of the Union and the making of implementing regulations, it may deposit an instrument of accession to the Convention.

28. The Council is invited to take note of the information given above and to take decisions on the basis of the proposal set out in the preceding paragraph.

[Annex I follows]

ANNEX I



FEDERAL REPUBLIC OF YUGOSLAVIA
FEDERAL GOVERNMENT
FEDERAL MINISTRY OF AGRICULTURE

February, 16th 2001

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

Sir,

I have the honor to inform you that on June 30th 2000 the Parliament of the Federal Republic of Yugoslavia adopted the Law on protecting agricultural and forest plant cultivars.

The Federal Republic of Yugoslavia 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).

Pursuant to the provisions of Article 34 (3) of the 1991 act, I would highly appreciate it if the UPOV Council could examine the conformity of the Law of the Federal Republic of Yugoslavia with provisions of the 1991 Act.

Accept, Sir, the assurances of my highest consideration.

Enclosure [Official translation of the law into English]

for
Mr. Saša Vitošević
Federal Minister of Agriculture
Sa. Vitošević

[Annex II follows]

ANNEX II

LAW OF YUGOSLAVIA

I. BASIC PROVISIONS

Article 1

This law regulates the procedure for protecting domestic and foreign agricultural and forest plants (hereinafter: cultivars) and the plant breeder's rights.

Article 2

The meaning of the terms used in this law:

- 1) 'Cultivar' – a plant grouping within a single botanical taxon of the lowest known rank, which is defined by the description of the properties of given genotype or combination of genotypes and is distinguished from any other plant grouping by the expression of at least one of the characteristics and represents a unit with regard to its suitability for being propagated unchanged.
- 2) 'Initial cultivar' – one from which new cultivar is derived.
- 3) 'Protected cultivar' – cultivar protected by the provisions of this law.
- 4) 'Breeder' – a legal person, an entrepreneur or a physical person who bred, or discovered and developed a cultivar.
- 5) 'Priority day' – a date of first public announcement of a cultivar.
- 6) 'Federal Office in charge' – a federal organ which is engaged in agricultural issues.
- 7) 'Federal Agency' – a federal agency in charge of issues concerning protecting cultivars of agricultural and forest plants.

II. THE PROCEDURE OF CULTIVAR PROTECTION

Application for Cultivar Protection

Article 3

The procedure for protecting domestic cultivars is started on the basis of filing an application by a breeder, and for foreign cultivar – when a breeder of the foreign cultivar or his authorized representative in Federal Republic in Yugoslavia file an application (hereinafter: application).

Article 4

The application from Article 3 is submitted to the Federal Agency in charge.

The form and the contents of the application form from item 1 of this Article are regulated by the Federal Office.

On receiving the application, the Federal Agency assesses whether the application has been properly filled, i.e. whether it meets the conditions stated in Article 3 of this law.

If not correct, the Federal Agency shall, stating the reasons, call the submitter to eliminate the assessed defects within 30 days from the announcement.

If the submitter does not act accordingly within the time prescribed, the application will be turned down.

Article 5

The duly made application is entered in the Register of Applications for the Protection of New Cultivars (hereinafter: Register of Applications).

The content of this Register is regulated by the Federal Office.

Article 6

Documentation on developing a new cultivar and the samples of the propagating material of the cultivar for the purpose of evaluation and preservation, i.e. a certificate that mother trees of perennial species of plants of that cultivar are grown, stating the locality and the data on mother trees, are also enclosed with the application.

Right of Priority

Article 7

If two or more breeders have, independently, bred, discovered or developed a new cultivar, the right of priority shall enjoy the breeder who was the first to file an application for cultivar protection.

The priority is in effect from the date of filing an application to the Federal Agency, if the applicant has not called on the day of priority.

In order to claim the right of priority on the basis of the day of priority, the applicant has to submit a proof of the day of priority to the Federal Agency within 30 days of filing an application.

If the Federal Agency accepts the proof of the day of priority, the application is considered as submitted on the day of priority.

If an earlier filed application is rejected or withdrawn, the Federal Agency shall start the procedure for protecting the cultivar on the basis of later submitted application.

Conditions for the Cultivar Protection

Article 8

A cultivar can be protected according to the provisions of this law if it is new, distinct, uniform, stable and meets the requirements for denomination as a protected cultivar.

