

Comments of the Russian Federation under document CAJ-AG/13/8/3

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Dear colleagues!

I ask some minutes of your attention to share my observations under the document mentioned above. Thank you in advance.

I would like to note that according to the UPOV Convention breeder's right (further PBR) operates in the territory only where this PBR has been registered. First of all, provisions of Article 14 (2) (acts in respect of harvested material), means application of sanctions to the person-grower of propagating material (seeds).

E.g. if the farmer has grown up seeds illegally and next year produced from them a harvested material for sale, it is the case, when the breeder had no "reasonable opportunity" **in time** (i.e., in a year of production of seeds) to detect infringers of his rights.

Next year (when producing harvested material), the breeder according to Article 14 (2) has the right to demand from infringers compensation of his corresponding losses. The national legislation should provide all conditions for the protection of the PBR infringed.

It is observed in the document unreasonable PBR expansion on an imported harvested material into PVP country. The reference is made to absence of "reasonable opportunity" of the breeder to control acts in respect of seeds (propagating material) in the territory without PVP.

Extractions from documents CAJ/XXIII/8 and CFJ/XXIV/6 are only protocol materials of preparatory discussions in the period before 1991 Diplomatic Conference for the UPOV Convention revision and cannot be the basis for development any Explanatory notes, on harvested material in particular. It is necessary to be guided only by the text of the 1991 Act of the UPOV Convention. *(It would be also useful to address to the UPOV Model PVP Law of 1993 z. and to comments to it).*

Examples in the given document encourage claims of a breeder to expansion of PBR on the harvested material produced in PVP territories where the breeder **did not intend or any more had no right** (e.g., by the reason of loss of novelty of a variety) to register his PBR for the variety.

It is necessary to take into consideration the fact that the breeder is interested in increase of export of seeds and harvested material of the variety as his income depends on the export value from the PVP country.

Provisions of the 1991 Act of the UPOV Convention should not be interpreted in the Explanatory notes in such a manner that production of a harvested material for export is included in the scope of the breeder's right in

another country. Those countries where the given genus and species are protected should not depend on unreasonable Explanatory notes contained in the document concerned.

And now let's look at the Examples of the document.

Example 1.

As there is no PVP Law in Country B it is no reason to make any explanations under the country.

Whether the breeder has right in Country A on harvested material imported from Country B depend on if he will be able to provide arguments that he had no opportunity to apply sanctions to the exporter of the seeds and also those arguments that an imported batch of harvested material from Country B had been produced from the batch of the seeds exported from Country A.

Example 2.

Everything worded in Example 2 is the same one as in Example 1 because the exported harvested material could be used as propagating material (seeds).

Situations in **Examples 3 and 4** are the similar those in **Examples 1 and 2** since there is no protection for genus and species to which Variety 1 belongs in Countries B and C. UPOV membership of a Country C changes nothing. The information that Variety is not protected in Country C changes nothing too.

Examples 5 and 6.

There is protection of genus and species to which Variety 1 belongs in country D. Absence of protection of Variety 1 in country D changes nothing. There is PBR exhaustion under Article 16 (1) (ii).

Example 7.

The situation in country F is the similar as ones in Examples 5 and 6. There is PBR exhaustion on exported batch of seeds.

Example 8.

There were no infringements when exporting of saplings from country H. Country 1 provides protection for genus and species to which Variety 3 belongs. Protection absence for the variety does not change anything.

If cut flowers in Country H are used as propagating material the breeder can exercise his right on the import of cutting into Country H.

Example 9.

It would be appropriate to write:

“Breeder of Variety 1 has PBR in Country A. However propagating material of Variety 1 is not grown up in Country A and, the breeder has no opportunity to exercise his right on acts in respect of propagating material.

In this case the breeder has PBR in the country on all batches of imported harvested material of the variety.

I have no objects under Examples 10 and 11.