



C(Extr.)/21/2

ORIGINAL: English

DATE: January 26, 2004

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Twenty-First Extraordinary Session
Geneva, April 2, 2004

EXAMINATION OF THE CONFORMITY OF THE LAW OF THE
REPUBLIC OF ARMENIA ON THE PROTECTION OF SELECTION ACHIEVEMENTS
WITH THE 1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

Introduction

1. By Note dated October 15, 2003, addressed to the Office of the Union, the Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organizations in Geneva, requested the examination of the "Law of the Republic of Armenia on the Protection of Selection Achievements" (hereinafter referred to as the "Law"), which was adopted on November 23, 1999, for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act"). The Note is reproduced in Annex I to this document. Annex II contains a translation of the Law in English provided by the Government of the Republic of Armenia (hereinafter referred to as "Armenia").

2. Armenia did not sign the 1991 Act. In conformity with Article 34(2) of the 1991 Act, it therefore has to deposit an instrument of accession in order to become a Contracting Party on the basis of the 1991 Act. Under Article 34(3) of the 1991 Act, an instrument of accession 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 1991 Act and if the decision of the Council embodying the advice is positive.

Basis for the Protection of New Plant Varieties in Armenia

3. The protection of new plant varieties in Armenia is governed by the Law. An analysis of the Law follows in the order of the substantive provisions of the 1991 Act.

4. Article 2 of the Law entitled “Legislation on the Protection of Selection Achievements” provides that “The legal relations in the field of protection and exploitation or use of selection achievements shall be regulated by this Law, Civil Code of the Republic of Armenia (RA) and other legislative instruments of the RA. Where the international treaties of the RA contain provisions that differ from those set out in this Law, the provisions of such international treaty shall apply.” Article 2 of the Law reflects the general legal principle which provides that in case of conflict between a treaty and the Law, the treaty prevails (general principle in Article 2 of the Law). This general principle in Article 2 of the Law will remedy any lacunae or minor departures from the substance of the 1991 Act identified in this document.

Article 1 of the 1991 Act: Definitions

5. Definitions are included in Article 3 of the Law. Article 3h) (author) and i) (breeder) of the Law incorporates essential elements of the definition of breeder of Article 1(iv) of the 1991 Act. In order to reflect treaty language, it is recommended to incorporate the definition of “breeder” as provided in Article 1(iv) of the 1991 Act.

6. Article 3a) of the Law reproduces most of the substance of the definition of “variety” contained in Article 1(vi) of the 1991 Act. It is recommended to incorporate “which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met” after the words “lowest known rank.” In order to avoid confusion with the scope of the breeder’s right as defined in Articles 14 and 15 of the 1991 Act (see paragraphs 24 to 28 of this document), it is proposed to delete the sentence: “The protected categories of the variety shall be the clone, the first generation hybrid, the population, the line.”

7. The definition of “common known variety” in Article 3f) of the Law is incomplete; it is proposed to delete this definition and to incorporate the notion of common knowledge provided in Article 7 of the 1991 Act in Article 5 of the Law dealing with the condition of distinctness.

8. There is lack of consistency between the use in the Law of the term “selection achievement” and the term “variety” (for example in Article 5 of the Law in relation to the conditions of novelty, homogeneity and stability and also in Article 13 of the Law). It is recommended to delete the definition of “selection achievement” in Article 3b) of the Law as it is source of confusion. The definition of “protected selection achievement” in Article 3e) of the Law already clarifies that a selection achievement consists in a plant variety protected under this Law.

9. It is recommended to use the term “propagating material” instead of “seed material” in Article 3c) of the Law and “harvested material” instead of “plant material” in Article 3d) of the Law in order to reflect treaty language used in the 1991 Act.

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

10. The Law provides for the grant of a patent for a selection achievement in conformity with Article 2 of the 1991 Act.

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

11. The Law does not contain provisions concerning the list of genera and species protected in Armenia. According to Article 3(2)(i) of the 1991 Act “Each Contracting Party which is not bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention, (i) at the date on which it becomes bound by this Convention, to at least 15 plant genera or species [...]”

12. At the time of depositing its instrument of accession to the 1991 Act, Armenia is obliged to notify the list of genera and species which are protected in Armenia in conformity with Article 3(2)(i) of the 1991 Act.