Article 9

A cultivar is considered to be a new one if on the day of filing the application or on the day of priority the propagating material of that cultivar has not been sold or disposed of to others in some other way with the consent of the breeder, legal successor or the heir of the breeder's right, for purposes of exploitation of the cultivar on the territory of the Federal Republic of Yugoslavia for a period longer than a year, or on a foreign territory – for longer than four years, and, in the case of perennial plant species – for longer than six years.

The cultivar from item 1 of this Article is also considered to be new if it has been marketed for commercial use as follows:

- 1) by a contract on the transfer of a breeder's right;
- 2) by a contract which allows the propagation of the propagating material of the cultivar in the name of the breeder, legal successor or the heir of the breeder's right, provided that the multiplied material is returned to the breeder, legal successor or to the heir of the breeder's right, and that the multiplied propagating material is not used for the production of another cultivar;
- 3) by a contract that allows investigations in the experimental field and laboratories for cultivar evaluation;
- 4) if trading a cultivar means fulfilling a legal obligation, particularly as regards biological safety or cultivar registration according to the Law on Release and Denomination of Agricultural and Forest Plants.

Article 10

A new cultivar is considered to be derived from the initial cultivar in the following cases:

- 1) if it has been mainly derived from the initial cultivar – as long as it retains relevant characteristics deriving from the genotype or from the combination of genotypes of the initial cultivar;
- 2) if it is distinct from the initial cultivar and the initial cultivar was used in the procedure of breeding new cultivar;

3) if it resembles the initial cultivar in the expression of the major properties which are the result of the genotype or the combination of genotypes of the initial cultivar, except for the differences caused by the very fact of deriving.

Article 11

A cultivar shall be deemed to be distinct if it is clearly distinguishable from any other cultivar, whose existence is a matter of common knowledge at the time of filing an application or on the day of priority.

A cultivar is considered as being well known if its exploitation has been already under way, if the cultivar has been entered in an official register of cultivars or if the data on the cultivar have been published in scientific publications.

If the application for the protection of cultivar release has been filed in a foreign country, the cultivar shall be considered as widely known from the day of filing application, provided that the cultivar has been entered in the appropriate register according to the required procedure.

Evaluation of cultivar distinctness is done using the methods regulated by the Federal Office.

Article 12

A cultivar shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Evaluation of cultivar uniformity is done using the methods regulated by the Federal Office.

Article 13

The cultivar shall be deemed to be stable if its relevant characteristics remain unchanged after propagation.

Evaluation of cultivar stability is done using the methods regulated by the Federal Office.

Article 14

The applicant is obliged to propose the cultivar denomination in the application.

The applicant may temporarily postpone denomination. In that case, the applicant shall propose the denomination for the cultivar within 30 day of filing the application. If the applicant does not submit the proposal in due time, the application shall be rejected.

The interested legal person, an entrepreneur or a physical person can file an objection to the proposed denomination within 30 days following the entry in the Register of applications.

The Federal Agency shall notify the applicant about the objection according to item 3 of this Article that he should submit a reply within 30 days from receiving the objection.

The applicant can propose a new denomination on the basis of the objection.

If the denomination proposed does not comply with the provisions of Article 15 of this law, the Federal Agency shall order the applicant to submit a proposal for a new denomination within 30 days of being notified.

If the applicant within the time prescribed does not submit a proposal for a new denomination, the application shall be rejected.

The Federal Agency shall grant the denomination handing down the decision on cultivar protection.

Article 15

The denomination may be a word, a combination of words, a combination of words and numbers, meaningful or meaningless, provided that the designation given enables the cultivar to be identified.

If the denomination had already been used in the Federal Republic of Yugoslavia or in a foreign country, or proposed or registered in Yugoslavia or in a foreign country, then only that denomination may be used in the procedure of protecting cultivars before the Federal Agency, except if there exist reasons for rejection under Article 16 of this law. All synonyms will be entered in the Register of Applications and the Register of Protected Cultivars.

The identical or a similar denomination in the Federal Republic of Yugoslavia or in a foreign country may not be used for another variety of the same or of a related species. The denomination may not be used even after its usage if the stated denomination has a particular significance with regard to the cultivar.

