



CAJ/44/8

ORIGINAL: English

DATE: August 10, 2001

**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE****Forty-Fourth Session  
Geneva, October 22 and 23, 2001**

## PLANT VARIETY IDENTIFICATION

*Document prepared by the Office of the Union*

1. At its forty-third session held in Geneva on April 5, 2001, the Administrative and Legal Committee (hereinafter referred to as "the Committee") discussed the possibility of considering plant variety identification within the terms of reference of the *ad hoc* subgroup of technical and legal experts on biochemical and molecular techniques (document CAJ/43/8 Prov., paragraphs 53 to 58). The Vice Secretary-General clarified that the extension of the terms of reference of the *ad hoc* subgroup would go beyond the responsibility of UPOV. However, the Committee agreed to the Chairman's proposal to include the item of plant variety identification on the agenda of the Committee for future consideration.
2. For the purpose of discussion on this matter, it is important to clarify the issue concerning plant variety identification. The matter under consideration is how to identify varieties in an effective way in order to enforce a breeder's right once granted. It should be noted that such matters are not addressed within the Convention. However, it is clear that any characteristics useful for DUS examination would be appropriate for variety identification.
3. The problem is that existing DUS characteristics are, in the main, morphological in nature and consequently require the growing of plants over several months to identify if plant material is of a particular variety. It is known that techniques, such as protein electrophoresis, have been used in some countries for the purpose of variety identification within commerce and this has raised the possibility that techniques, such as DNA profiles, might also be used for variety identification, in particular for investigating possible cases of infringement of a plant breeder's right.

4. Clearly, for any technique to address possible cases of infringement in a reliable way, it would require that varieties are clearly distinguishable, uniform and stable for any characteristics arising from such techniques, i.e. the same criteria as for granting of a breeder's right. Although the use of biochemical and molecular techniques for variety identification is not a matter for UPOV within the terms of the Convention, it may be a matter for concern of Contracting Parties if these techniques were developed in a different way for variety identification than for the examination of DUS. This would be of particular concern if, as suggested by some parties, a description produced using these techniques would be considered to form a part of a protected variety's official description without forming a part of the DUS examination.

*5. The Committee is invited to consider if it is appropriate for UPOV to make general recommendations on the use of characteristics for variety identification where such characteristics have not been used in the examination of DUS for the variety concerned.*

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