Article 4 of the 1991 Act: National Treatment

13. Armenia has provided for the national treatment principle in Article 21 of the Law. It should be clarified that not only nationals but also “residents” of UPOV members should benefit of the same treatment as accorded to nationals of Armenia.

Articles 5 to 9 of the 1991 Act: Conditions for the Grant of the Breeder’s Right

14. The conditions for the grant of the breeder’s right are provided in Article 5 of the Law, which incorporates most of the substantive provisions of Articles 5 to 9 of the 1991 Act. In order to fully incorporate the terminology and provisions of Articles 5 to 9 of the 1991 Act the modifications hereafter are recommended.

15. In relation to the novelty condition, it is recommended to insert in Article 5(1) of the Law the words underlined:

“A plant variety shall be deemed to be new if, at the date of filing of the application for the grant of a patent, propagating material or harvested material of the given variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety [...]”

16. If the intention of Article 22 of the Law was to introduce a transitional novelty regime for varieties of recent creation as provided by Article 6(2) of the 1991 Act, it is recommended to include in the Law or in implementing regulations the time limit to be given to the applicant to claim the benefits of the transitional regime of Article 6(2) of the 1991 Act and the criteria by which a variety will be considered to be of recent creation and the duration of the patent in those cases.

17. As regards the condition of distinctness, it is recommended to add the following sentence at the end of Article 5(2) of the Law:

[...] “In particular, the filing, in any country, of an application for a breeder’s right or for entry in a catalogue of varieties admitted to trade shall be deemed to render the variety being the subject of the application a matter of common knowledge from the date of the application, provided that the application leads to the grant of the breeder’s right or the entry in the catalogue, as the case may be.”

Article 10 of the 1991 Act: Filing of Applications

18. The Law contains provisions on the filing of applications in Article 6 in conformity with Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

19. The Law does not contain the provisions of Article 11 of the 1991 Act on the right of priority except by the following reference in Article 8 of the Law “The priority of the selection achievement shall be determined by the date of filing of the application to the Authorized Body.” It is recommended to include the provisions of Article 11 of the 1991 Act. In the meantime, this omission can be remedied by the general principle in Article 2 of the Law.

Article 12 of the 1991 Act: Examination of the Application

20. The examination of the application is foreseen in Articles 9, 10 and 11 of the Law in terms which enable Armenia to give effect to Article 12 of the 1991 Act. However, it should be added at the end of Article 11(1) that “The Authorized Body may require the applicant to furnish all the necessary information, documents or material for examination purposes.”

21. Article 9(2) of the Law refers to a period of three months for the preliminary examination of the application, while Article 9(4) of the Law provides for a period of 15 days to inform the applicant of corrections to be made to the application. The relationship of these two periods should be clarified bearing in mind the need to provide for realistic periods for the authorities and for reasonable periods for the applicants.

22. Article 10(2) of the Law refers to a period of three days for the authority to take a decision on the novelty condition in the absence of objections. It is recommended to revise this period.

Article 13 of the 1991 Act: Provisional Protection

23. Article 16 of the Law contains provisions on provisional protection corresponding to the minimum prescribed by Article 13 of the 1991 Act. However, it is proposed, in order to fully incorporate the provisions in Article 13 of the 1991 Act, to substitute Article 16(3) of the Law by:

“The patent owner shall be entitled to equitable remuneration from any person who, during the period of the provisional legal protection, has performed acts specified in Article 13 of this Law, which once the patent is granted required the authorization of the owner. The amount of the remuneration shall be determined by the consent of parties. Failing such a consent, the issue shall be resolved by the court.”

Articles 14 and 15 of the 1991 Act: The Rights of the Breeder

24. The substance of Articles 14 and 15 of the 1991 Act has been introduced in Articles 13 and 15 of the Law. However, it is proposed to substitute Article 13(1) of the Law by:

“1. Subject to the exceptions to the patent right in Article 15 and the exhaustion of the patent right [New Article to be included in the Law], the following acts in respect of the propagating material of the selection achievement require the authorization of the patent owner: [...]”

25. It is further proposed to substitute Article 13(2) of the Law by:

“2. The right of the patent owner, as provided in the above paragraph, shall also extend to harvested material which has been produced from the unauthorized use of the propagating material, unless the patent owner has had reasonable opportunity to exercise his right in relation of the said propagating material.”