The legal person, an entrepreneur or a physical person, who deals with marketing or advertising of the propagating material of the protected cultivar, is obliged to use the cultivar denomination.

The obligation concerning the denomination is valid even after expiring of cultivar protection, i.e. breeder's rights referred to in Article 31 of this law.

When a cultivar is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered denomination. If such an indication is so associated, the denomination must nevertheless be easily distinguishable.

Article 16

The Federal Agency shall reject the proposal for the denomination if it establishes that the proposed denomination is:

- 1) unsuitable for the cultivar identification;

- 2) composed exclusively of marks and indications which may serve for determination of cultivar, species, quality, quantity, desired aim, value of geographical origin or the production time;
- 3) composed in such a way that it might be mistaken or confused with regard to its properties, value or geographical origin of the cultivar;
- 4) identical or very similar to the denomination which has already marked the cultivar of the same or related species.

The Federal Agency shall determine the related species.

Article 17

The Federal Agency shall cancel the denomination upon breeder's request or on the basis of the decision prohibiting denomination issued by the Court.

The Federal Agency shall notify the breeder that the denomination has been cancelled on the basis of the Court decision and ask him to propose a new denomination within 30 days.

Article 18

The cultivar is evaluated in the experimental field or laboratory in order to assess whether it fulfills the requirements for the protection.

For the above mentioned evaluation, the applicant is obliged to submit the necessary quantity of the cultivar propagating material to the Federal Agency. If the applicant does not submit the adequate quantity of the propagating material, the application will be rejected.

Article 19

The cultivar is evaluated in the experimental field or laboratory by the legal person, who satisfies the requirements for the mentioned research in terms of specialization, equipment and facilities (hereinafter: trial contractor).

The requirements concerning the specialization, equipment and facilities which the contractor has to fulfill, are determined by the Federal Agency.

The Federal Agency checks the conditions from item 1 of this Article and issues a decision whether the conditions have been met.

The list of the trial contractors is published in 'Slu`beni list SRJ' (*Yugoslav Official Register*).

Article 20

The Federal Agency signs the contract with the trial contractor.

The Federal Agency processes the trial results obtained in the experimental field or laboratory.

The results from item 2 of this Article are processed according to the methods regulated by the Federal Office.

On the basis of the examination results, the Federal Agency estimates whether the conditions for plant protection have been met for granting the breeder's right to the applicant.

Article 21

The Federal Agency issues a decision on plant protection or rejects the application for it.

The cultivar which was approved is entered in the Register by the Federal Agency.

The contents of the Register on cultivars protected is regulated by the Federal Agency.

The list of the cultivars protected with the data on denomination, the breeder, holder of the right and their seat, i.e. residence, is announced in 'Slu`beni glasnik SRJ' (*Yugoslav Official Register*) within 30 days from the decision issue.

Article 22

The propagating material of the protected cultivars of agricultural and forest plants may be marketed if the Federal Agency has issued a decision on plant protection.

The propagating material of the protected cultivars which are imported must be followed by the appropriate papers issued by the Federal Office of the exporting countries, which has inspected trueness-to-name and quality in the production of the propagating material.

Article 23

A legal person, an entrepreneur or a physical person may have an insight into:

- 1) the applications for cultivar protection;
- 2) the documentation on cultivar evaluation and protection procedure;
- 3) the documentation on protected cultivars, i.e. on breeder's rights.

If a cultivar production requires repeated use of another cultivar (components), the applicant may demand that the documents and the trial results of the components be an official secret.

Objections

Article 24

Effective from the day of the entry of the application in the Register of applications, i.e. the entry of the cultivar in the Register of the protected cultivars, a legal person, an

entrepreneur or a physical person interested may submit to the Federal Agency an objection to the entry within 30 days.

The objection must be submitted in written form with the appropriate evidence.

Article 25

The objection to the entry in the Register of the applications must be based on the statement that the applicant does not hold the right of the breeder or he does not have the right of priority.

The Federal Agency will forward the objection from item 1 of this Article to the applicant informing him to send the reply to the objection in which he should state whether he intends to retain, alter or withdraw his application within 30 days from the day of the objection receipt.

