



C/41/14

ORIGINAL: Inglés

FECHA: 16 de octubre de 2007

UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES
GINEBRA

CONSEJO

Cuadragésima primera sesión ordinaria
Ginebra, 25 de octubre de 2007

**EXAMEN DE LA CONFORMIDAD DE LA LEY DE PROTECCIÓN DE VARIEDADES
VEGETALES DE LA REPÚBLICA DE MONTENEGRO CON EL ACTA DE 1991
DEL CONVENIO DE LA UPOV**

Documento preparado por la Oficina de la Unión

Introducción

1. Por carta con fecha 11 de septiembre de 2007, dirigida al Secretario General de la UPOV, el Ministro de Agricultura, Silvicultura y Recursos Hídricos de la República de Montenegro (denominada en adelante “Montenegro”), S.E. el Sr. Milutin Simovic, pidió que se examine la conformidad de la “Ley de Protección de las Variedades Vegetales” (a la que en adelante se denominará “la Ley”), promulgada por el Parlamento el 24 de julio de 2007, con el Acta de 1991 del Convenio de la UPOV (a la que en adelante se denominará el “Acta de 1991”). La versión en español de la carta del Ministro se reproduce en el Anexo I del presente documento. En el Anexo II se reproduce una segunda carta del Sr. Simovic junto con una traducción verificada al inglés de la Ley recibidas el 12 de octubre de 2007.

2. Montenegro no ha firmado el Acta de 1991. En virtud del artículo 34.2 del Acta de 1991, Montenegro tendría que depositar un instrumento de adhesión para ser Parte Contratante conforme al Acta de 1991. De conformidad con el artículo 34.3 del Acta de 1991, sólo puede depositarse un instrumento de adhesión si el Estado de que se trata ha solicitado la opinión del Consejo acerca de la conformidad de su legislación con las disposiciones del Acta de 1991 y si la decisión del Consejo, haciendo oficio de opinión, es positiva.

Bases para la protección de las obtenciones vegetales en Montenegro

3. En Montenegro la protección de las obtenciones vegetales estará regida por la Ley. A continuación se analiza la Ley en el orden en el que figuran las disposiciones sustantivas del Acta de 1991.

Artículo 1 del Acta de 1991: Definiciones

4. El artículo 2 de la Ley contiene definiciones que se corresponden con las del artículo 1 del Acta de 1991.

Artículo 2 del Acta de 1991: Obligación fundamental de las Partes Contratantes

5. En el primer párrafo del artículo 1 de la Ley se dispone que “[l]a presente Ley fija las condiciones y el procedimiento de obtención de protección para las variedades vegetales (a las que en adelante se denominarán: variedades) y determina los derechos y las obligaciones de los titulares de derechos de obtentor”; con cuyo texto queda cumplida la obligación básica contemplada en el artículo 2 del Acta de 1991.

Artículo 3 del Acta de 1991: Géneros y especies que deben protegerse

6. En el segundo párrafo del artículo 1 de la Ley se dispone que “[l]a presente Ley se aplicará a todos los géneros y especies vegetales”. Esta disposición se ajusta a lo dispuesto en el artículo 3.2.ii) del Acta de 1991. Cabe señalar que, de conformidad con lo dispuesto en el artículo 36.1.ii) del Acta de 1991, cuando Montenegro deposite su instrumento de adhesión deberá notificar mediante declaración que la Ley se aplica a todos los géneros y especies vegetales.

Artículo 4 del Acta de 1991: Trato nacional

7. El artículo 3 de la Ley dispone que “[e]n lo que respecta a la protección de las variedades en la República de Montenegro (a la que en adelante se denominará: la República) las personas jurídicas y naturales extranjeras gozarán de los mismos derechos y tendrán las mismas obligaciones que los nacionales de la República”. Esta disposición se ajusta a lo exigido en el artículo 4 del Acta de 1991.

Artículos 5 a 9 del Acta de 1991: Condiciones de la protección; novedad; distinción; homogeneidad; estabilidad

8. Los artículos 5 y 7 a 10 de la Ley establecen las condiciones de la protección de conformidad con lo dispuesto en los artículos 5 a 9 del Acta de 1991.

9. El artículo 7 de la Ley contempla la condición de novedad con arreglo a lo dispuesto en el artículo 6.1) del Acta de 1991.

10. El artículo 57 de la Ley instauro un régimen provisional de novedad para las “variedades de creciente creación” sobre la base de lo dispuesto en el artículo 6.2 del Acta de 1991.

11. El artículo 8 de la Ley introduce la condición de distinción. Para que se ajuste a lo dispuesto en el artículo 7 del Acta de 1991, se recomienda modificar el párrafo 2 del artículo 8 de la Ley de la siguiente forma:

“En particular, el ~~El~~ depósito, en cualquier país, de una solicitud de concesión de un derecho de obtentor para otra variedad o de inscripción de otra variedad en un ~~el~~ registro oficial de variedades ~~protegidas~~, se reputará que hace a otra variedad notoriamente conocida a partir de la fecha de la solicitud, si ésta conduce a la concesión del derecho de obtentor o la inscripción de esa otra variedad en un ~~el~~ registro oficial de variedades ~~protegidas~~, según el caso.”

12. El artículo 9 de la Ley introduce la condición de homogeneidad con arreglo a lo dispuesto en el artículo 8 del Acta de 1991.

13. El artículo 10 de la Ley introduce la condición de estabilidad con arreglo a lo dispuesto en el artículo 9 del Acta de 1991.

Artículo 10 del Acta de 1991: Presentación de solicitudes

14. Los artículos 15 a 18 de la Ley se ocupan de la presentación de solicitudes. En la Ley no hay disposiciones que estén en conflicto con lo dispuesto en el artículo 10 del Acta de 1991.

Artículo 11 del Acta de 1991: Derecho de prioridad

15. El artículo 19 de la Ley contiene disposiciones sobre el derecho de prioridad que se ajustan a lo dispuesto en los párrafos 1 y 2 del artículo 11 del Acta de 1991. Se recomienda introducir en el artículo 19 de la Ley las disposiciones que faltan del artículo 11.3 del Acta de 1991:

“*[Documentos y material]* El obtentor se beneficiará de un plazo de dos años tras la expiración del plazo de prioridad o, cuando la primera solicitud sea rechazada o retirada, de un plazo adecuado a partir del rechazo o de la retirada, para proporcionar a la autoridad de la Parte Contratante ante la que haya presentado la solicitud posterior, cualquier información, documento o material exigidos por las leyes de esta Parte Contratante para el examen previsto en el Artículo 12.”

Artículo 12 del Acta de 1991: Examen de la solicitud

16. Los artículos 16 a 18 y 20 a 24 de la Ley contienen disposiciones relativas al examen de la solicitud que se ajustan a lo dispuesto en el artículo 12 del Acta de 1991.