26. In Article 13(3) of the Law, it is proposed to replace the term “seeds” by “propagating material.”

27. It is proposed to introduce in Article 13(4)(b) of the Law the words “for example by” before “the selection of an induced transformation.”

28. It is proposed to add the following clarification at the end of Article 15(1)c) in order to fully conform with Article 15(1)(iii) of the 1991 Act: “and, except where provisions of Article 13(3) and (4) apply, acts referred to in Article 13(1) and (2) of the Law in respect of such new varieties.”

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

29. It is recommended to introduce a new Article in the Law concerning the exhaustion of the breeder’s right in line with Article 16 of the 1991 Act. For the time being, this omission can be remedied by the general principle in Article 2 of the Law.

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

30. Article 17(6) to (8) of the Law provides for a compulsory license system for reasons of “interests of national security and public interests” which meet the requirements of Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

31. The Law does not seem to contain provisions in conflict with Article 18 of the 1991 Act.

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

32. According to Article 4(4) of the Law, the term of protection is 25 years for “grapevines and ornamental, fruit and forest trees, including rootstocks thereof” and 20 years for other species from the date of registration of the selection achievement in the State Register. This is in line with Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

33. The provisions on variety denominations appear in Article 7 of the Law. In order to fully incorporate the substance of Article 20 of the 1991 Act, it is recommended to add the following provisions:

“1. The selection achievement shall be designated by a denomination, which must enable the variety to be identified.

“2. It may not consist solely of figures unless this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any UPOV members, an existing variety of the same plant species or of a closely related species.

“[3. Remains unchanged]

“4. Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden, the Authorized Body shall require the breeder to submit another denomination.

“5. The selection achievement shall be used only with the denomination registered in the State Register. Any person who, within the territory of a UPOV member, offers for sale or markets propagating material of a selection achievement shall be obliged to use the denomination even after the expiration of the patent, except where prior rights prevent such use.

“6. Where a variety is already protected by a UPOV member or where an application for the protection of the same variety is filed in such UPOV member, only the variety denomination which has been proposed or registered in that other UPOV member may be proposed and registered, and the Authorized Body shall not register any other designation as a denomination for the variety unless the Authorized Body considers the denomination unsuitable in Armenia.

“7. The patent owner may not invoke his rights in the denomination (trademark, trade name or other right) against the legitimate use of his variety denomination in the offering for sale or marketing of the variety by another person, even after the expiration of the protection of the patent.

“8. The Authorized Body shall publish in the Official Gazette the variety denominations of selection achievements which have been proposed, or registered or cancelled and shall inform other members of UPOV on matters concerning variety denominations.”

34. For the time being, the aforementioned omissions in Article 7 of the Law can be remedied by the general principle in Article 2 of the Law.

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

35. The Law does not contain the grounds for nullity provided in Article 21(1)(i) and (ii) of the 1991 Act. It is recommended to incorporate them and to modify Article 18c) and to delete (cb) of the Law accordingly. For the time being, this departure from Article 21 of the 1991 Act can be remedied by the general principle in Article 2 of the Law.

36. It is also recommended to make a clear distinction in Article 18 of the Law between the reasons of nullity and the reasons for cancellation (referred to in the Law as “premature termination”). The effects of the nullity declaration is that the breeder’s right is deemed never to have been granted, whereas cancellation does not have any retroactive effect.

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

37. The Law does not contain the substance of Article 22(1)(a) and (b)(i) of the 1991 Act. It is recommended to incorporate in the Law the reasons for cancellation of Article 22(1)(a) and (b)(i) of the 1991 Act. For the time being, this departure from Article 22 of the 1991 Act can be remedied by the general principle in Article 2 of the Law.

Article 30 of the 1991 Act: Implementation of the Convention

38. Article 30(1)(i) of the 1991 Act requires that Contracting Parties should “provide for appropriate legal remedies for the effective enforcement of the breeders’ rights.” It is recommended to incorporate in the Law provisions concerning legal remedies available for patent owners or to include a reference on the legal texts relevant to this matter.