If the applicant does not reply within the time prescribed, the objection will be considered withdrawn. If the applicant replies and demands the objection to be re-evaluated, with alterations or without them, i.e. without additions, his reply will be submitted to the submitter of the objection who is obliged to reply within 30 days.

The decision concerning the objection from item 1 of this Article is finally under the administrative procedure.

Article 26

The objection to the entry in the Register of the protected cultivars must be based on the statement that the cultivar is not new, distinct, uniform or stable.

The Federal Agency may order an additional testing of the cultivar to assess the statements in the objection.

At the request of the Federal Agency, the objection submitter must within 30 days submit additional information and documents on which his objection is based or the propagating material needed for evaluation.

If the objection submitter does not meet the conditions from item 3 of this Article, the objection will be rejected.

The decision concerning the objection from item 1 of this Article is finally under the administrative procedure.

III. RIGHTS AND OBLIGATIONS OF THE HOLDER OF THE PLANT BREEDER'S RIGHT

The Rights of the Holder of the Plant Breeder's Right

Article 27

The rights of the breeder are as follows: property rights (the right of the holder of the right to use the protected cultivar and dispose of it, as well as to enjoy other commercial benefits of the protected cultivar) and moral rights (that the denomination, i.e. the name of the breeder be stated in the application, files, registers, documentation and publications).

The breeder's right to the protected cultivar will be acknowledged to the breeder, his legal successor or the heir of his right by issuing a decision on cultivar protection (hereinafter: the holder of the right).

If two or more breeders jointly bred, discovered or developed a cultivar, they hold the same protection right. If the breeders reached some other agreement, their rights will be stated by the contract.

Article 28

Effective from the day of the cultivar entry in the Register of the protected cultivars, the holder of the right is entitled to:

- 1) production or propagation (multiplication) of the protected cultivar;
- 2) assessment of the conditions for propagating the protected cultivar;
- 3) inclusion in traffic of the protected cultivar;
- 4) marketing of the protected cultivar;
- 5) exporting and importing of the protected cultivar;
- 6) using the denomination of the protected cultivar.

The holder of the right may also have the right to:

- 1) the cultivar which derives from a protected cultivar which has not been originally derived cultivar;
- 2) the cultivar which cannot be clearly distinguished from the protected cultivar;
- 3) the cultivar the production of which requires repeated use of the protected cultivar.

Article 29

The breeder's right does not include the right for the protection of the procedures:

- 1) which are undertaken privately or for the purposes which are not commercial;
- 2) which are taken for experimental purposes;
- 3) which are carried out for breeding other cultivars.

Article 30

The breeder's right does not refer to the rights from Article 28 of this law concerning the propagating material of the cultivar included in traffic by the holder of the right or with his approval on the territory of the Federal Republic of Yugoslavia for further propagation of the cultivar which is in the procedure of the evaluation or for the export of propagating material of the cultivar into a country which has no protection of the cultivars of a plant, genus or species to which this cultivar belongs.

Article 31

During the period from submitting an application for cultivar protection until assessing breeder's right, the holder of the right is entitled to an appropriate remuneration paid by a legal person, an entrepreneur or a physical person who exploited the cultivar over the period mentioned.

Article 32

The right of the breeder to the cultivar protected lasts 20 years, and for perennial crops – 25 years.

Obligations of the Holder of the Breeder's Right

Article 33

The holder of the right is obliged to maintain the cultivar protected or its hereditary components unchanged as long as the cultivar protection is valid.

Article 34

The Federal Agency shall estimate whether the cultivar protected or its hereditary components are maintained unchanged during the protection period.

If the Federal Agency finds out that the holder of the right has failed to maintain the cultivar, it will issue a decision on canceling the breeder's right.

Article 35

At the request of the Federal Agency, the holder shall provide an appropriate sample of propagating material or its hereditary components for assessing or renewing the samples or comparative trials of other cultivars for the purpose of the protection.

At the request of the Federal Agency, the holder of the right shall maintain or keep the official sample.

Licenses

Article 36

The holder of the right from Article 28 of this law may contract to transfer his rights wholly or partially to a legal person, an entrepreneur or a physical person (hereinafter: license).

The license is transferred by the contract which must be in written form and contain scope of the rights, the term of the license, remuneration, as well as state other rights from the contract.

The holder of the right is under obligation to submit the license contract to the Federal Agency for entry into the Register of the protected cultivars.