Artículo 13 del Acta de 1991: Protección provisional

17. El artículo 31 de la Ley contiene disposiciones sobre la protección provisional. Para que se ajuste a lo dispuesto en el artículo 13 del Acta de 1991, se recomienda modificar el artículo 31 de la Ley de la siguiente forma:

“Durante el período comprendido entre la presentación de la solicitud de concesión de protección a la variedad y la concesión del derecho sobre la variedad protegida, el titular del derecho de obtentor tendrá derecho a una remuneración equitativa percibida de quien, en el intervalo mencionado, haya realizado actos que, después de la concesión del derecho, haya utilizado la variedad sin exigir requieran la autorización del obtentor de conformidad con lo dispuesto en el artículo 28.”

Artículo 14 del Acta de 1991: Alcance del derecho de obtentor

18. El artículo 28 de la Ley contiene disposiciones sobre el alcance del derecho de obtentor. Para que se ajuste a lo dispuesto en el artículo 14 del Acta de 1991, se recomienda introducir las siguientes modificaciones en los párrafos 3, 4, 5, 6 y 7 del artículo 28 de la Ley:

“A reserva de lo dispuesto en los artículos 29 y 30, se requerirá la autorización del obtentor para los actos siguientes realizados respecto ~~La utilización~~ de material de reproducción o de multiplicación de la variedad protegida:

- 1) la producción o la reproducción (multiplicación) de la variedad protegida;
- 2) la preparación a los fines de la reproducción o de la multiplicación de la variedad protegida;
- 3) la oferta en venta de la variedad protegida;
- 4) la venta o cualquier otra forma de comercialización de la variedad protegida;
- 5) la exportación y la importación de la variedad protegida;
- 6) la posesión para cualquiera de los fines mencionados en los puntos 1 a 5 del párrafo 3 del presente artículo.

“A reserva de lo dispuesto en los artículos 29 y 30, Sse requerirá la autorización del obtentor para los actos mencionados en los puntos 1) a 6) del párrafo 3 del presente artículo, realizados respecto del producto de la cosecha, incluidas plantas enteras y partes de plantas, obtenido por utilización no autorizada de material de reproducción o de multiplicación de la variedad protegida, a menos que el obtentor haya podido ejercer razonablemente su derecho en relación con dicho material de reproducción o de multiplicación.

“También será necesaria la autorización del obtentor para ~~la utilización~~ los actos mencionados en los párrafos 3 y 4 del presente artículo respecto de una variedad:

- 1) que es derivada esencialmente de la variedad protegida, cuando esta no sea a su vez una variedad esencialmente derivada;
- 2) que no se distingue claramente de la variedad protegida; y
- 3) para cuya producción se necesite el empleo repetido de la variedad protegida.

“Se considerará que una variedad es esencialmente derivada de la variedad inicial si:

- 1) se deriva principalmente de la variedad inicial, o de una variedad que a su vez se deriva principalmente de la variedad inicial, conservando al mismo tiempo los caracteres esenciales que resulten del genotipo o de la combinación de genotipos de la variedad inicial;
- 2) se distingue claramente de la variedad inicial; y
- 3) salvo por lo que respecta a las diferencias resultantes de la derivación, es conforme a la variedad inicial en la expresión de los caracteres esenciales que resulten del genotipo o de la combinación de genotipos de la variedad inicial.

“A los efectos de lo dispuesto en los párrafos 5.1 y 6 del presente artículo:

- 1) ~~una variedad inicial es la variedad de la que se obtuvo la nueva variedad;~~
- 2) una variedad esencialmente derivada ~~es la variedad obtenida~~ podrá obtenerse, por ejemplo, por selección de un mutante natural o inducido o de una variante somaclonal, selección de un individuo variante entre las plantas de la variedad inicial, retrocruzamientos o transformaciones por ingeniería genética.”

Artículo 15 del Acta de 1991: Excepciones al derecho de obtentor

19. El artículo 29 de la Ley contiene disposiciones sobre las excepciones al derecho de obtentor.

20. Los dos primeros apartados del párrafo 1 del artículo 29 de la Ley contienen disposiciones que se corresponden con el artículo 15.1.i) y ii) del Acta de 1991.

21. Para ajustarse a lo dispuesto en el artículo 15.1.iii) del Acta de 1991, se recomienda modificar el tercer apartado del párrafo 1 del artículo 29 de la Ley de la forma siguiente:

“– A los fines de la creación de nuevas variedades, así como, a menos que las disposiciones del párrafo 5 del artículo 28 sean aplicables, a excepción de los a los actos mencionados en los párrafos 3 4-y 4 ~~5~~-del artículo 28 de la presente Ley realizados con tales variedades.”

22. Para ajustarse a lo dispuesto en el artículo 15.2) del Acta de 1991, se recomienda modificar el párrafo 2 del artículo 29 de la Ley de la forma siguiente:

“A reserva de la necesidad de salvaguardar los derechos del obtentor, la Autoridad podrá restringir dentro de límites razonables el derecho de obtentor, velando por que la remuneración no sea inferior a la del mercado, en relación con cualquier variedad y para permitir que los agricultores utilicen el producto de la cosecha que hayan obtenido a partir de la variedad protegida en su propia explotación para la reproducción o la multiplicación en su propia explotación”.

Artículo 16 del Acta de 1991: Agotamiento del derecho de obtentor

23. El artículo 30 de la Ley contiene disposiciones sobre el agotamiento del derecho de obtentor que se ajustan a lo dispuesto en el artículo 16 del Acta de 1991.

Artículo 17 del Acta de 1991: Limitación del ejercicio del derecho de obtentor

24. Los artículos 37 a 41 de la Ley contienen disposiciones sobre las licencias obligatorias.

25. El artículo 37 de la Ley contempla la concesión de licencias obligatorias por razones de interés público y se ajusta a lo dispuesto en el artículo 17.1) del Acta de 1991.

26. En el artículo 17.2) del Acta de 1991 se estipula la obligación de que “el obtentor reciba una remuneración equitativa”. A ese respecto, en el artículo 39 de la Ley se hace referencia a la remuneración en el caso de las licencias obligatorias y se estipula que “[e]l titular de la licencia obligatoria deberá pagar al titular del derecho de obtentor las tasas establecidas de mutuo acuerdo. A falta de acuerdo sobre el importe y el método de pago de la tasa en cuestión, dicho importe será fijado por las autoridades judiciales competentes, teniendo en cuenta las circunstancias de cada caso y el valor económico que represente la licencia obligatoria.” El artículo 39 de la Ley se ajusta a lo dispuesto en el artículo 17.2) del Acta de 1991.

Artículo 18 del Acta de 1991: Reglamentación económica

27. El Capítulo IX de la Ley contiene disposiciones en materia de inspección y control que son relevantes para la protección del derecho de obtentor así como disposiciones en materia de reglamentación económica. Cabe subrayar que en el artículo 18 del Acta de 1991 se estipula lo siguiente:

“El derecho de obtentor es independiente de las medidas adoptadas por una Parte Contratante para reglamentar en su territorio, la producción, el control y la comercialización del material de las variedades, o la importación y exportación de ese material. En cualquier caso, esas medidas no deberán obstaculizar la aplicación de las disposiciones del presente Convenio.”