39. Article 30(1)(ii) of the 1991 Act requires that Contracting Parties should “maintain an authority entrusted with the task of granting breeders’ rights [...]” Article 3j) of the Law defines the “Authorized Body” as “the State Authorized Body who performs the granting of the patent for the selection achievement.” The Law conforms with Article 30(1)(ii) of the 1991 Act.

40. Article 30(1)(iii) of the 1991 Act requires that Contracting Parties should publish information concerning applications and grants of breeders’ rights and proposed and approved denominations. Article 19 of the Law entitled “Publication of the Official Information” provides that the Authorized Body will periodically publish an official gazette with the information required by Article 30(1)(iii) of the 1991 Act.

General Conclusion

41. The Law, in its main provisions, incorporates the substance of the 1991 Act. The deviations from strict conformity referred to in this document will be remedied by the general principle in Article 2 of the Law (see paragraph 4 of this document). However, it is recommended that the texts of the legislation of Armenia be amended and supplemented at the first opportunity so as to avoid recourse to the general principle in Article 2 of the Law.

42. The Office of the Union therefore suggests that the Council may wish

(a) to advise the Government of Armenia that the Law, in its main provisions, incorporates the substance of the 1991 Act, and that it may deposit an instrument of accession to the 1991 Act;

(b) to further advise the Government of Armenia that it may wish to amend and supplement the texts of its legislation, as recommended in this document, so as to avoid recourse to the general principle in Article 2 of the Law.

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

[Annex I follows]

ANNEX I



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PERMANENT MISSION OF THE REPUBLIC OF ARMENIA

Ref: N° 312/335/03

The Permanent Mission of the Republic of Armenia to the United Nations Office and other International Organisations in Geneva presents its compliments to the Secretariat of the International Convention for the Protection of New Varieties of Plants and, according to Article 34 Paragraph 3 of the UPOV Convention, the Republic of Armenia has the honour to ask the Council of UPOV to advise in respect of the conformity of "The Law of the Republic of Armenia on the Protection of Selection Achievements" enacted by the National Assembly of Armenia on November 23, 1999, with the provisions of 1991 Act of the UPOV Convention.

The Law of the Republic of Armenia on the Protection of Selection Achievements is enclosed.

The Permanent Mission of the Republic of Armenia avails itself of this opportunity to renew to the Secretariat of the International Convention for the Protection of New Varieties of Plants the assurances of its highest consideration.



THE SECRETARIAT OF THE INTERNATIONAL CONVENTION
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[Annex II follows]

ANNEXE II / ANNEX II / ANLAGE II / ANEXO II

THE LAW OF THE REPUBLIC OF ARMENIA
ON THE PROTECTION OF SELECTION ACHIEVEMENTS

adopted by
the National Assembly
on November 23, 1999

CHAPTER I
GENERAL PROVISIONS

Article 1
Purposes of the Law

The present Law regulates the economic relationships and the non-economic personal relationships associated with the creation, legal protection and exploitation or use of the plant variety selection achievements.

Article 2
Legislation on the Protection of Selection Achievements

The legal relations in the field of protection and exploitation or use of selection achievements shall be regulated by this Law, Civil Code of the Republic of Armenia (RA) and other legislative instruments of the RA. Where the international treaties of the RA contain provisions that differ from those set out in this Law, the provisions of such international treaty shall apply.

Article 3
The Main Terms Used in the Law

The following main terms are used in this Law:

- a) variety - a plant grouping within a single botanical taxon of the lowest known rank, which can be defined by the expression of characteristics resulting from a given genotype or combination of genotypes, is distinguished from any other plant grouping of the same botanical taxon by the expression of at least one of the said characteristics and can be considered as a unit with regard to its suitability for being propagated unchanged. The variety may be represented by a single part or parts of a plant provided such part or parts may be used for the purpose of reproduction of entire plants of the variety. The protected categories of the variety shall be the clone, the first generation hybrid, the population, the line;
- b) selection achievement - a plant variety acquired by an artificial way and having one or several economic characteristics that distinguish it from existing plant varieties;

- c) seed material (nursery material) - a plant or its single part used for the purpose of reproduction of the variety;
- d) plant material - a plant or its part used for purposes other than reproduction of the variety;
- e) protected selection achievement - a plant variety registered in the State Register of Protected Selection Achievements (hereinafter, State Register);
- f) commonly known variety - a selection achievement having a precise description, which has been entered in the State Register;
- g) applicant – a natural person or a legal entity, who has filed an application for the grant of a patent for a selection achievement;
- h) author - a natural person or a group thereof whose creative work resulted in the creation of the variety;
- i) breeder - an author of the variety, his/her heirs, persons who are the author's employers or their successors in title;
- j) Authorized Body – the State authorized body who performs the granting of the patent for the selection achievement;
- k) Appeal Board – the commission created by the Authorized Body for the settlement of disputes related to the examination of the selection achievements.

