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UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES

Ginebra

CONSEJO**Cuadragésima séptima sesión ordinaria
Ginebra, 24 de octubre de 2013****EXAMEN DE LA CONFORMIDAD DE LA LEY DE PROTECCIÓN
DE LAS OBTENCIONES VEGETALES DE BOSNIA Y HERZEGOVINA
CON EL ACTA DE 1991 DEL CONVENIO DE LA UPOV***Documento preparado por la Oficina de la Unión**Descargo de responsabilidad: el presente documento no constituye
un documento de política u orientación de la UPOV*

1. Mediante carta enviada el 27 de junio de 2013 al Secretario General de la Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV), el Sr. Uzunović Zeid, Director Adjunto de la Oficina de Protección Fitosanitaria de Bosnia y Herzegovina del Ministerio de Comercio Exterior y Relaciones Económicas, solicitó el examen de la Ley de Protección de las Obtenciones Vegetales de Bosnia y Herzegovina del 23 de febrero de 2010, modificada el 16 de abril de 2013 ("la Ley") con la finalidad de determinar su conformidad con el Acta de 1991 del Convenio de la UPOV ("Acta de 1991"). La carta antedicha se reproduce en el Anexo I del presente documento. En el Anexo II figura una traducción de la Ley al inglés.

ANTECEDENTES

2. En el artículo 34.3) del Acta de 1991 se dispone que "[a]ntes de depositar su instrumento de adhesión, todo Estado que no sea miembro de la Unión o cualquier organización intergubernamental solicitará la opinión del Consejo acerca de la conformidad de su legislación con las disposiciones del presente Convenio. Si la decisión haciendo oficio de opinión es positiva, podrá depositarse el instrumento de adhesión".

3. El Gobierno de Bosnia y Herzegovina inició el procedimiento para ser miembro de la UPOV mediante una carta fechada el 2 de octubre de 2008, en la que solicitaba la opinión del Consejo acerca de la conformidad, con el Acta de 1991, de la Ley de Protección de las Obtenciones Vegetales de Bosnia y Herzegovina sancionada por el Parlamento el 27 de julio de 2004 (la Ley de 2004).

4. El Consejo, en su cuadragésima segunda sesión ordinaria celebrada en Ginebra el 30 de octubre de 2008, decidió:

"a) tomar nota del análisis realizado en el documento C/42/19;

b) recomendar que Bosnia y Herzegovina incorporara en la Ley las disposiciones adicionales y modificaciones que se enunciaban en el documento C/42/19 y, una vez incorporadas a dicha ley las disposiciones y modificaciones adicionales necesarias, que se sometiera la ley modificada a examen del Consejo, de conformidad con el artículo 34.3) del Acta de 1991;

c) pedir a la Oficina de la Unión que, tan pronto como fuera oportuno, ofreciera asistencia al Gobierno de Bosnia y Herzegovina para redactar las disposiciones adicionales y modificaciones necesarias a los fines de su incorporación a la Ley; y

d) autorizar al Secretario General a informar de esa decisión al Gobierno de Bosnia y Herzegovina (véase el documento C/42/21 "Informe", párrafo 18)."

5. Los días 15 y 16 de enero de 2009, en Sarajevo, la Oficina de la Unión prestó asistencia al Gobierno de Bosnia y Herzegovina en la elaboración de la primera versión del proyecto de ley de protección de las obtenciones vegetales basado en el Acta de 1991 del Convenio de la UPOV, habida cuenta de las recomendaciones del Consejo formuladas en 2008.

6. El 20 de marzo de 2010, la Sra. Mirjana Brzica, Jefa del Departamento de Semillas, Plántulas y Protección de las Obtenciones Vegetales, de la Oficina de Protección Fitosanitaria de Bosnia y Herzegovina del Ministerio de Comercio Exterior y Relaciones Económicas, presentó una copia de la "Ley de Protección de las Obtenciones Vegetales en Bosnia y Herzegovina", sancionada por el Parlamento de dicho país el 23 de febrero de 2010 (la Ley de 2010), solicitando asimismo a la Oficina de la Unión que formulara observaciones.

7. El 28 de mayo de 2010, la Oficina de la Unión formuló observaciones sobre la Ley de 2010 y señaló que la mayor parte de las recomendaciones incluidas en la decisión del Consejo de 2008 se habían incorporado en la Ley. Sin embargo, se señaló que, en aras de la correspondencia con el Convenio de la UPOV, sería necesario introducir otras modificaciones en la Ley o realizar algunas verificaciones con la versión original de la Ley de 2010. La Oficina de la Unión informó a la Sra. Brzica que el proyecto de Ley o la Ley sancionada, una vez modificados sobre la base de las observaciones formuladas el 28 de mayo de 2010, tendrían que ser presentados al Consejo para que éste examinara su conformidad con el Convenio de la UPOV.