28. En lo que respecta al Capítulo IX de la Ley, se recomienda que se aclare en la Ley que las actividades de inspección en relación con el derecho de obtentor deben llevarse a cabo de forma independiente a las actividades de inspección en materia de reglamentación económica (párrafos 3, 4 y 5 del artículo 53 y artículo 54 de la Ley).

29. A reserva de la recomendación expuesta en el párrafo 28 del presente documento, no parece haber en la Ley disposición alguna incompatible con el artículo 18 del Acta de 1991.

Artículo 19 del Acta de 1991: Duración del derecho de obtentor

30. El artículo 6 de la Ley contiene disposiciones sobre la duración del derecho de obtentor que se ajustan a lo dispuesto en el artículo 19 del Acta de 1991.

Artículo 20 del Acta de 1991: Denominación de la variedad

31. Los artículos 11 a 14 de la Ley contienen disposiciones sobre la denominación de variedades.

32. Para ajustarse a lo dispuesto en los párrafos 2 y 7 del artículo 20 del Acta de 1991, se recomienda modificar los párrafos 4 y 6 del artículo 11 de la Ley de la forma siguiente:

“La denominación de la variedad no podrá componerse únicamente de cifras, salvo cuando sea una práctica establecida para designar variedades específicas. No deberá ser susceptible de inducir en error o de prestarse a confusión sobre las características, el valor o la identidad de la variedad o sobre la identidad del obtentor. La denominación de la variedad deberá ser diferente de toda denominación utilizada en el territorio de los ~~Estados~~ miembros de la UPOV para designar una variedad existente de la misma especie vegetal o de una especie vecina.”

“La obligación de utilizar la denominación de la variedad registrada no expirará aun cuando haya expirado el plazo de protección de la variedad contemplado en el artículo 6 de la presente Ley, salvo en los casos en los que, conforme a lo dispuesto en el párrafo 8, la existencia de derechos anteriores impida dicha utilización.”

33. Para ajustarse a lo dispuesto en el artículo 30.1.iii) del Acta de 1991 sobre la obligación de publicar información sobre denominaciones propuestas y los fines de facilitar la formulación de observaciones por los miembros de la Unión (artículo 20.6) del Acta de 1991), se recomienda realizar la siguiente modificación en el párrafo 3 del artículo 12 de la Ley:

“Toda persona interesada podrá, en un plazo de 30 días contados a partir de la fecha de publicación de la denominación propuesta, en el Registro de Solicitudes, formular objeciones en relación con dicha denominación.”

34. A los fines de evitar repeticiones e incoherencias entre el artículo 11 y el artículo 13 de la Ley, se recomienda efectuar las siguientes modificaciones:

“Razones que justifican el rechazo de la denominación propuesta”

Artículo 13

“La Autoridad competente rechazará toda propuesta de denominación de variedad que:

- 1) sea inadecuada a los fines de la identificación de la variedad;
- 2) consista exclusivamente en signos o indicaciones que puedan servir para indicar la especie, la calidad, la cantidad, el objetivo, el valor, el origen geográfico y la fecha de producción de la variedad;
- 3) no se ajuste a lo dispuesto ~~en los párrafos 3 y 7 del~~ el artículo 11 de la presente Ley.
- 4) ~~sea idéntica o muy similar a una denominación existente con la que ya se designe una variedad de la misma especie o una especie vecina;~~
- 5) ~~indique características en común con otras variedades de la misma especie;~~

6) — indique que la variedad deriva de una especie notoriamente conocida o vecina.

“Incumbe al Ministerio determinar las especies vecinas”

Artículo 21 del Acta de 1991: Nulidad del derecho de obtentor

35. El artículo 43 de la Ley contiene disposiciones sobre la nulidad del derecho de obtentor que se ajustan a lo dispuesto en el artículo 21 del Acta de 1991.

Artículo 22 del Acta de 1991: Caducidad del derecho de obtentor

36. El artículo 44 de la Ley contiene disposiciones sobre la caducidad del derecho de obtentor que se ajustan a lo dispuesto en el artículo 22 del Acta de 1991.

Artículo 30 del Acta de 1991: Aplicación del Convenio

37. En lo que respecta a la obligación de adoptar “todas las medidas necesarias para la aplicación del presente Convenio y, concretamente” prever “recursos legales apropiados que permitan defender eficazmente los derechos de obtentor” (artículo 30.1.i) del Acta de 1991), la Ley contempla lo siguiente:

a) en los artículos 46 a 51 de la Ley se contemplan las medidas y los recursos civiles existentes a los fines de proteger el derecho de obtentor; y

b) en los artículos 55 y 56 de la Ley se contemplan sanciones administrativas y multas en caso de incumplimiento de determinadas obligaciones estipuladas por la Ley, a saber: obligación de utilizar la denominación, suministro de material de multiplicación y reproducción y mantenimiento de la variedad protegida.

38. En el párrafo 1 del artículo 23 de la Ley se estipula lo siguiente: “sobre la base de los resultados del examen, la Autoridad competente tomará una decisión en relación con la protección de la variedad o el rechazo de la solicitud de protección de la misma, según proceda”; la Ley se ajusta así a lo dispuesto en el artículo 30.1.ii) del Acta de 1991. La Autoridad competente depende del Ministerio de Agricultura (véase el párrafo 3 del artículo 8 de la Ley).

39. En el párrafo 9 del artículo 23 de la Ley se estipula lo siguiente: “[l]os datos relativos a la protección de la variedad, entre otros la denominación de la variedad, información sobre el obtentor, y el titular del derecho y su oficina o domicilio legal, según proceda, serán publicados en el ‘Boletín Oficial de la República de Montenegro’ en un plazo de 30 días contados a partir de la fecha de inscripción en el Registro de Variedades Protegidas”. Esa disposición se ajusta a la obligación de publicar información sobre la concesión de derechos de obtentor y denominaciones aprobadas que se contempla en el artículo 30.1.iii) del Acta de 1991.

40. En el artículo 25 de la Ley se estipula lo siguiente: “toda persona interesada que considere que el solicitante no reúne los requisitos para gozar de derechos de obtentor, o que no le corresponde el derecho de prioridad o que no se han cumplido las condiciones

necesarias para la protección de la variedad en virtud de lo dispuesto por la presente Ley gozará de un plazo de 30 días contados a partir del día de publicación de los datos sobre la inscripción para presentar una reclamación ante el Ministerio con respecto a la inscripción de la solicitud en el Registro de Solicitudes o la inscripción de la variedad en el Registro de Variedades Protegidas.” Esa disposición se ajusta a la obligación de publicar información relativa a las solicitudes y a la concesión de derechos de obtentor contemplada en el artículo 30.1.iii) del Acta de 1991.

41. Como se ha recomendado con respecto a la modificación del artículo 12 de la Ley (véase el párrafo 33 del presente documento), la publicación de denominaciones propuestas que se exige en el artículo 30.1.iii) del Acta de 1991 permite que terceros interesados puedan presentar objeciones y que los miembros de la Unión formulen observaciones (artículo 20.6 del Acta de 1991).