Article 4
Legal Protection of Selection Achievements

1. The rights in a selection achievement shall be protected by the Law and shall be certified by a patent for a selection achievement.
2. The patent shall certify the exclusive right of the patent owner to use the selection achievement.
3. A selection achievement for which a patent has been granted shall be registered in the State Register.
4. The term of a patent shall be 20 years from the date of registration of the selection achievement in the State Register. For the varieties of the grapevines and ornamental, fruit and forest trees, including rootstocks thereof, the said period shall be 25 years.

CHAPTER II

CONDITIONS FOR LEGAL PROTECTION OF SELECTION ACHIEVEMENTS AND THE PROCEDURE FOR FILING AN APPLICATION FOR THE GRANT OF A PATENT

Article 5

Criteria of the Legal Protection of Selection Achievement

The criteria of the legal protection of selection achievement shall be the following:

1. Novelty.

A plant variety shall be deemed to be new if, at the date of filing of the application for the grant of a patent, the seed material (nursery material) of the given variety has not been sold or otherwise disposed of to others, by the breeder, for purposes of exploitation of the variety

- a) in the territory of the RA, earlier than one year before that date;
- b) in the territory of any other State, earlier than four years or, in the case of grapevines and ornamental, fruit and forest trees, earlier than six years before the said date;

2. Distinctness.

A selection achievement shall be deemed having distinctness if it is clearly distinguishable from any other commonly known selection achievement existing at the time of the filing of the application;

3. Homogeneity.

A plant variety shall be deemed homogeneous if, taking into account peculiarities of its propagation, the plants of such variety are sufficiently uniform in their essential characteristics;

4. Stability.

A selection achievement shall be deemed stable if its essential characteristics remain unchanged after repeated propagation or reproduction or, in the case of a particular cycle of propagation or reproduction, at the end of each such cycle.

Article 6

Application for the Grant of a Patent

1. The application for a patent for selection achievement (hereinafter, application) shall be filed with the Authorized Body by the breeder.
2. The request of the application shall be drawn up in Armenian.

3. The other documents of the application may be submitted in another language. In such a case, the domestic applicant shall be required to submit a translation thereof into Armenian together with the application and the foreign applicant - within two months from the filing date of the application.
4. The application shall relate to one single selection achievement.
5. The application for a patent for selection achievement shall contain:
 - a) the request for the grant of a patent, where a denomination of the selection achievement, an applicant (applicants), an author (co-authors) and their residence or place of location shall be indicated;
 - b) the description of the selection achievement.
6. The document approving the payment of the fee in a prescribed value shall be attached to the application.
7. The requirements to the document forms of the selection achievement application shall be established by the Authorized Body.

Article 7 Denomination of Selection Achievement

1. The selection achievement shall be designated by a denomination, which shall consist of genealogy of the variety.
2. The denomination must enable the variety to be identified, exclude the solely figurative expression, and not be liable to mislead or to cause confusion concerning the qualitative and genealogical issues of the variety.
3. The breeder shall propose a denomination of the variety to the Authorized Body. If it is found that such a denomination does not satisfy the requirements of paragraph 2 of this Article, the mentioned Body shall refuse the registration and shall require the breeder to propose another denomination within a period of one month. The Authorized Body shall register the denomination of the variety simultaneously with the granting of the patent.
4. Prior rights of third persons shall not be affected.
5. The selection achievement shall be used only with the denomination registered in the State Register.

Article 8 Priority of the Selection Achievement

The priority of the selection achievement shall be determined by the date of filing of the application to the Authorized Body.