8. El 2 de septiembre de 2011, la Sra. Brzica informó a la Oficina de la Unión de que la Administración de Protección Fitosanitaria de Bosnia y Herzegovina había iniciado la labor de preparación de un texto consolidado teniendo en cuenta las modificaciones y comprobaciones de la legislación original propuestas por la Oficina de la Unión el 28 de mayo de 2010.

9. El 24 de abril de 2012, la Sra. Brzica solicitó a la Oficina de la Unión que formulara comentarios sobre cada una de las propuestas de modificación de la Ley de 2010 y del texto consolidado, teniendo en cuenta las modificaciones en la Ley y las verificaciones con la versión original de la Ley propuestas por la Oficina de la Unión el 28 de mayo de 2010. La Oficina de la Unión formuló comentarios el 19 de julio de 2012 y el 8 de agosto de 2012.

10. El 7 de junio de 2013, la Sra. Brzica informó a la Oficina de la Unión que la Ley de 2010 se había modificado el 16 de abril de 2013 y que el Gobierno de Bosnia y Herzegovina tenía previsto presentar la Ley de 2010, modificada en 2013, para someterla al examen del Consejo (véase el párrafo 1, *supra*).

FUNDAMENTO DE LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES EN BOSNIA Y HERZEGOVINA

11. La protección de las obtenciones vegetales en Bosnia y Herzegovina se rige por la Ley de Protección de las Obtenciones Vegetales de Bosnia y Herzegovina, sancionada por el Parlamento de dicho país el 23 de febrero de 2010, modificada el 16 de abril de 2013. A continuación se analizan las disposiciones de la Ley en el orden en el que figuran las disposiciones fundamentales del Acta de 1991.

Artículo 1 del Acta de 1991: Definiciones

12. En el artículo 2 de la Ley figuran las definiciones de "obtentor" y "variedad" que están en conformidad con las definiciones del artículo 1.iv) y vi) del Acta de 1991, respectivamente.

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

13. En el artículo 1.1) de la Ley se dispone lo siguiente: “[e]n la Ley de Protección de las Obtenciones Vegetales de Bosnia y Herzegovina (“la Ley”) se establecen los procedimientos para proteger las obtenciones vegetales, las condiciones, la sucesión, el método y el procedimiento de protección y la duración del derecho de obtentor”, a tenor de la obligación fundamental con arreglo al artículo 2 del Acta de 1991.

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

14. En el artículo 4 de la Ley se dispone que “[e]sta Ley se aplicará desde la fecha de entrada en vigor a todos los géneros y especies vegetales”, por lo que guarda conformidad con el artículo 3.2)ii) del Acta de 1991. Cabe señalar que, con arreglo al artículo 36.1)ii) del Acta de 1991, al depositar su instrumento de adhesión, Bosnia y Herzegovina debe notificar en una declaración que la Ley se aplica a todos los géneros y especies vegetales.

Artículo 4 del Acta de 1991: Trato nacional

15. En el artículo 5 de la Ley se establecen las disposiciones de trato nacional. La Ley es conforme al artículo 4 del Acta de 1991.

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

16. En los artículos 6 a 10 de la Ley se establecen las condiciones de protección correspondientes a las disposiciones de los artículos 5 a 9 del Acta de 1991.

17. En los artículos 7.2) y 3) de la Ley referidos a la excepción facultativa del artículo 6.2) del Acta de 1991 se establece lo siguiente:

“2) Cuando, de conformidad con el artículo 4, la presente Ley se aplique a un género o a una especie vegetal a la que no se aplicase anteriormente, se considerará que las variedades pertenecientes a ese género o especie vegetal satisfacen la condición de novedad definida en el párrafo 1), incluso si la venta o la entrega a terceros descrita en dicho párrafo hubiese tenido lugar en Bosnia y Herzegovina dentro de un plazo de cuatro años antes de la fecha de presentación o, en el caso de los árboles y las vides, dentro de un plazo de seis años antes de esa fecha.

“3) La disposición prevista en el párrafo 2) del presente artículo se aplicará a las solicitudes de protección de derechos de obtentor presentadas en el plazo de un año a partir de la aplicación de las disposiciones de la Ley a los géneros o especies en cuestión”.

Artículo 10 del Acta de 1991: Presentación de solicitudes

18. En el artículo 12 de la Ley se establecen disposiciones relativas a la presentación de solicitudes. En la Ley no parece haber disposiciones que entren en conflicto con el artículo 10 del Acta de 1991.

Artículo 11 del Acta de 1991: Derecho de prioridad

19. En el artículo 14 de la Ley se establecen disposiciones sobre el derecho de prioridad que están en conformidad con las disposiciones del artículo 11 del Acta de 1991.

Artículo 12 del Acta de 1991: Examen de la solicitud

20. En el artículo 15 de la Ley se establecen disposiciones relativas al examen de la solicitud que están en conformidad con las disposiciones del artículo 12 del Acta de 1991.

Artículo 13 del Acta de 1991: Protección provisional

21. En el artículo 18 de la Ley se establecen disposiciones sobre protección provisional que están en conformidad con las disposiciones del artículo 13 del Acta de 1991.