Conclusiones generales

42. En opinión de la Oficina de la Unión, la Ley recoge la mayoría de las disposiciones del Acta de 1991. Una vez se incorporen en la Ley las modificaciones recomendadas y disposiciones que faltan (véanse los párrafos 11, 15, 17, 18, 21, 22, 28, 32, 33 y 34 del presente documento), Montenegro podrá “dar efecto” a las disposiciones del Acta de 1991, como se estipula en el artículo 30.2) de dicha Acta.

43. *Se invita al Consejo a:*

a) tomar nota de la información suministrada en el presente documento;

b) a reserva de la incorporación de las disposiciones adicionales y modificaciones propuestas en el presente documento, tomar una decisión positiva sobre la conformidad de la Ley de Protección de las Variedades Vegetales de la República de Montenegro con las disposiciones del Acta de 1991 del Convenio Internacional para la Protección de las Variedades Vegetales; una vez incorporadas en la Ley las disposiciones adicionales y modificaciones en cuestión a satisfacción de la Oficina de la Unión en consulta con el Presidente del Consejo, Montenegro podrá depositar su instrumento de adhesión al Acta de 1991;

c) solicitar a la Oficina de la Unión que ofrezca asistencia al Gobierno de Montenegro para la redacción de las disposiciones adicionales y modificaciones que se necesitan introducir en la Ley; y

d) autorizar al Secretario General a informar al Gobierno de Montenegro acerca de esa decisión.

[Siguen los Anexos]

ANEXO I

[Traducción por la Oficina de la Unión de una carta con fecha 11 de septiembre de 2007]

Enviada por: Milutin Simovic
Ministro de Agricultura, Silvicultura y Recursos Hídricos
República de Montenegro

A: Dr. Kamil Idris
Secretario General de la UPOV

S. Ref.: 320/07-0202-6399

Tengo el agrado de informarle que el 24 de julio de 2007 el Parlamento de Montenegro promulgó la Ley sobre la protección de las variedades vegetales.

Montenegro tiene planes para adherirse al Convenio internacional para la protección de las obtenciones vegetales, de 2 de diciembre de 1961, revisado en Ginebra el 10 de noviembre de 1972, el 23 de octubre de 1978 y el 19 de marzo de 1991 (Convenio de la UPOV).

De conformidad con lo dispuesto en el párrafo 3 del artículo 34 del Convenio de la UPOV, agradecería que el Consejo de la UPOV examine la conformidad de la Ley de Montenegro con las disposiciones del Convenio de la UPOV.

(firmada)

Anexos: Traducción oficial de la Ley sobre la protección de las variedades vegetales en uno de los idiomas oficiales de la UPOV (inglés)

[Sigue el Anexo II]

ANEXO II

[Traducción por la Oficina de la Unión de una carta con fecha 12 de octubre de 2007]

Enviada por: Milutin Simovic
Ministro de Agricultura, Silvicultura y Recursos Hídricos
República de Montenegro

A: Dr. Kamil Idris
Secretario General de la UPOV

S. Ref.: 320/07-0202-6399/3

Haciendo referencia a la carta del 1 de octubre de 2007 firmada por el Sr. Rolf Jördens, Secretario General Adjunto de la Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV), tengo el honor de adjuntar a la presente la traducción verificada al inglés de algunas disposiciones de la “Ley de Protección de las Variedades Vegetales”, que fue promulgada por el Parlamento de la República de Montenegro el 24 de julio de 2007.

(firmada)

Anexo: Traducción verificada al inglés de algunas disposiciones de la “Ley de Protección de las Variedades Vegetales”

[Sólo en inglés]

OFFICIAL JOURNAL OF THE REPUBLIC OF MONTENEGRO NO. 48/07

On the basis of Article 88 paragraph 2 of the Constitution of the Republic of Montenegro, I hereby issue

**THE DECREE
ON PROCLAMATION OF THE LAW ON PROTECTION OF PLANT VARIETIES**

The **Law on Protection of Plant Varieties** enacted by the Constituent Assembly of the Republic of Montenegro at the sixth regular session in 2007 on July 24, 2007 is hereby proclaimed.

No. 01-962/2
Podgorica, August 2, 2007.

President of the Republic of Montenegro
Filip Vujanovic, *manu propria*.

LAW ON PROTECTION OF PLANT VARIETIES

I GENERAL PROVISIONS

Scope of the Law

Article 1

This Law governs the terms and the procedure for the protection of plant varieties (hereinafter referred to as: varieties) as well as rights and obligations of the breeder's rights holders.

This Law shall apply to all plant genera and species.

Article 2

For the purposes of this Law the following definitions shall apply:

- 1) **variety** means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes and is distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered a unit with regard to its suitability for being propagated unchanged;
- 2) **protected variety** means a variety protected in accordance with the provisions of this Law;
- 3) **breeder** means:

- a company, some other legal person, entrepreneur or a natural person (hereinafter referred to as: person) who bred, or discovered and developed a new variety, or
 - the person who is the employer of the aforementioned person from the indent 1 of this item, or who has commissioned the latter's work;
- 4) **breeder's right** means the right of the breeder acknowledged by registration of the protected variety into the Register of Protected Varieties, provided for in this Law;
- 5) **breeder's right holder** means a person who has been granted a breeder's right in accordance with provisions of this Law, or his successor in title or heir;
- 6) **Register of Applications for variety protection** means the register into which duly filed applications for protection of a plant variety are recorded (hereinafter referred to as: Register of Applications);
- 7) **Register of Protected Varieties** means a register into which protected varieties are recorded;
- 8) **UPOV** means the international Union for the Protection of New Varieties of Plants.

Foreign Persons' Rights

Article 3

As regards variety protection in the Republic of Montenegro (hereinafter referred to as: the Republic) the foreign legal and natural persons shall have the same rights and obligations as its nationals.

Article 4

In a procedure before the competent authority a foreign legal and natural person shall be represented by a local representative.

II VARIETY PROTECTION

1. CONDITIONS AND PERIOD

Conditions

Article 5

A variety shall be protected in accordance with this Law provided that it is new, distinct, uniform, stable and meets the conditions for granting it a protected variety denomination.

Period of protection

Article 6

The period of protection of a variety shall expire after twenty years, and in the case of trees and vines it shall expire twenty five years from the day of the grant of the breeder's right.

2. NEW VARIETY

Article 7

A variety shall be considered new if, at the date of filing of the application for a variety protection, the propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for the purpose of exploitation of the variety in the Republic for the period longer than one year or in a territory other than the Republic for the period longer than four years or, in the case of trees and vines, longer than six years from the said date.

The variety referred to in the paragraph 1 of this Article shall also be considered new in cases when it is placed on the market in one of the following ways:

- 1) By a contract on the transfer of the breeder's right;
- 2) By a contract on the basis of which the propagating material of the variety is multiplied on behalf of the holder of the breeder's right, provided that the propagating material multiplied is returned to the holder of the breeder's right and that the propagating material multiplied is not used for production of another variety;
- 3) By a contract on the basis of which researches are made in the experimental field and in laboratories, for the purpose of variety evaluation.