Article 37

The request for refusal of the compulsory license is submitted to the Federal Agency.

If the exploitation of the protected cultivar is beneficial to agriculture, health service, defense of the country, protection and improvement of the environment, or is of special interest to a particular branch of economy, the Federal Agency will issue a decision granting the compulsory license.

The compulsory license will be granted under the following conditions:

- 1) if the applicant is qualified to use the breeder's right in an expert and efficient way;
- 2) if the holder of the right refuses to grant the license or grants it under unacceptable conditions;
- 3) if three years have elapsed since the day of establishing the breeder's right.

The Federal Agency shall grant the compulsory license with the entitlement to all or particular rights stated in Article 28 of this law.

The Federal Agency shall fix an adequate payment for the compulsory license which will be paid to the holder of the right by a legal person, entrepreneur or a physical person who were granted the license.

The holder of the right is obliged, at the request of the Federal Agency, to deliver the amount of the propagating material necessary for utilization of the compulsory license to the legal person, entrepreneur or physical person to whom the compulsory license has been granted, with the adequate payment to the holder of the right.

The compulsory license is issued for the two-to-four year period. Exceptionally, the compulsory license can be granted for a period shorter than two or longer than four years. The compulsory license can be extended if the Federal Agency finds out that there exist reasons for which the compulsory license was granted after its expiry.

The Federal Agency shall cancel the compulsory license if a legal person, an entrepreneur or a physical person to whom the license was granted does not fulfil the conditions under which it had been granted.

IV. TERMINATION OF THE BREEDER'S RIGHT

Article 38

Breeder's right is terminated before the expiry of the term stated in Article 32 of this law in the following cases:

- 1) if the holder of the right states in written form to the Federal Agency that he wants to terminate the breeder's right, in effect from the day mentioned in the statement, i.e. from the day of the receipt of the statement;
- 2) if the annual costs of cultivar protection were not paid on the day when the costs were due.

Article 39

The Federal Agency can nullify the decision on the cultivar protection throughout the duration of the protection, by official duty or at the proposal of the interested legal person, entrepreneur or physical person if it assesses that the cultivar is not new or distinct, uniform or stable or that the breeder's right was given to the legal person, entrepreneur or physical person to whom they are not entitled, and the person who holds the breeder's right has not started the procedure for cultivar protection, or waived the right for cultivar protection.

On the basis of declaring the decision null, the Federal Agency shall annul the cultivar from the Register of the protected cultivars.

Article 40

The Federal Agency will cancel the decision on cultivar protection and enter the data into the Register of the protected cultivars if:

- 1) it assesses that the holder of the breeder's right does not maintain the cultivar protected or its hereditary components during the period of cultivar protection;
- 2) the holder of the breeder's rights does not propose the change of the denomination within the term prescribed according to Article 18, item 2 of this law.

If the breeder's right has been reconfirmed after cancellation, the request submitter cannot ask for the fulfillment of his rights from the legal person, entrepreneur or physical person who did not misuse the cultivar protected from cancellation of the right and its reconfirming.

V. COSTS

Article 41

The costs of cultivar trials in the field and laboratory, and annual costs for cultivar protection bears the applicant, i.e., the holder of the right.

The costs from item 1 of this Article are fixed by Federal Government.

VI. CONTROL

Article 42

The control over the provisions of this law and its articles shall be performed by the Federal Office through its inspector.

The inspector from item 1 of this article must hold a degree in field crops, vegetable or fruit growing, viticulture, horticulture or forestry.

Article 43

While controlling the law, the inspector shall be in charge of:

- 1) inspecting cultivar distinctness, stability and uniformity in the experimental field or laboratory with the contractor;
- 2) inspecting whether the contractor meets the requirements necessary for cultivar evaluation in the experimental field or laboratory;
- 3) inspecting the production and traffic of the propagating material which is protected according to the provisions of this law;
- 4) inspecting the import and export of the propagating material;
- 5) monitoring the application of license rights;
- 6) inspecting the usage of the denomination;
- 7) sampling the propagating material without remuneration for assessing the fulfillment of the requirements prescribed by this law;
- 8) checking business files and documents of legal persons, entrepreneurs and physical persons concerning this law;
- 9) collecting data and information from responsible and other persons and interrogating the witnesses and court experts when necessary for successful job performance.

