

Technical Working Party for Fruit Crops

TWF/56/4

**Fifty-Sixth Session
Bursa, Türkiye, June 23 to 26, 2025**

Original: English
Date: May 23, 2025

REPORT ON COURT CASES DEALING WITH TECHNICAL MATTERS

Document prepared by an expert from the European Union

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The annex to this document contains a copy of a presentation “Report on court cases dealing with technical matters”, to be made by an expert from the European Union, at the fifty-sixth session of the TWF.

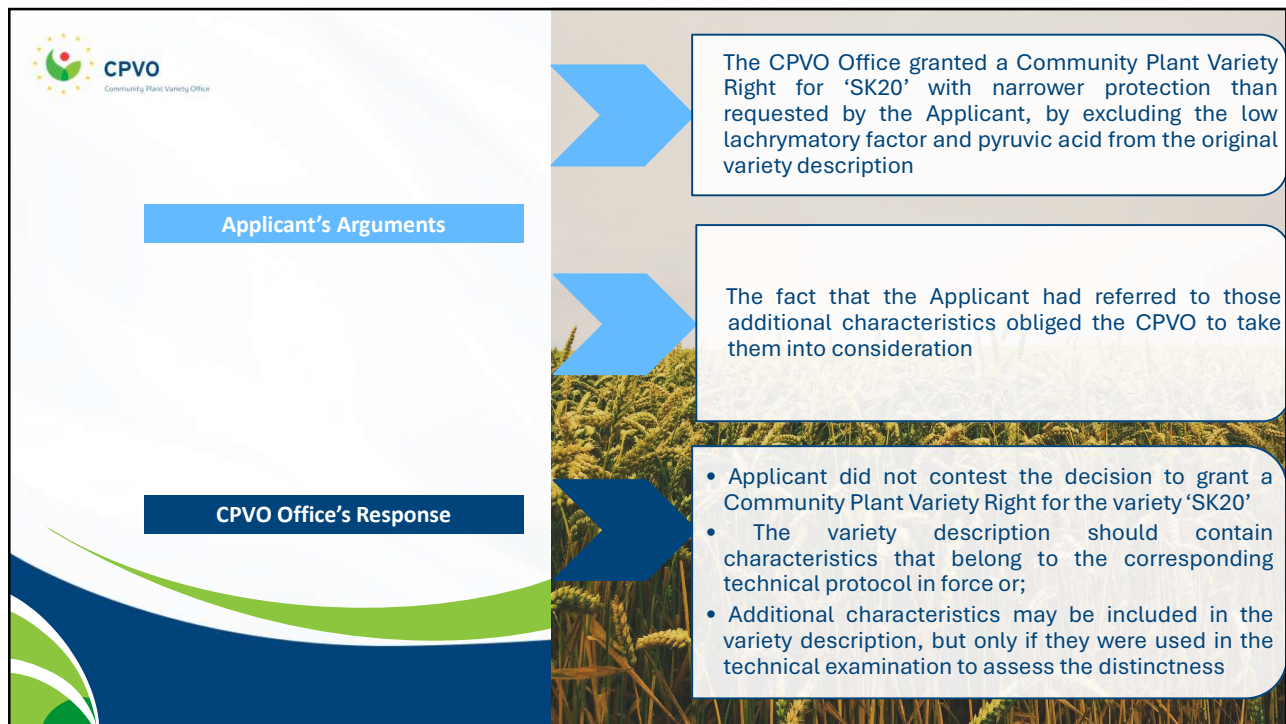
[Annex follows]



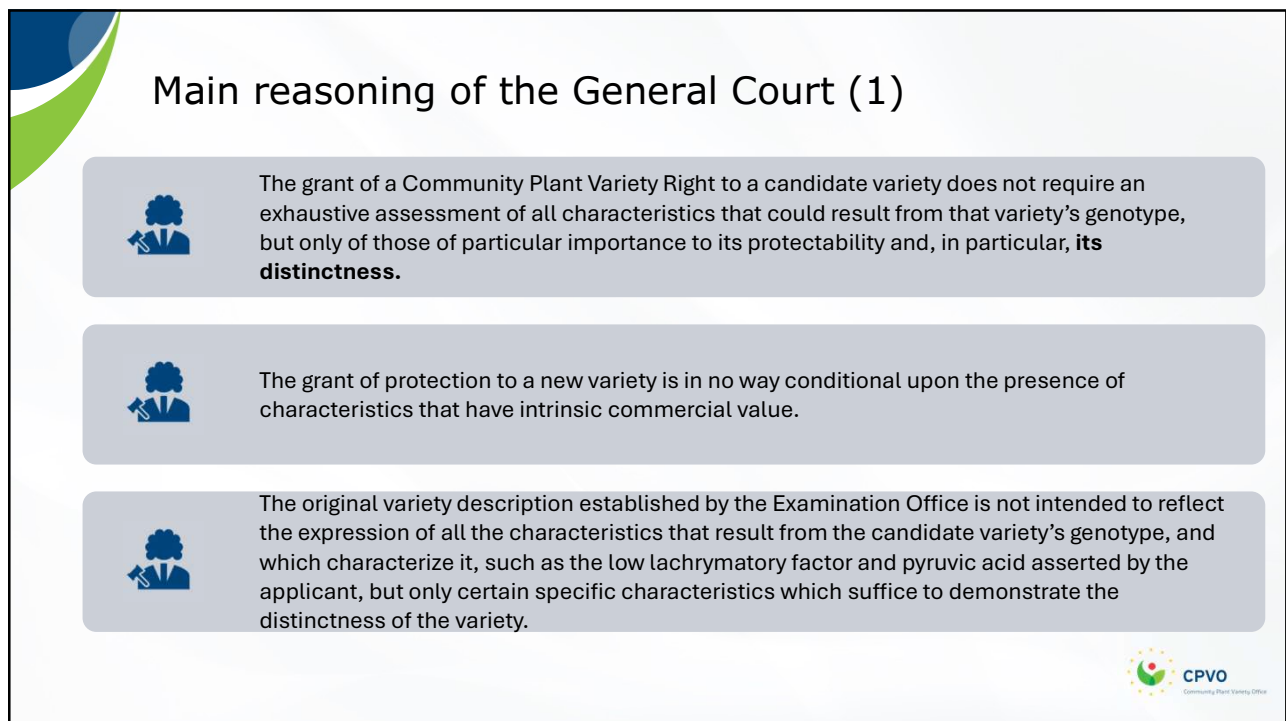
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Main reasoning of the General Court (2)