3. DISTINCTNESS

Article 8

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.

The filing of an application for granting of a breeder's right or for entering of another variety into the register of protected varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to granting of a breeder's right or to the entering of the said other variety into the Register of protected varieties, as the case may be.

The methods for checking the distinctness of a variety shall be laid down by the Ministry in charge of agriculture (hereinafter referred to as: Ministry).

4. UNIFORMITY

Article 9

The variety 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.

The methods for checking the uniformity of a variety shall be laid down by the Ministry.

5. STABILITY

Article 10

The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

The methods for checking the stability of a variety shall be laid down by the Ministry.

6. VARIETY DENOMINATION

Variety

Article 11

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

Where a variety denomination has already been used in the Republic or some other country or where an application is filed or the denomination already registered in the Republic or some other country, only the variety denomination which has been proposed may be used in the protection procedure before the competent authority.

Where a variety denomination proposed is inappropriate for use in the Republic and use of a synonym is necessary, that synonym shall be registered in the Register of Applications and the Register of Protected Varieties.

A variety denomination may not consist solely of figures unless this is an established practice for designating specific varieties. A variety denomination may not mislead or cause confusion concerning the characteristics, value or identity of the breeder. A variety denomination shall be different from any other denomination used on the territory of UPOV Member States for designation of existing variety of the same plant species or a closely related species.

Any person who markets or advertises the propagating material of a variety protected shall use the registered variety denomination.

The obligation on use of the registered variety denomination shall not expire even after the expiration of the period of variety protection referred to under the Article 6 of this Law.

When a variety is marketed or advertised, a trademark, trade name or other similar indication may be associated with the registered variety denomination, provided that the variety denomination is easily recognizable.

Where use of a variety denomination is forbidden to a person who is bound to use it, for reasons of any of the prior rights of a third person, the competent authority in charge of plant variety protection (hereinafter referred to as: competent authority) shall request from the breeder to propose another variety denomination.

Denomination Proposal

Article 12

The applicant shall propose a variety denomination in his application.

The applicant may temporarily, not longer than 30 days from the day of filing the application, postpone the proposal of a denomination. In case the applicant failed to submit the proposal in due time, the competent authority shall reject the application.

An interested person may, within the period of 30 days from the date of entry in the Registry of Applications, file an objection to the proposed denomination.

The competent authority shall notify the applicant of the objection referred to under the paragraph 3 of this Article and invite him to submit a reply to the objection within the period of 30 days from the day of the receipt of the notification.

In his reply to the objection, the applicant may propose a new denomination for the variety.

In case the denomination proposed does not comply with this Law, the competent authority shall order the applicant to file a proposal for a new denomination of the variety within the period of 30 days from the day of the receipt of the notification.

In case the applicant failed to submit the proposal of the new denomination within the prescribed period of time, the competent authority shall reject the application.

The variety denomination is granted by the competent authority in the decision on variety protection.

Reasons for rejection of the denomination proposed

Article 13

The competent authority shall reject the proposal of a variety denomination which:

- 1) is inappropriate for a variety identification;
- 2) consists solely of signs or indications that may serve for indication of a variety, kind, quality, quantity, intended objective, value geographic origin or time of production;
- 3) is contrary to Article 11 paragraphs 3 and 7 of this Law;
- 4) is identical or very similar to a denomination that already designates an existing variety of the same or closely related species;
- 5) indicates features in common to other varieties of the same species;
- 6) indicates that the variety is derived from a renowned or related species.

Closely related plant species are laid down by the Ministry.

Denomination cancellation

Article 14

The competent authority shall cancel a variety denomination under the circumstances stated under the Article 13 paragraph 1 of this Law, or on the basis of a court decision prohibiting the use of the denomination.

The competent authority shall issue a notification on cancellation of the variety denomination and invite the holder of the breeder's right to propose a new denomination within the period of 30 days from the day of receipt of the notification.

III VARIETY PROTECTION PROCEDURE

1. APPLICATION

Article 15

The procedure for protection of a variety is initiated on the basis of an application filed to the competent authority by the breeder or his representative.

The form and contents of the application stated under the paragraph 1 of this Article is laid down by the Ministry.

Additional information

Article 16

Together with the application referred to under the Article 15 paragraph 1 of this Law, information on the process of variety development and samples of propagating material are to be supplied for the examination purposes.

The contents and method of submission of the information and samples referred to under the paragraph 1 of this Article shall be laid down by the Ministry.

The samples of propagating material of a variety that has not been entered into the Register of Varieties may be imported for the examination purposes as well as for keeping them for the variety protection procedure purposes.

Examination of the application

Article 17

The competent authority shall examine whether the application is appropriate, i.e. whether it meets the requirements as laid down by this law.

Where it establishes that the application is not appropriate, the competent authority shall, stating the reasons for it, invite the applicant to solve the deficiencies identified within the period of 15 days from the day of receipt of the notification.

In case the applicant failed to solve the deficiencies within the period of time referred to under the paragraph 2 of this Article, the application shall be rejected.

Entry into the Register of Applications

Article 18

Where it is established that the application meets the requirements, the competent authority shall register it into the Register of Applications.

The contents of the Register of Applications shall be laid down by the Ministry.

The Register of Applications shall be kept by the competent authority.

2. RIGHT OF PRIORITY

Article 19

Any breeder who has duly filed an application for the protection of a variety with the competent authority of another UPOV member for the grant of a breeder's right shall enjoy a right of priority for a period of twelve months from the day of filing the application.

In case two or more breeders have, independently, bred, discovered and developed a new variety, the right of priority shall be enjoyed by the breeder who was the first to file an application for the variety protection to the competent authority.

In order to avail himself of the right of priority, the breeder shall furnish the competent authority with the evidence on the priority date within a period of 90 days.

In case the competent authority accepts the evidence on the priority date, the application shall be deemed as filed on the priority day.

3. VARIETY EXAMINATION

Examination

Article 20

Variety examination for the purpose of determining whether it fulfils the requirements for protection of the variety is done in the experimental field and in the laboratory, in compliance with the Law.

The applicant shall supply the competent authority with a quantity of propagating material of the variety which is adequate for the examination.

Where the applicant fails to supply the adequate quantity of the propagating material, the application shall be rejected.

Examiner

Article 21

Examination of a variety in the experimental field or laboratory may be carried out by a legal person that meets the requirements for carrying out such examination in terms of human resources, facilities and equipment (hereinafter referred to as: examiner).

Requirements that need to be met by the examiner shall be laid down by the Ministry.

Compliance with requirements referred to under the paragraph 2 of this Article shall be laid down by the competent authority.

Processing examination results

Article 22

The competent authority shall conclude the contract with the examiner on the basis of public announcement procedure.

The competent authority shall process the results obtained in the experimental field and laboratory.

Processing of results referred to under the paragraph 2 of this Article shall be done in line with methods laid down by the Ministry.