Article 44

While controlling the law, the inspector shall be in charge of:

- 1) forbidding the traffic, import and export of the propagating material if he assesses that that this material does not meet the conditions mentioned in this law;
- 2) forbidding the contractor to test the cultivars in the field or laboratory if the latter does not eliminate the defects as regards the conditions prescribed by this law and by the regulation passed for the purpose of this law;
- 3) filing actions for infringements done on a criminal or commercial basis and starting the legal procedure due to violation of the provisions of this law;
- 4) ordering taking other measures based on the authorization derived from this law.

Measures from item 1 of this law are regulated by the decision of the Inspector.

This decision can be appealed to the Federal Office.

The objection should be submitted within 8 days from the delivery date and cannot prevent its execution.

The decision of the Federal Office is finally under the administrative procedure.

Article 45

The Federal inspectors must have an official card, uniform and the badge of the Federal inspector.

The form of the card, the uniform and the shape of the badge from item 1 of this law are regulated by the Federal Office.

VII. PENAL PROVISIONS

Article 46

A fine of 150.000 to 450.000 of new dinars shall be imposed on a legal person or an entrepreneur who were entered into the court Register for commercial offense:

- 1) if he uses the denomination without the approval of the Federal Agency (Article 14; item 8);
- 2) if he uses the denomination for cultivar protected, which is identical or very similar to the name of the protected cultivar of the same or related species, as well as after termination of the usage of cultivar protected if denomination of the cultivar protected has a particular significance with regard to that cultivar (Article 15; item 3);
- 3) if he includes into traffic the propagating material which has not been granted the decision on cultivar protection (Article 22; item 1);

4) if he imports the propagating material which is not followed by the appropriate documentation issued by the Federal Office of the exporting country which controlled the production of the propagating material (Article 22; item 2);

5) if he does not maintain the cultivar protected or its hereditary components throughout the period of cultivar protection (Article 33).

Actions from item 1 of this Article shall be fined for commercial offense and the fine of 3,000 to 30,000 of new dinars shall be imposed on the person responsible for the legal person.

Article 47

A fine of 15,000 to 150,000 new dinars shall be imposed on the legal person or entrepreneur for an offense committed:

1) if at the request of the Federal Agency, he does not deliver the adequate sample of the propagating material or hereditary components of the protected cultivar for the purpose of renewing cultivar samples or conducting comparative trials or other cultivars for protection; or if he does not maintain or keep the official sample for the needs of the Federal Agency (Article 34);

2) if he does not submit to the Federal Agency the contract on the license for the entry in the Register of the protected cultivars (Article 36; item 3);

3) if at the request of the Federal Agency, he does not deliver the appropriate propagating material necessary for the usage of the compulsory license (Article 37; item 5).

Actions from item 1 of this Article shall be fined for an offense and the fine of 900 to 9,000 of new dinars shall be imposed on the person responsible for the legal person.

Article 48

If the action from Article 46, item 1, provision 1 and 3 and 4, and Article 47, item 1 of this law is committed by a physical person, a fine of 900 to 9,000 dinars shall be imposed on him.

VIII. TRANSITIONAL AND FINAL PROVISIONS

Article 49

Regulations for the execution of this law shall be brought within 6 months from the date on which this law comes into force.

Article 50

On the date when this law comes into force, the Law on Approval of New Cultivars, Permission to Introduce into Production Foreign Cultivars and the Protection of the Cultivars of Agricultural and Forest Plants ceases to be valid (Yugoslav Official Register, No 38/80 and 82/90).

Article 51

The cultivars which are protected according to the provisions of the Law on Approval of New Cultivars, Permission to Introduce into Production Foreign Cultivars and the Protection of the Cultivars of Agricultural and Forest Plants must be tested in the experimental field and laboratory within a year from the date on which this law comes into force in order to assess whether the mentioned cultivar is distinct, uniform and stable.

Article 52

The cultivars for which the applications for the cultivar protection were filed till the date on which this law comes into force, and for which the procedure has not been completed, will be protected according to the provisions of this law.

Article 53

This law comes into force on the 8th day following its publication in the Yugoslav Official Register.

[End of Annex II and of document]