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

22. En el artículo 21.4) de la Ley se establece la siguiente excepción facultativa: "Actos respecto de ciertos productos" del artículo 14.3) del Acta de 1991:

"4) Se requerirá la autorización del obtentor para los actos mencionados en los puntos a) a g) del párrafo 1) de este artículo realizados respecto de productos fabricados directamente a partir de un producto de cosecha de la variedad protegida cubierto por las disposiciones del párrafo 3) de este artículo por la utilización no autorizada de dicho producto de cosecha, a menos que el obtentor haya podido ejercer razonablemente su derecho en relación con dicho producto de cosecha".

23. En el artículo 2.f) y el artículo 21 de la Ley se establecen disposiciones sobre el alcance del derecho de obtentor que están en conformidad con las disposiciones del artículo 14 del Acta de 1991.

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

24. En el artículo 22.1) de la Ley se establecen las disposiciones relativas a las excepciones obligatorias al derecho de obtentor que están en conformidad con las disposiciones del artículo 15.1) del Acta de 1991.

25. En el artículo 15.2) del Acta de 1991 se dispone lo siguiente:

"2) [Excepción facultativa] No obstante lo dispuesto en el Artículo 14, cada Parte Contratante podrá restringir el derecho de obtentor respecto de toda variedad, dentro de límites razonables y a reserva de la salvaguardia de los intereses legítimos del obtentor, con el fin de permitir a los agricultores utilizar a fines de reproducción o de multiplicación, en su propia explotación, el producto de la cosecha que hayan obtenido por el cultivo, en su propia explotación, de la variedad protegida o de una variedad cubierta por el Artículo 14.5)a)i) o ii)".

26. En los artículos 22.2) a 6) de la Ley se establecen las siguientes disposiciones relativas a las excepciones obligatorias previstas el artículo 15.2) del Acta de 1991:

"2) En relación con las variedades incluidas en una Lista de plantas agrícolas, no lesionarán el derecho de obtentor los pequeños agricultores que, dentro de límites razonables y a reserva de la salvaguardia de los intereses legítimos del obtentor, utilicen con fines de reproducción o de multiplicación, en su propia explotación, el producto de la cosecha que hayan obtenido por el cultivo en su propia explotación, de la variedad protegida o de una variedad amparada por el artículo 21, párrafo 5), puntos a) o b) de la presente Ley (en adelante denominado "semillas conservadas en finca").

3) Los agricultores estarán obligados a pagar al titular del derecho de obtentor una remuneración razonable por utilizar las semillas conservadas en finca, que será considerablemente inferior al nivel de remuneración de las semillas compradas. Los pequeños agricultores están exonerados de la obligación de pagar remuneración por la utilización de semillas conservadas en finca.

4) Los criterios relativos a los pequeños agricultores serán prescritos por la Administración.

5) El obtentor estará autorizado a solicitar a los agricultores la información por escrito que considere necesaria en relación con las semillas conservadas en finca.

6) Quedan excluidas de la excepción prevista en el párrafo 2) del presente artículo las variedades de plantas frutales, ornamentales, forestales y las hortalizas.

27. Aun teniendo en cuenta que en los artículos 22.2) a 6) de la Ley se incorporan las disposiciones esenciales del artículo 15.2) del Acta de 1991, para aclarar a qué agricultores se aplica la excepción prevista para las semillas conservadas en finca, se recomienda que se elimine la palabra "pequeños" en el artículo 22.2) de la Ley o se elimine el artículo 22.3) de la Ley y se añada la frase siguiente al final del artículo 22.2) de la Ley: "En el reglamento se dispondrán los límites razonables y la salvaguardia de los intereses legítimos del obtentor".

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

28. En el artículo 23 de la Ley se establecen las disposiciones relativas al agotamiento del derecho de obtentor que están en conformidad con las disposiciones establecidas en el artículo 16 del Acta de 1991.

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

29. En el artículo 24 y el artículo 34 de la Ley se establecen las disposiciones relativas a la limitación del ejercicio del derecho de obtentor que están en conformidad con las disposiciones establecidas en el artículo 17 del Acta de 1991.

Artículo 18 del Acta de 1991: Reglamentación económica

30. En el artículo 25 de la Ley se establecen las disposiciones relativas a la reglamentación económica que están en conformidad con las disposiciones establecidas en el artículo 18 del Acta de 1991. La Ley no parece contener disposiciones que entren en conflicto con el artículo 18 del Acta de 1991.

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

31. En el artículo 26 de la Ley se establecen las disposiciones relativas a la duración del derecho de obtentor que están en conformidad con las disposiciones establecidas en el artículo 19 del Acta de 1991.

Artículo 20 del Acta de 1991: Denominación de la variedad

32. En el artículo 28 de la Ley se establecen disposiciones sobre las denominaciones de las variedades que están en conformidad con las disposiciones del artículo 20 del Acta de 1991.

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

33. En el artículo 29 de la Ley se establecen disposiciones sobre la nulidad del derecho de obtentor que están en conformidad con las disposiciones del artículo 21 del Acta de 1991.