4. DECISION ON VARIETY PROTECTION AND GRANT OF BREEDER'S RIGHT

Article 23

Based on examination results, the competent authority shall issue a decision on protection of the variety or rejection of the application for the protection of the variety, as appropriate.

Based on the decision on protection of the variety, the variety shall be registered into the Register of Protected Varieties.

The applicant is entitled to appeal to the Ministry against the decision on rejection of the variety protection.

In the appeal procedure, the examination of the variety in the examination field and the laboratory for the purpose of the supervision shall be conferred to another examiner.

When the supervision results confirm that the variety meets the requirement for protection and entry into the Register of Protected Varieties, the supervision costs shall be borne by the examiner who initially presented the examination results.

When the supervision results confirm the initial examination results, the supervision costs shall be borne by the plaintiff.

The contents of the Register of Protected Varieties shall be laid down by the Ministry.

The Register of Protected Varieties shall be kept by the competent authority.

The data on the variety protection, including the variety denomination and data on the breeder, the holder of the right and their head office or domicile, as appropriate, shall be published in the "Official Journal of the Republic of Montenegro", within the period of 30 days from the day of entry in the Register of Protected Varieties.

Data availability and confidentiality

Article 24

Any interested person may peruse the following:

- 1) the Register of Application for variety protection;
- 2) the results of variety examination in the protection procedure;
- 3) the Register of Protected Varieties.

When a variety production requires repeated use of another variety (component), the applicant may request in his application confidentiality of the documents and results of component examination.

5. APPEAL

Right of appeal

Article 25

Any interested person who deems that the applicant is not entitled to the breeder's right or that he does not have the right of priority or that conditions for protection of a variety under this Law have not been complied with, may lodge a complaint to the Ministry with respect to the entry of the application into the Register of Application or to the entry of the variety into the Register of Protected Varieties within the period of 30 days from the day of publicizing the data on the entry.

The complaint shall be lodged in writing, together with appropriate evidence.

The complaint referred to under the paragraph 1 of this Article shall be forwarded to the applicant or holder of the right, together with an invitation to provide a reply to the complaint within the period of 15 days from the date of the receipt of the complaint.

Decision on complaint to the entry into the Register of Applications

Article 26

When the applicant fails to present a reply to the complaint within the period prescribed, the application shall be deemed withdrawn.

When the applicant presents a reply to the complaint and demands the decision on his application, with or without amendments, the decision on the application and the complaint shall be made concurrently.

Opposition to registration in the Register of Protected Varieties

Article 27

The opposition to registration in the Register of Protected Varieties may be submitted by a person who is of the opinion that the variety is not new, distinct, uniform or stable.

The opposition stated under the paragraph 1 of this Article shall be submitted to the Ministry.

Additional examination of the variety may be ordered in the opposition procedure in order to verify the statements of the opposition.

At the request of the body making decision on the opposition, the person who submitted opposition shall present, within the period of 15 days, the additional information and documents that the opposition is based on or reproduction material necessary for examination.

When the person who submitted the opposition fails to act in compliance with the paragraph 3 of this Article, the opposition shall be rejected.

Based on results of the procedure undertaken as regards the opposition submitted, the opposition may be either upheld, thus cancelling the entry into the Register of Protected Varieties, or dismissed.

IV THE RIGHTS AND OBLIGATIONS OF THE BREEDER

1. RIGHTS

Scope of the breeder's right

Article 28

The holder of the breeder's rights shall be entitled to indication of his name and the denomination in acts, registers, documents and publications.

The propagating material of a protected variety shall be used only with authorization of the holder of the breeder's right, who sets the conditions for granting the authorization.

The use of the propagating material of a protected variety includes entitlement to:

- 1) Production or reproduction (multiplication) of the variety protected;
- 2) Conditioning for the purpose of propagation of the protected variety;
- 3) Offering the protected variety for sale;
- 4) Marketing of the protected variety;
- 5) Exporting or importing of the protected variety;
- 6) Stocking for any of the purposes referred to in items 1 to 5 of the paragraph 3 of this Article.

Acts referred to in the paragraph 3 items 1) to 6) of this Article, in respect of the harvested material, including whole plants and parts of plants obtained through the unauthorized use of the propagating material of the protected variety shall require authorization of the holder of the breeder's right, unless the holder has had reasonable opportunity to exercise his right in relation to the propagating material concerned.

The authorization of the holder of the breeder's right is also required for use of a variety:

- 1) Which is essentially derived from the protected variety where the protected variety is not in itself an essentially derived variety;
- 2) Which is not clearly distinguishable from the protected variety; and'
- 3) Whose production requires the repeated use of the protected variety.

A variety shall be deemed to be derived from the initial variety when:

- 1) It is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the essential characteristics resulting from the genotype or a combination of genotypes of the initial variety;
- 2) It is clearly distinguishable from the initial variety; and
- 3) With the exception of the differences resulting from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or a combination of genotypes of the initial variety.

For the purpose of paragraphs 5 and 6 of this Article:

- 1) An initial variety is the variety that the new variety was developed from;
- 2) An essentially derived variety is a variety obtained by selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing or transformation by genetic engineering.

Exceptions to the breeder's right

Article 29

Authorization of the holder of the breeder's right is not required for the acts undertaken for:

- Personal use and for non-commercial purposes;
- Experimental purposes;
- For the purpose of breeding other varieties, with the exception of acts referred to in the Article 28 paragraphs 3, 4 and 5 of this Law.

The administration may, taking into account the need for safeguarding the breeder's rights, restrict the breeder's right, with remuneration that shall not be lower than the market one, in relation to any variety in order to permit farmers to use the harvested material obtained from the protected variety in their own holdings for propagation purposes.

Exhaustion of the breeder's right

Article 30

The breeder's right shall not extend to propagating material of any protected variety, the harvested material, including whole plants or plant parts, and any product obtained from harvested material (hereinafter referred to as: material) marketed by the holder of the breeder's right or with his consent, on the territory of the Republic, unless for the purpose of further propagation of the variety concerned, or exporting the material of the variety into a country that does not protect varieties of the plant genus or species to which the variety belongs, except where the material is exported for the purpose of final consumption.

Provisional protection

Article 31

During the period between filing the application for the grant of the variety protection and the granting of the right on the variety protection, the holder of the breeder's right shall be entitled to equitable compensation from any person who, during the period concerned, used the variety without the authority of the holder of the breeder's right.

Several breeders, breeder and employer

Article 32

When two or more persons jointly bred or discovered and developed a variety, they shall have equal rights to protection. The rights and obligations of such persons may be regulated by a contract.

When a variety is bred, discovered and developed during the employment, the rights of the employee who bred, discovered and developed the variety concerned and the rights of the employer shall be laid down by this Law, general regulations and a contract between the employer and the employee or their representatives.

2. OBLIGATIONS

Maintenance of the protected variety

Article 33

The holder of the breeder's right shall, throughout the period for which the right is exercisable, be under the obligation to maintain the protected variety or its hereditary components in an unchanged form.

Monitoring of variety maintenance

Article 34

The competent authority ensures whether the holder of the breeder's right maintains the protected variety or its hereditary components in an unchanged form throughout the period for which the right is exercisable.