Even if the additional characteristic had been included during the technical examination and in the original description of the variety 'SK20', that would not have had any bearing on the protection conferred on that variety. A new variety, displaying the same low lachrymatory factor and pyruvic acid, would still be protectable so long as it displayed one or more other characteristics clearly distinguishing it from the applicant's variety.



Inserting the additional characteristic asserted by the applicant into the description would in no way amend the scope of the protection granted for the variety 'SK20'.



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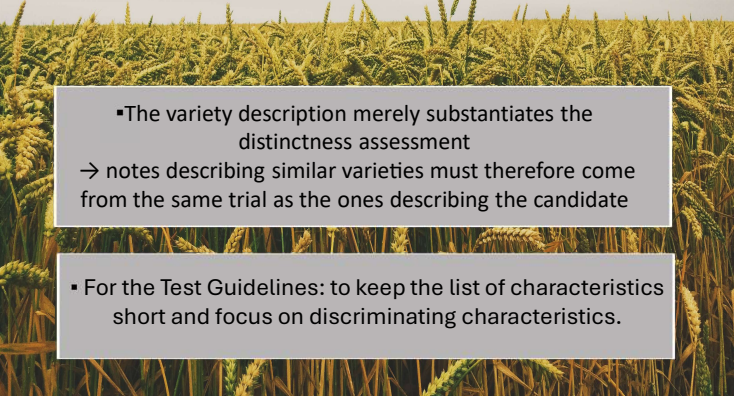


Decision

♦ The General Court dismissed the Action

Implications to Consider:

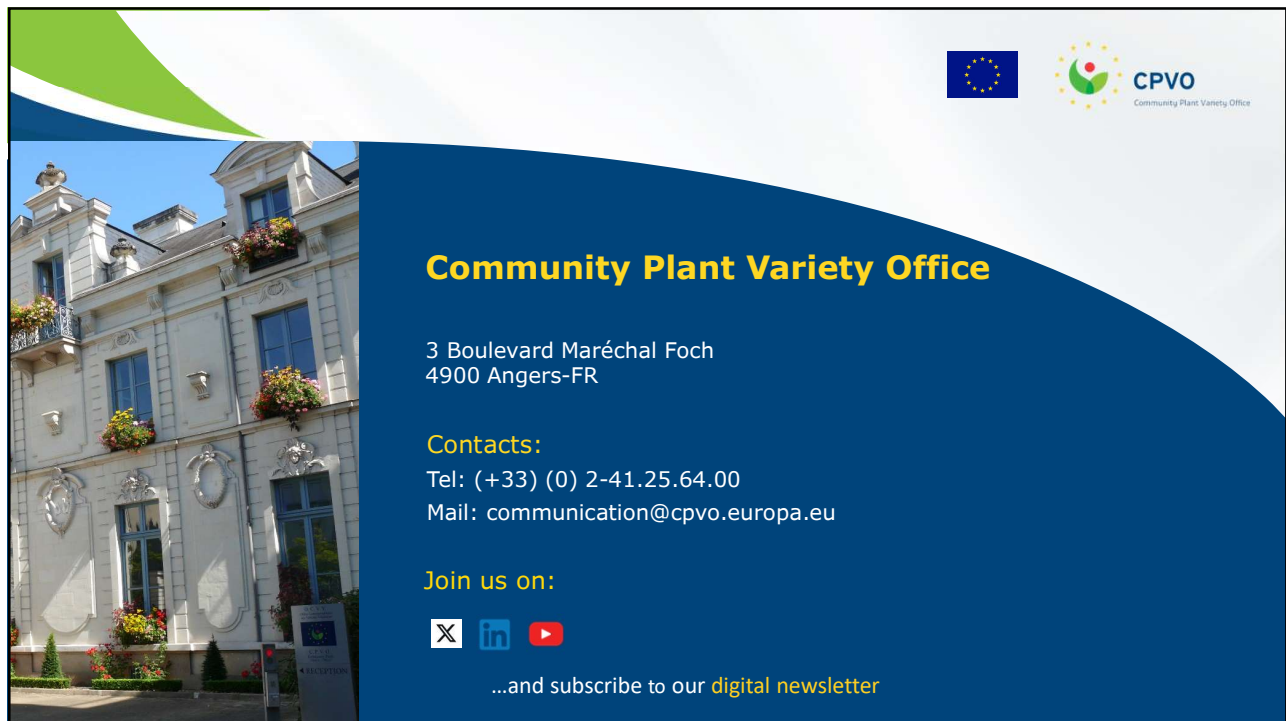
- A variety is represented by its material, not by its description
- The scope of protection is not defined by the description
- The variety description merely substantiates the distinctness assessment
→ notes describing similar varieties must therefore come from the same trial as the ones describing the candidate
- For the Test Guidelines: to keep the list of characteristics short and focus on discriminating characteristics.



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