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

34. En el artículo 30 de la Ley se establecen disposiciones sobre la caducidad del derecho de obtentor que están en conformidad con las disposiciones del artículo 22 del Acta de 1991.

Artículo 30 del Acta de 1991: Aplicación del Convenio

35. Con respecto a la obligación de “proveer los recursos legales apropiados que permitan defender eficazmente los derechos de obtentor” (artículo 30.1)i) del Acta de 1991), en los artículos 36 a 46 y los artículos 49 a 55 de la Ley estipulan medidas provisionales, civiles, penales y aduaneras para defender los derechos de obtentor.

36. En relación con la obligación conforme al artículo 30.1)ii) del Acta de 1991, en el artículo 1.2) de la Ley se dispone lo siguiente:

“2) La Administración de Bosnia y Herzegovina (“la Administración”) es la autoridad encargada de conceder derechos de obtentor de conformidad con la Ley”.

37. El artículo 11.8), el artículo 13.7), el artículo 16.4) y el artículo 28.3) de la Ley se ajustan a la obligación de publicar información relativa a las solicitudes de derecho de obtentor y a los títulos concedidos, así como a las denominaciones propuestas y aprobadas, según se exige en el artículo 30.1)iii) del Acta de 1991.

Conclusión general

38. En opinión de la Oficina de la Unión en la Ley se recogen las disposiciones sustantivas del Acta de 1991. A la luz de lo antedicho, Bosnia y Herzegovina estará en condiciones de “dar efecto” a las disposiciones del Acta de 1991, como se estipula en su artículo 30.2).

39. *Se invita al Consejo a:*

a) tomar nota del análisis expuesto en este documento;

b) recomendar, para aclarar a qué agricultores se aplica la excepción prevista para las semillas conservadas en finca, que se elimine la palabra "pequeños" en el artículo 22.2) de la Ley o que se elimine el artículo 22.3) de la Ley y se añada la frase siguiente al final del artículo 22.2) de la Ley: “En el reglamento se dispondrán los límites razonables y la salvaguardia de los intereses legítimos del obtentor”;

c) tomar una decisión positiva acerca de la conformidad del proyecto de Ley de Protección de las Obtenciones Vegetales de Bosnia y Herzegovina con las disposiciones del Acta de 1991 del Convenio Internacional para la Protección de las Obtenciones Vegetales, lo que permite a Bosnia y Herzegovina depositar su instrumento de adhesión al Acta de 1991; y

d) autorizar al Secretario General a informar al Gobierno de Bosnia y Herzegovina sobre la recomendación y la decisión mencionadas con anterioridad.

[Siguen los Anexos]

[Traducción por la Oficina de la Unión de una carta con fecha 27 de junio de 2013]

Enviada por: BOSNIA Y HERZEGOVINA
Ministerio de Comercio Exterior y Relaciones Económicas
Oficina de Protección Fitosanitaria de Bosnia y Herzegovina

Destinatario: Sr. Francis Gurry
Secretario General
Unión Internacional para la Protección de las
Obtenciones Vegetales (UPOV)
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Objeto: "Ley de Protección de las Obtenciones Vegetales de Bosnia y Herzegovina"

Estimado Secretario General:

Me complace informarle de que la "Ley de Protección de las Obtenciones Vegetales de Bosnia y Herzegovina" fue sancionada por el Parlamento de Bosnia y Herzegovina el 23 de febrero de 2010 y modificada el 16 de abril de 2013.

Bosnia y Herzegovina tiene la intención de 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 las disposiciones del Artículo 34.3) de dicho Convenio, le agradecería que el Consejo de la UPOV examinara la conformidad de la Ley de Protección de las Obtenciones Vegetales de Bosnia y Herzegovina con las disposiciones del Convenio de la UPOV.

Aprovecho la oportunidad para saludarle atentamente,

(Firmada)

Anexo: Traducción al inglés de la Ley de 2010, modificada en 2013.

[Sigue el Anexo II]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]

Pursuant to el artículo IV 4. a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at its 71. session of the House of Representatives held on 03. and 10. February 2010, and at the 43. session of the House of Peoples, held on 23. February 2010 passed the

LAW
ON PROTECTION OF NEW VARIETIES OF PLANTS
IN BOSNIA AND HERZEGOVINA

PART ONE

CHAPTER I – GENERAL PROVISIONS

Article 1
(Subject of the Law)

(1) The Law on Protection of New Varieties of Plants in Bosnia and Herzegovina (hereinafter “the Law”) defines the procedures for protection of new varieties of plants, conditions, assignment, method and procedure for protection and duration of breeder's right.

(2) The Administration of Bosnia and Herzegovina for plant protection (hereinafter the Administration) is the authority entrusted with the task of granting breeder's right according to the Law.