If the competent authority establishes that the holder of the breeder's right has failed to maintain the variety, it shall make a decision on cancellation of the breeder's right.

Providing variety samples

Article 35

At the request of the competent authority, the holder of a breeder's right shall be under an obligation to make available appropriate quantity of samples of the propagating material or hereditary components of the protected variety for the purpose

of establishing or renewing the variety sample or comparative examination for the purpose of protection of other varieties.

At the request of the competent authority, the holder of the breeder's right is under the obligation to maintain or keep the variety sample.

V LICENCES

Transfer of the breeder's right

Article 36

A holder of the breeder's right may transfer his right to a protected variety, in entirety or partially, to another person (hereinafter referred to as: licence).

The licence is transferred by a contract on licence that shall be in writing and include: the scope of right, the period of time for which the right is transferred and the fee for use of the right, if contracted.

The holder of the breeder's right shall be under obligation to present the contract on the licence to the competent authority for the purpose of entry into the Register of Protected Varieties.

Compulsory licence

Article 37

When the holder of the breeder's right refuses to transfer his right of economic use of the variety protected to other persons, or when he sets unjustified conditions for such transfer, the competent authority may grant the compulsory licence, provided that the use is of public interest for development of plant production, for protection and development of the environment or for a specific economic branch.

Prior to filing the request referred to under the paragraph 1 of this Article, the interested person shall have to provide evidence on his attempt to obtain the authorization from the holder of the breeder's right for use of the variety protected under reasonable economic conditions and that the authorization was not granted to him within the reasonable period of time.

The compulsory licence referred to under the paragraph 1 of this Article shall be granted only to the interested person that proves its capability and capacity required for economic use of the protected plant variety.

Deadline for requesting the compulsory licence

Article 38

The request for grant of the compulsory licence may not be filed earlier than four years from the date of filling the application, or three years from the date of grant of the breeder's right, whichever expires later.

The compulsory licence shall not be granted if the holder of the breeder's right proves there are reasons justifying his refusal to grant the authorization for use of the protected variety or conditions for use.

The fee for compulsory licence

Article 39

The holder of the compulsory licence shall pay the holder of the breeder's right the fee set by mutual consent. In absence of the consent on the amount and method of paying the fee, the amount of the fee shall be set by the competent court of law, taking into account the circumstances of each individual case and the economic value of the compulsory licence.

Scope and duration of the compulsory licence

Article 40

The scope and the duration of the compulsory licence shall be limited to the purpose it was granted for.

The compulsory licence may not be preclusive.

The compulsory licence may be transferred only together with the company or part of the company in which it is used, as appropriate.

The compulsory licence shall be granted primarily for the purposes of supplying the domestic market.

The compulsory licence may be terminated if and when the circumstances resulting in it cease to exist and when it is unlikely that they will reoccur. Upon the substantiated grounded request, the competent authority shall review the existence of such circumstances.

The compulsory licence may also be terminated when the competent authority establishes that the person to whom it was granted fails to meet the conditions under which it was granted.

Obligation of supply of propagating material

Article 41

At the request of the competent authority, the holder of the breeder's right shall be bound to supply the person to whom the compulsory licence was granted the quantity of propagating material necessary for use of the compulsory licence, at an appropriate remuneration.

VI TERMINATION OF BREEDER'S RIGHT

Reasons for termination of breeder's right

Article 42

The breeder's right shall terminate before the term referred to under the Article 6 of this Law when:

- 1) The holder of the breeder's right presents to the competent authority the written renouncement of the breeder's right, on the date specified in the renouncement, or the date of the receipt of the renouncement;
- 2) The holder of the breeder's right dies or ceases to exist without a heir or successor in rights, on the date of death or cessation;
- 3) The annual costs of variety protection have not been paid on the due date.

The decision on termination of the breeder's right is made by the competent authority which enters it into the Register of Protected Varieties.

Nullity

Article 43

The competent authority may declare null and void the decision on protection of the variety throughout the period of protection, *ex officio* or at the proposal of an interested person when:

- 1) It is established that the variety was not new or not distinct at the time of the grant of the breeder's right;
- 2) It is established that the decision on granting the breeder's right has been essentially based upon information and documents furnished by the applicant, while conditions of stability and uniformity were not complied with at the time of the grant of the breeder's right;
- 3) The breeder's right has been granted to a person who is not entitled to it, unless transferred to the person who is so entitled.

The decision referred to under the paragraph 1 of this Article shall be entered into the Register of Protected Varieties.

After the decision referred to under the paragraph 1 of this Article becomes final, the competent authority shall delete the variety from the Register of the Protected Varieties.

A complaint to the decision referred to under the paragraph 1 of this Article may be lodged to the Ministry.

Cancellation of the decision

Article 44

The competent authority shall cancel the decision on protection of the variety when:

- 1) It is established that the variety is no longer uniform or stable;
- 2) The holder of the breeder's right fails to furnish the competent authority with information, documents or material deemed necessary for verification of the variety maintenance;
- 3) The holder of the breeder's right fails to propose another denomination for the variety when the variety denomination has been cancelled after the grant of the right;
- 4) The breeder fails to pay the fee for maintenance of the breeder's right.

The decision referred to under the paragraph 1 of this Article shall be entered into the Register of Protected Varieties.

After the decision referred to under the paragraph 1 of this Article becomes final, the competent authority shall delete the variety from the Register of the Protected Varieties.

VII COSTS

Article 45

The costs of variety examination in the examination field and the laboratory and annual costs of variety protection shall be borne by the applicant or the holder of the breeder's right, as appropriate.

The amount of the costs referred to under the paragraph 1 of this Article shall be laid down by the Ministry.

VIII CIVIL LAW PROTECTION

Article 46

The holder of the breeder's right or his successor in title or heir may bring an action against the person infringing his right through actions referred to under the Article 28 paragraph 2, 3 and 4 of this Law without authorization, and request:

- 1) Ascertaining of infringement of the breeder's right;
- 2) Prohibition of actions infringing the breeder's right;
- 3) Damages for the damage done through infringement of the breeder's right, including the actual damage, lost profit and just expenditures incurred by legal representation in legal proceedings;
- 4) Publicising of the court decision at the expense of the respondent;

- 5) Forfeiture or destruction, without compensation, the items and equipment prevalingly used for infringement of the breeder's right;
- 6) Forfeiture or destruction, without compensation, the products produced in the course of infringement of the breeder's right.

General regulations on damages shall be applied to issues related to compensation of the damage done by infringement of the breeder's right which have not been addressed by this law.

When infringement of the breeder's right is done wilfully or because of extreme negligence, the plaintiff may, instead of the amount of damages referred to under the paragraph 1 item 3 of this Article, request damages of triple amount of the fee for legal use of the breeder's right.

Statute of limitations

Article 47

The action referred to under the 46 paragraph 1 of this Law may be submitted within the period of three years from the day the plaintiff received knowledge on the infringement and the offender, but no later than five years from the day when the infringement was committed.