CHAPTER III

EVALUATION OF THE LEGAL PROTECTION OF THE SELECTION ACHIEVEMENT

Article 9

Preliminary Examination of the Application

1. A preliminary examination of the application shall be carried out by the Authorized Body in accordance with this Article.
2. During the preliminary examination, within a period of three months, the existence of the documents appropriate to the prescribed requirements of the application shall be verified.
3. If after the preliminary examination it appears that the documents of the application conform to the prescribed requirements, the Authorized Body shall make a decision for an official publication of the application.
4. If an application does not conform to the prescribed requirements, the Authorized Body during 15 days from the date of receipt of the application shall send to the applicant a request with a proposal to submit, within a period of two months, the corrected or the missing documents.
5. If the relevant additional or corrected materials are not submitted within a period of two months from the date of request, the application shall be deemed invalid.
6. During the preliminary examination the applicant may, on his own initiative or if requested to do so, make corrections or amendments to the application by submitting additional materials, provided such materials do not modify the subject matter of the filed selection achievement. The additional materials shall be deemed as modifying the subject matter of the selection achievement if they contain characteristics that were not contained in the application as originally filed and which should be included in the claims. The part of additional materials that modifies the subject matter of the filed selection achievement shall not be taken into consideration for the purposes of the examination and the applicant may couch it as a separate application.
7. After the preliminary examination the Authorized Body shall make a decision for refusal to grant a patent or for an official publication of the application.
8. If the applicant does not agree with the decision of the preliminary examination for refusal to grant a patent, he shall be entitled within two months as from the date of receipt of the decision to appeal to the Authorized Body with a request for repeated preliminary examination. The repeated preliminary examination shall be carried out within one month as from the date of receipt of the request.
9. After the repeated preliminary examination the Authorized Body shall make a decision for refusal to grant a patent or for an official publication of the application.
10. If the applicant does not agree with the decision of the repeated preliminary examination, he may apply to the court from the date of its receipt.

Article 10
Examination of Novelty of the Selection Achievement

1. Any interested party may, within six months following the date of publication of the application, submit to the Authorized Body an objection in respect of the novelty of the claimed selection achievement.
2. In case of absence of the objection the Authorized Body shall take a decision on compliance of the application to the criteria of novelty within three days and shall notify the applicant within one week from the taking a decision.
3. In case of receiving an objection the Authorized Body shall notify the applicant submitting him a copy of objection. If the applicant does not submit a written denial to the Authorized Body within three months from the date of receipt of the said notice, the Authorized Body shall take a decision to refuse the patent grant.
4. The Authorized Body, on the basis of available to him documents, within twelve months from the date of official publication of the application shall take a decision on the compliance of the application to the criteria of novelty or on refusal of the patent grant and shall notify the applicant about the decision within one week.
5. In case of disagreement with the decision to refuse the patent grant, the applicant shall be entitled, within two months as from the date of receipt of the said decision, to lodge an appeal with the Appeal Board of the Authorized Body. The Appeal Board shall consider the appeal within two months as from the date of its receipt and shall submit its decision to the applicant within three days.
6. In case of disagreement with the decision of the Appeal Board, the applicant shall be entitled to apply to the court in accordance with the procedure established by the law.

Article 11
Testing of the Distinctness, Uniformity and Stability of the Selection Achievement

1. Testing of the selection achievement as to its compliance with the criteria of distinctness, uniformity and stability shall be carried out in accordance with the procedure and in cases established by the Government of the RA.
2. As the result of test may be used the data submitted by the competent authorities of foreign states which have concluded relevant agreements with the RA, by the organizations which have concluded relevant agreements with the Authorized Body, as well as by the applicant.
3. Testing of the selection achievement as to its compliance with the conditions of distinctness, uniformity and stability may be combined with the State testing which is carried out in order to determine the economic utility of the selection achievement.
4. Authorized Body shall, on the bases of the favorable results of the examination on protectability of the selection achievement, take a decision to grant a patent and shall make the description of the selection achievement.

5. In case of disagreement with the examination decision to refuse the patent grant, the applicant shall be entitled, within two months as from the date of receipt of the said decision, to appeal to the Authorized Body with a request for re-examination. The procedure to carry out the re-examination shall be established by the Government of the RA.
6. After the re-examination the Authorized Body shall make a decision to grant a patent or to refuse the patent grant.
7. After the re-examination, in case of disagreement with the examination decision to refuse the patent grant, the applicant shall be entitled, within two months as from the date of receipt of the said decision, to lodge an appeal with the Appeal Board of the Authorized Body. The Appeal Board shall consider the appeal within two months as from the date of its receipt and shall submit its decision to the applicant within three days.
8. In case of disagreement with the decision of the Appeal Board, the applicant shall be entitled to apply to the court in accordance with the procedure established by the law.