Article 2
(Definitions)

(1) Terms used in this Law shall have the following meanings:

a) “Breeder” means:

- 1) a person who bred, or discovered and developed, a new variety independently or jointly with other persons;
- 2) the person who is the employer of the aforementioned person or who has commissioned the latter's work;
- 3) the person who is the legal successor in title of the person who bred, or discovered and developed, a new variety or of his employer.

b) “person” means: physical person or legal entity;

c) “breeder's right” means the right of the breeder provided for in this Law;

d) “variety” means: a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether other conditions for protection are fully met, can be:

- 1) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- 2) distinguished from any other plant grouping by the expression of at least one of the said characteristics and
- 3) considered as a unit with regard to its suitability for being propagated unchanged;

e) “protected variety” is a variety which is protected in accordance with the provisions of this Law;

f) “essentially derived variety” may be obtained for example by the 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;

g) “Register of applications for protection of the right of breeder” is a register in which properly submitted applications for protection of the rights of breeders are entered;

- h) "Register of transferred breeder's right" is a register in which the transferred breeders' rights are entered;
- i) "Register of Contractual Licenses" is a register in which Contractual Licenses are entered;
- j) "Register of agents" is a register in which agents of breeder's right are entered;
- k) "Register of protected plant varieties" is a register in which protected plant varieties and assigned breeder's right are entered;
- l) "authorized institution" – is the Administration of Bosnia and Herzegovina for plant protection;
- m) "UPOV" means the International Union for the Protection of New Varieties of Plants;
- n) "member of UPOV" means a State party to the UPOV Convention of 1961/Act of 1972 or the Act of 1978 or a Contracting Party to the 1991 Act, which shall apply the provisions of this Convention;
- o) "territory" means where the member state of UPOV, Contracting Party is a State, the territory of that state and, for intergovernmental organization, the territory in which the constituting treaty applies.

CHAPTER II - SPECIAL PROVISIONS

Article 3 (Commission for Protection of New Varieties of Plants)

- (1) Based on the proposal of the Administration the Council of Ministers of Bosnia and Herzegovina shall issue a Decision to appoint members of the Commission for the protection of new varieties of plants (hereinafter: the Commission).
- (2) The Commission consists of specialists in the field of protection of plant varieties proposed by the competent authorities of the entities and of Brčko District of Bosnia and Herzegovina.
- (3) The Commission consists of a maximum five (5) members.
- (4) The Commission is responsible for providing expert opinions, proposals and monitoring in the field of protection of varieties, as well as giving prior consent to the procedure of adopting a Decision on the acquisition of breeder's right.

Article 4 (Genera and Species to be Protected)

This Law shall be applied on the date of its coming into force to all plant genera and species.

Article 5 (National Treatment)

- (1) Breeder's right may acquire a natural person, a citizen of Bosnia and Herzegovina, resident in Bosnia and Herzegovina, or legal entity with its registered office in Bosnia and Herzegovina.
- (2) Foreign natural or legal person has the same treatment in the acquisition and protection of breeder's right in Bosnia and Herzegovina, as well as the citizens of Bosnia and Herzegovina, as is accorded by the international agreements to which Bosnia and Herzegovina is party to.
- (3) Any State which, not being a member of UPOV, grants national treatment to the nationals of Bosnia and Herzegovina, shall enjoy national treatment in Bosnia and Herzegovina.
- (4) In proceedings before the agency performing the activities of protection of varieties, the state administration and the courts, the foreign legal and natural persons exercise the same rights under this Law by an authorized representative in a process of variety protection as domestic legal or natural persons.

PART TWO

CHAPTER III- CONDITIONS FOR THE GRANTING OF A BREEDER'S RIGHT

Article 6
(Conditions for the Granting of a Breeder's Right)

- (1) A variety is protected by the granting of a breeder's right.
- (2) The breeder's right shall be granted where the variety is:
 - a) new;
 - b) distinct;
 - c) uniform and
 - d) stable
- (3) The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with this Law, and that the applicant complies with the formalities provided for in this Law and that he pays the required fees.

Article 7
(Novelty)

- (1) The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, 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 purposes of exploitation of the variety:
 - a) in the territory of Bosnia and Herzegovina earlier than one year before the date of filing of the application and
 - b) in a territory other than that of Bosnia and Herzegovina earlier than four years or, in the case of trees or of vines, earlier than six years before the date of filing of the application.
- (2) Where this Law, according to Article 4 of this Law, applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph (1) of this Article even where the sale or disposal to others described in that paragraph took place in Bosnia and Herzegovina within four years before the filing date or, in the case of trees or of vines, within six years before the said date.
- (3) The provision under paragraph (2) of this Article, shall only apply to applications for protection of the breeder's right filed within one year, at the latest, after the provisions of this Law apply to the genera or species concerned.
- (4) The following acts shall be considered not to result in the loss of novelty:
 - a) variety is made available to others for the purpose of testing not involving some other form of exploitation of the variety
 - b) sale or disposal of to others without the consent of the breeder;
 - c) sale or disposal of to others that forms part of an agreement for the transfer of rights to the successor in title;
 - d) sale or disposal of to others that forms part of an agreement under which a person multiplies propagating material of a variety on behalf of the breeder where that agreement requires that the property in the multiplied material reverts to the breeder;
 - e) sale or disposal of to others that forms part of an agreement under which a person undertakes field tests or laboratory trials, or small-scale processing trials, with a view to evaluating the variety;
 - f) sale or disposal of to others that forms part of the fulfillment of a statutory or administrative obligation, in particular concerning biosafety or the entry of varieties in an official catalogue of varieties admitted to trade;
 - g) sale or disposal of to others of harvested material which is a by-product or a surplus product of the creation of the variety or of the activities referred to in items (d) to (f) of this paragraph, provided that the said material is sold or disposed of without variety identification for the purposes of consumption and