The proceedings in action brought for infringement of the breeder's right shall be urgent.

Relief

Article 48

Upon request of the holder of the breeder's right who makes probable the current or future infringement of his right, the court of law may order the relief by way of dispossession or suspension from free circulation of items used in the infringement or the prohibition the continuation of activities undertaken which might lead to infringement.

Securing evidence

Article 49

At the request of the holder of the breeder's right who makes probable the current or future infringement of his right, or the risk of occurrence of irreparable damage and when there is a reasonable doubt that evidence on that shall be destroyed or that providing them would not be possible in due course, the court of law may order the measure of securing the evidence without prior notification to or hearing of the person from whom the evidence is collected.

Securing the evidence in terms of the paragraph 1 of this Article means control of premises, records, documents, databases and other, as well as seizure of documents and products produced by infringement of the breeder's right and hearing witnesses and experts.

The court decision on securing evidence shall be handed to the person from whom the evidence is collected at the moment of evidence collected and in case of his absence, as soon as possible.

Proposal for relief

Article 50

Relief referred to under the Articles 48 and 49 of this Law may be requested even before bringing an action.

In the case stated under the paragraph 1 of this Article, the decision on the relief shall also set the deadline within which the action shall have to be brought, which period of time shall not be longer than 30 days from the day of implementation of the relief.

The appeal against the court decision on relief shall not defer enforcing of the decision.

Respondent's obligation to present information

Article 51

The court of law may order the respondent to provide information on third persons related to the infringement or to furnish documents related to the infringement.

The person failing to meet the obligation stated under the paragraph 1 of this Article liable for the resulting damage.

IX INSPECTION AND SURVEILLANCE

Article 52

Inspection and surveillance over the enforcement of this Law shall be done by the competent authority through a phytosanitary inspector, in compliance with the Law.

1. Authority of a phytosanitary inspector

Article 53

A phytosanitary inspector performs inspection and surveillance particularly in regard to:

- 1) Examination of distinctness, stability or uniformity of varieties in the experimental field or laboratory of the examiner;
- 2) Examiner's compliance with the conditions for examination of varieties in the experimental field or laboratory;
- 3) Production and marketing of propagating material of varieties protected under the provisions of this Law;
- 4) Imports and exports of propagating material of varieties protected;
- 5) Exercising the licence rights;
- 6) Use of the protected variety denomination;
- 7) Sampling of propagating material, free of charge, for the purpose of establishing the compliance with the conditions as laid down by this Law.

2. Administrative measures and actions

Article 54

In cases when breach of law or other regulation is established, a phytosanitary inspector shall, in addition to administrative measures and actions laid down by the law governing the inspection and surveillance, undertake the following administrative measures and actions:

- 1) Prohibit placing on the market, import or export of propagating material of varieties if it is established that the propagating material fails to meet the conditions as laid down by this Law;
- 2) Prohibit the examiner the examination of varieties in the experimental field or in the laboratory in case of failing to remove the deficiencies as regards conditions laid down by this Law.

X PENAL PROVISIONS

Article 55

A fine ranging from 200 to 300 minimum wages in the Republic shall be imposed on an organ, company or other legal person or entrepreneur in case of:

- 1) Using the variety denomination not granted by the decision of the competent authority (Article 12 paragraph 8);
- 2) Using the variety denomination identical or very similar to the denomination that already designates an existing variety of the same or closely related plant species as well as in case that the protected variety denomination has a special significance as regards the variety (Article 13);
- 3) Failing to maintain the protected variety or its hereditary components in an unchanged form throughout the period of the variety protection (Article 33).

A fine of 20 minimal wages shall also be imposed on the person in charge of the legal person for the offence referred to under the paragraph 1 of this Article.

A fine ranging from 15 to 20 minimal wages in the Republic shall be imposed on the natural person for the offence referred to under the paragraph 1 of this Article.

For the offence referred to under the paragraph 1 of this Article, in addition to the fine, a protective measure of prohibition of work ranging from one to six months may be imposed on the company, other legal person or entrepreneur.

Article 56

A fine ranging from 150 to 200 minimum wages in the Republic shall be imposed on an organ, company or other legal person or entrepreneur when:

- 1) At the request of the competent authority it fails to supply the adequate quantity of propagating material or hereditary components of the protected variety for the purpose of establishing or renewing the variety sample or for the purpose of comparative examination for the purpose of protection of other varieties or when it

- fails to maintain or keep the sample for the needs of the competent authority (Article 35);
- 2) Failing to present to the competent authority the contract on licence for the purpose of entry in the Register of Protected Varieties (Article 36 paragraph 3);
 - 3) At the request of the competent authority fails to supply to the person to whom the compulsory licence was granted the appropriate quantity of propagating material necessary for use of the compulsory licence (Article 41).

For the offence referred to under the paragraph 1 of this Article a fine ranging from 15 to 20 minimum wages in the Republic shall be imposed the natural person and the person in charge of the legal person.

XI TRANSITIONAL AND FINAL PROVISIONS

Protection of renowned varieties

Article 57

Notwithstanding the Article 7 of this Law, the competent authority may grant the breeder's right for the variety that is not new on the day this Law enters into force when:

- 1) The application has been filed no later than 12 months from the day this Law entered into force; and
- 2) The variety is:
 - Registered in the appropriate variety register acknowledging the competent authority;
 - The subject of the breeder's right in a UPOV member state, or the subject of the application in a UPOV member state, in case that application leads to grant of the breeder's right; or
 - The subject of the evidence on the date when the variety ceased to be new in line with the provision of the Article 7 of this Law, that the competent authority finds acceptable.

Duration of the breeder's right granted in line with the provision of the paragraph 1 of this Article starts with the date of:

- Registration referred to under the paragraph 1 item 2 line 1 of this Article;
- Grant of the breeder's right referred to under the paragraph 1 item 2 line 2 of this Article; or
- When the variety ceased to be new in line with the provision referred to under the paragraph 1 item 2 line 3 of this Article.

When relevant to the decision of the competent authority, the earliest of the dates stated under the paragraph 2 of this Article shall be taken.

When the breeder's right is granted in line with the provision of the paragraph 1 of this Article, the holder of the right is under obligation to yield the licence under reasonable terms in order to provide for conscientious use of the variety that the third

person began in good faith prior to filing the application for the grant of the right in line with the provision of the paragraph 1 of this Article.

Article 58

Bylaws for implementation of this Law shall be adopted within the period of one year from the day this Law enters into force.

Pending the adoption of the regulations based on the authority of this Law the regulations adopted on the basis of the Law on Protection of Varieties of Agricultural and Forest Plants (Official Journal of FRY, No. 12/98, 28/ 2000, 37/02) provided that it is not in the defiance of this Law.

Article 59

On the day this Law enters into force, the Law on Protection of Varieties of Agricultural and Forest Plants (Official Journal of FRY, No. 12/98, 28/ 2000, 37/02) shall be repealed.

Entering into force

Article 60

This Law shall enter into force on the day of its publishing in the Official Journal of the Republic of Montenegro.

[Fin del Anexo II y del documento]