Article 12 Registration of a Selection Achievement

The decision of the Authorized Body to grant a patent for a selection achievement is a reason to register the selection achievement in the State Register. The procedure for keeping the State Register shall be established by the Government of the RA.

CHAPTER IV LEGAL PROTECTION AND THE STATE REGULATION OF THE USE OF SELECTION ACHIEVEMENT

Article 13 Rights of the Patent Owner

1. The patent owner has the exclusive right to prohibit the third persons from using the patented selection achievement without his permission, as well as to use it at his discretion, if such use does not infringe the rights of other patent owners. Any person may, under the license contract, obtain a permission from the patent owner to perform the following acts in respect of the selection achievement:
 - a) production and reproduction,
 - b) conditioning of the seed material for the purpose of further propagation,
 - c) offering for sale,
 - d) selling or other way of realization (marketing),
 - e) exporting from the territory of the RA,

- f) importing into the territory of the RA,
 - g) stocking for any of the aforementioned purposes.
2. The right of the patent owner shall also extend to plant material which has been produced and put on the market without the authorization of the patent owner.
3. The authorization of the patent owner shall be required for the performance of acts specified in paragraph (1) of this Article in relation to seeds of variety, which:
- a) essentially derive the characteristics of the protected initial variety, where the protected variety is not itself a selection achievement, which essentially derives the characteristics of another selection achievement;
 - b) are not clearly distinguishable from the protected variety;
 - c) require the repeated use of the protected variety (for their production).
4. A selection achievement shall be deemed to be essentially deriving the characteristics of the protected initial selection achievement when, being clearly distinguishable from the initial selection achievement:
- a) it derives the predominantly essential characteristics of an initial selection achievement, or of another selection achievement that itself derives the essential characteristics (of the initial selection achievement), while retaining the essential characteristics that express the genotype or combination of genotypes of the initial selection achievement (typical characteristics);
 - b) it conforms to the genotype or combination of genotypes of the initial selection achievement, except for the differences which result from the application of such methods, as the selection of an induced transformation (mutant) or of a somaclonal variant from the initial variety, the backcrossing, the genetic engineering.

Article 14 Rights of an Author of the Selection Achievement

1. The Authorized Body shall issue a certificate of authorship to each author who is not the patent owner.
2. The certificate of authorship shall attest the authorship of a selection achievement and the entitlement of the author, if he is not the patent owner, to remuneration to be paid by the patent owner for the use of the selection achievement.
3. The amount and payment conditions of remuneration of the author of a selection achievement, who is not the patent owner, shall be determined by the contract between the patent owner and the author.

4. The remuneration of the co-authors of a selection achievement shall be regulated by the contract between them.
5. The usurpation of the authorship, the coercion to the co-authorship, the publication, without the consent of the author, of the subject matter of an application before its submission, as well as the disclosure of the subject matter of the applied selection achievement before its official publication by the state patent examiner shall entail the liability in accordance with the legislation of the RA.

Article 15
Acts Not Infringing the Rights of the Patent Owner

1. It shall not be considered as an infringement of the rights of the patent owner in respect of the selection achievement, if the protected selection achievement is used:
 - a) for private and non-commercial purposes,
 - b) for experimental purposes,
 - c) as an initial material for the purpose of breeding new varieties.

Article 16
Provisional Legal Protection of Selection Achievement

1. From the date of official publication of the application for selection achievement until the publication of the official data on the granted patent, the provisional legal protection shall be granted to the selection achievement, within the scope of claims laid open to public inspection. The provisional legal protection shall include all rights granted to the patent owner under this Law.
2. The provisional legal protection shall be deemed never to have been granted where the opportunities to appeal the decision of the Authorized Body to refuse the patent grant have been exhausted.
3. The third persons who, during the period mentioned in the item 1 of this Article, have used the selection achievement, shall pay to the patent owner an appropriate compensation for its use. The amount of compensation shall be determined by the consent of parties. Failing such a consent the issue shall be resolved by the court.
4. The period mentioned in the item 1 of this Article may begin from the date, when the applicant has notified of the selection achievement the user of it, if that date precedes the date of official publication of the application for selection achievement.