h) disposal of to others for the purposes of displaying the variety at an official, or officially recognized, exhibition.

Article 8
(Distinctness)

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. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official list of varieties (a register), 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 the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

Article 9
(Uniformity)

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.

Article 10
(Stability)

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.

CHAPTER IV- PROCEDURE FOR THE GRANT OF A BREEDER'S RIGHT

Article 11
(Start of the Proceedings)

- (1) Granting of a breeder's right is achieved in the administrative procedure led by the Administration.
- (2) In other matters, which are not regulated by this Law, the provisions of the Law on Administrative Procedure ("Official Gazette of BiH", no.29/02, 12/04 and 88/07) are applied accordingly.
- (3) The proceeding for granting of the starts by submitting the Application for the grant of the breeder's right to the Administration.
- (4) If the Application for granting of the breeder's right was filed by more breeders, the breeder's right is granted to each of the breeders by the issued Decision.
- (5) The Decision referred to in paragraph (4) of this Article cannot determine the mutual rights of the breeders.
- (6) The procedure for granting the breeder's right starts by filing an application also outside of Bosnia and Herzegovina, if so provided by the international agreement to which Bosnia and Herzegovina is party to.
- (7) Validity of the recognized rights based on the application from paragraph (6) of this Article is balanced with the rights that are recognized on the basis of the application within Bosnia and Herzegovina, unless otherwise provided by international treaty.
- (8) The Administration publishes the Application for granting of the breeder's right as well as any withdrawal or refusal of the application.

Article 12
(Filing the Application)

- (1) The filing date of the application for the breeder's right shall be the date of receipt of the application duly filed. The application shall be submitted in one of the official languages in Bosnia and Herzegovina and in writing. The breeder or his authorized representative is required, together with the Application for granting of the breeder's right, to submit documentation of the variety under the provisions of this Law.

(2) Besides the submission of the application, the breeder is required to submit a proof of payment of administrative fees and special costs of proceedings. The Administration shall regulate the amount of special expenses by a special by-law.

(3) The Administration shall not refuse to grant a breeder's right or limit its duration on the ground that protection for the same variety has not been applied for, or it has been refused or has expired in any other State or intergovernmental organization.

(4) The Administration defines the content and method of keeping the Register of applications for the protection of the breeder's right.

(5) Besides the application under paragraph (1) of this Article, a certain quantity of reproductive material for the variety for which the breeder's right is requested is also submitted for obtaining the breeder's right.

(6) Documentation of reproductive material of the variety shall be considered confidential and will be treated as such secret information.

Article 13
(Terms and Conditions for the Entry in the Register of Applications)

(1) Upon the submission of application for granting the breeder's right, the Administration verifies whether the conditions for the entry in the Register of applications are fulfilled.

(2) If the application fulfills the prescribed conditions for granting the breeder's right, it shall be entered in the Register on the date of submission of application, and the applicant is issued a confirmation receipt.

(3) If the application does not meet the conditions prescribed by this Law, the Administration shall notify the applicant to correct deficiencies within a period of three months at the latest, starting from the date of submission notification to correct the identified deficiencies.

(4) If the applicant corrects the deficiencies in a given period, referred to in paragraph (3) of this Article, the application is entered in the Register on the date of receipt of the document with corrected deficiencies.

(5) If the applicant does not correct the deficiencies in the given period of time, the application is rejected with a formulated conclusion.

(6) If the expenses for public announcement of the application for granting breeder's right at the Administration are paid, the Application is published after the expiration of three months from the date of its filing and it becomes available to any interested party.

(7) Publication of the Application from paragraph (6) of this Article contains information about the date of filing the application, the name and the address of the applicant, and the name and characteristics of variety.

Article 14
(Right of Priority)

(1) Any breeder who has duly filed an Application for the protection of a variety in one of the members of UPOV (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the Administration enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.

(2) The day and time of filing of the application referred to in Article 12 of this Law will be noted on the application and on the receipt about the confirmation of the application issued to the applicant.

(3) In order to benefit from the right of priority, the breeder shall, in the application filed with the Administration, claim the priority of the first application in accordance with the provisions of paragraph (1) of this Article.