Article 17
Granting the Right to Use the Selection Achievement

1. The use of selection achievement shall be regulated by the license contract (exclusive, non-exclusive, open and compulsory).
2. The license contracts that have not been registered with the Authorized Body shall have no legal effect. The procedure for the registration of the license contracts shall be established by the Government of the RA.
3. In case of exclusive license an exclusive right to use the selection achievement is transferred within the limits provided in the contract, beyond which the licensor retains the said right.
4. In case of non-exclusive license the licensor, while transferring to the licensee the right to use the selection achievement, retains all rights deriving from the patent, including the right to grant licenses to third parties.
5. In case of open license the patent owner may appeal to the Authorized Body with the request to publish in its Official Gazette a notice on granting the right to use the selection achievement to other person. A person who expressed a wish to obtain an open license shall be required to conclude a payment contract with the patent owner.
6. In the interests of the national security and in the public interests or in situations of emergency of the RA, as well as in case of public non-commercial use the Government of the RA is empowered to use or authorize third parties to use a selection achievement without the consent of the patent owner, provided the patent owner shall be notified within 10 days and paid adequate remuneration taking into account the circumstances of each case and the economic value of such authorization.
7. The terms for granting a compulsory license are regulated in accordance with the procedure established by the Government of the RA.
8. The compulsory license shall be only non-exclusive and, depending on its objectives, shall be granted for a certain period and on certain terms. The said period may be extended if the conditions, on the bases of which the compulsory license was granted, continue to exist. The compulsory license shall be recognized invalid if the licensee has infringed the terms under which the license was been granted.
9. Disputes relating to the license contracts shall be settled by the court.

Article 18
Premature Termination of the Legal Protection of the Selection Achievement

1. The legal protection of the selection achievement shall prematurely terminate if:
 - a) the Authorized Body takes a decision to refuse the grant of a patent;

- b) the applicant has withdrawn the application or the patent owner has denied from the patent in writing;
 - c) it appeared that the legal protection was granted:
 - ca) to the person who has not had that right;
 - cb) predominantly on the basis of documents submitted by the breeder and the criteria of distinctness, uniformity and stability were not complied with on the date of the grant of the legal protection;
 - d) the applicant or the patent owner has failed to pay the fees prescribed by the law;
 - e) the denomination of the variety was cancelled after the granting of the legal protection and the applicant or the patent owner has failed to propose a suitable denomination.
2. The protection of the right on selection achievement can not be prematurely terminated on the grounds that differ from those established by this law.

Article 19 Publication of the Official Information

- 1. The Authorized Body shall periodically publish an Official Gazette.
- 2. After the publication of the information on the patent applications and the decisions in respect thereof any person shall have the right to inspect the documents of the patent applications.

Article 20 Patent Fees

The filing of a patent application, the grant of a patent and its maintenance in force, as well as the performance of other legal acts relating to a patent shall be subject to the payment of fees. The types of the fees, the amount and the time limits for paying the fees, together with the conditions and terms for reduction, refund or exemption of fees shall be determined by the “Law on State Duties” of the RA.

Article 21 Rights of Foreign Citizens and Legal Entities

Foreign natural persons and legal entities shall, on the basis of international treaties to which the RA is party, or on the basis of reciprocity, enjoy the rights provided for in this Law and bear the responsibility on the same footing as natural persons and legal entities of the RA.

CHAPTER V

TRANSITIONAL PROVISIONS

Article 22

The Granting of the Patent on the Basis of the Materials Entered into the List of Varieties and the Author's Certificates of the Former USSR

The granting of the patent for selection achievement on the basis of the materials entered into the List of divided into districts plant varieties, hybrids and the author's certificates of the former USSR shall be carried out for the unexpired period of the patent validity in compliance with the procedure established by the Authorized Body.

THE PRESIDENT OF THE
REPUBLIC OF ARMENIA

R. KOCHARYAN

Yerevan, December 22, 1999
AL-23

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End of Annex II and of document/
Ende der Anlage II und des Dokuments/
Fin del Anexo II y del documento]