The Administration shall require the breeder to furnish, within a period of three months from the filing date of the application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that first application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

(4) The breeder shall be allowed a period of two (2) years after the expiration of the period from paragraph (1) of this Article or, where the first application for granting the breeder's right in the first country of filing the application is rejected or withdrawn, an appropriate time, after such rejection or withdrawal, in which to furnish, to the Administration any necessary information, document or material required for the purpose of the examination under Article 15 of this Law.

(5) Events occurring within the period provided for in paragraph (1) such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

Article 15
(Examination of the Application in Order to
Derive the Evidence for Granting the Breeder's Right)

(1) Any decision to grant a breeder's right shall require an examination for compliance with the conditions under article 6 of this Law.

(2) In the course of the examination of conditions from paragraph (1) of this Article, the Commission may, be contracting an authorized/accredited laboratory, grow the variety or carry out other necessary tests, or take into account the results of trials carried out in Bosnia and Herzegovina or other states.

(3) The Commission may require the breeder to furnish all the necessary information, documents or material as specified in paragraph (1) and (2) of this Article.

(4) The Commission shall submit all its decisions to the Administration.

Article 16
(Decision on the Grant of the Breeder's Right)

(1) The Administration enters the Decision on the grant of the breeder's right in the Register of breeder's right.

(2) The date of entry in the register referred to in paragraph (1) of this Article is at the same time the date of passing the Decision on the grant of the breeder's right.

(3) The Administration shall pass a decision rejecting the grant of the breeder's right if in the process of testing it is established that the variety for which the application is filed does not meet the prescribed conditions. The deadline for passing the decision is determined by the provisions of the Law on Administrative Procedure.

(4) Decisions referred to in paragraph (2) and (3) of this Article shall be published in the official gazette of the Administration.

(5) Following the announcement on the grant of breeder's right in the official gazette of the Administration, the Administration issues the Certificate on granting of the breeder's right.

(6) A document about the obtained breeder's right can be attached to the Certificate on granting of the breeder's right at the request of the breeder.

(7) The design and content of the certificate referred to in paragraph (5) of this Article is defined by the Administration.

Article 17
(Obligations of the Holder of a Breeder's Right)

(1) The holder of a breeder's right pays a fee for maintenance of the breeder's right during the use of that right.

(2) The amount of fee is determined by the Administration in accordance with the Law on Administrative Fees (Official Gazette BiH, no. 14/99)

Article 18
(Provisional Protection)

(1) Provisional protection is provided to safeguard the interests of the breeder during the period between the publication of the application for the grant of a breeder's right and the grant of that right.

(2) Provisional protection shall have the effect that the holder of a breeder's right is entitled to an equitable remuneration from any person who, during the said period, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 21 of this Law.

Article 19
(Committee for Appeals)

(1) Against the decision and the conclusions made in the process of obtaining breeder's rights can be appealed within three months from the date on which the decision or conclusions are received.

(2) An appeal shall be submitted to the Committee for Appeals (hereinafter the Committee) which is appointed by the Council of Ministers of Bosnia and Herzegovina based on the proposal from the Administration (hereinafter: the Council of Ministers).

(3) The Committee consists of five members, representatives of the relevant entity's institutions and the Administration.

(4) Details about the work of the Committee shall be prescribed by the Book of Rules passed by the Committee.

Article 20
(The Costs of the Procedure for Granting the Breeder's Right)

(1) A fee shall be paid for the grant and the use of the breeder's right in accordance with the regulations in this Law and other regulations adopted on its basis.

(2) If the costs in the process of obtaining breeder's right are not paid, the acquisition for the grant of the breeder's right is rejected.

CHAPTER V – THE RIGHTS OF THE BREEDER

Article 21
(Scope of Breeder's Right)

(1) The following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- a) production or reproduction (multiplication);
- b) conditioning for the purpose of propagation;
- c) offering for sale;
- d) selling or other marketing;
- e) exporting;
- f) importing;
- g) stocking for any of the purposes mentioned in (a) to (f) in this paragraph.

(2) The breeder may make his authorization referred to in paragraph (1) subject to condition and limitations.

(3) The acts referred to in items a) to g) of paragraph (1) of this Article in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

(4) The acts referred to in items a) to g) of paragraph (1) of this Article in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph (3) of this Article through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

(5) The provisions of paragraphs (1) to (4) of this Article shall also apply in relation to:

- a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- b) varieties which are not clearly distinguishable in accordance with Article 8 of this Law from the protected variety and
- c) varieties whose production requires the repeated use of the protected variety.

(6) For the purposes of paragraph (5) item a) of this Article, a variety shall be deemed to be essentially derived from another variety (the initial variety) when:

- a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
- b) it is clearly distinguishable from the initial variety;
- c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(7) Essentially derived variety may be obtained for example by the 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.

Article 22 (Exceptions to the Breeder's Right)

(1) The breeder's right shall not extend to:

- a) acts done privately and for non-commercial purposes;
- b) acts done for experimental purposes and;
- c) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 21 paragraph (5) apply, acts referred to in Article 21 paragraphs (1) to (4) in respect of such other varieties.

(2) In relation to varieties included in a List of Agricultural Plants, the breeder's right shall not be infringed by a small farmers who, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 21 paragraph (5) items a) or b) of this Law (hereinafter "farm saved seed").

(3) When using farm saved seed the farmers are obliged to pay to the breeder reasonable remuneration for the use of farm saved seed which is significantly lower than the level of remuneration of the purchased seed. Small farmers are exempted from the obligation to pay remuneration for the use of the farm saved seed.

(4) The criteria for small farmers will be prescribed by the Administration.

(5) The breeder is entitled to request necessary information in writing from farmers in relation to the farm saved seed.

(6) The varieties of fruit, ornamentals, vegetables and forest plants are excluded from the exception under paragraph (2) of this Article.

Article 23 (Exhaustion of the Breeder's Right)

(1) The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 21 paragraph (5) of this Law, which has been sold or otherwise marketed by the breeder or with his consent in the territory of Bosnia and Herzegovina, or any material derived from the said material, unless such acts:

- a) involve further propagation of the variety in question, or
- b) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

(2) For the purposes of paragraph (1) of this Article, "material" means, in relation to a variety:

- a) propagating material of any kind;
- b) harvested material, including entire plants and parts of plants, and
- c) any product made directly from the harvested material.

Article 24
(Restriction on the Exercise of the Breeder's Right)

(1) Except where expressly provided in this Law, the free exercise of a breeder's right shall not be restricted for reasons other than of public interest.

(2) When any such restriction has the effect of the Administration authorizing a third party to perform any act for which the breeder's authorization is required, the breeder shall receive equitable remuneration.

Article 25
(Measures Regulating Commerce)

The breeder's right is independent of any measure to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provision of this Law.

Article 26
(Duration of the Breeder's Right)

The breeder's right shall be granted for a period of 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall be 25 years from the said date.

Article 27
(Termination of the Breeder's Right)

The breeder's right may be terminated:

- a) waiver of breeder's right holder;
- b) the expiration of the period for which the breeder's right is obtained;

CHAPTER VI – VARIETY DENOMINATION

Article 28
(Variety Denomination)

(1) The variety shall be designated by a denomination which will be its generic designation. Subject to paragraph (4) of this Article, no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

(2) The denomination must enable the variety to be identified. It may not consist solely of figures except where 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 the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the Administration. If it is found that the denomination does not satisfy the requirements of paragraph (2) of this Article, the Administration shall refuse to register it and shall require the breeder to propose another denomination within a three month period. The denomination shall be registered by the Administration at the same time as the breeder's right is granted.

(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 to a person who, in accordance with the provisions of paragraph (7) of this Article, is obliged to use it, the Administration shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted to all members of UPOV under the same denomination. The Administration shall register the denomination so submitted, unless it considers the denomination unsuitable. In the latter case, it shall require the breeder to submit another denomination.

(6) The Administration ensures that the responsible authorities of the members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. The responsible authorities of the members of UPOV may address its observations on the registration of a denomination to the Administration.

(7) Any person who, offers for sale or markets in Bosnia and Herzegovina propagating material of a variety protected in Bosnia and Herzegovina is obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.

(8) When a variety is offered for sale or marketed, it is permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must be nevertheless easily recognizable.

CHAPTER VII – NULLITY AND CANCELLATION OF THE BREEDER'S RIGHT

Article 29 (Nullity of the Breeder's Right)

- (1) The Administration shall declare the breeder's right null and void when it is established that:
- the conditions laid down in Articles 7 and 8 of this Law were not complied with at the time of filing the application, or where relevant, at the priority date under Articles 11 and 12 of this Law.
 - where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 9 and 10 of this Law were not complied with at the time referred to under item a) of this paragraph,
 - that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.
- (2) No breeder's right shall be declared null and void for reasons other than those referred to in paragraph (1).
- (3) The Administration publishes the decision under paragraph (1) of this Article in the official gazette of the Administration.
- (4) If the applicant of the proposal to declare the decision null and void abandons its proposal, the Administration may proceed with the proceedings ex officio.

Article 30 (Cancellation of the Breeder's Right)

- (1) The breeder's right shall be cancelled on the basis of a Decision on Cancellation of the Breeder's Right if it is established that:
- the conditions laid down in Articles 9 and 10 of this Law are no longer fulfilled.
 - the breeder does not provide the Administration within the period of sixty (60) days:
 - the information, documents or material deemed necessary for verifying the compliance under Articles 9 and 10 of this Law,
 - the breeder fails to pay such fees as may be payable to keep his right in force, and
 - the breeder does not propose, where the denomination of the variety is cancelled by the Administration after the grant of the right, another suitable denomination.
- (2) No breeder's right shall be cancelled for reasons other than those referred to in paragraph (1).
- (3) The Administration shall publish the decision under paragraph (1) of this Article in the official gazette of the Administration.

CHAPTER VIII – TRANSFER AND CEDING THE BREEDER'S RIGHT

Article 31 (Transfer of Breeder's Right)

- (1) The holder of breeder's right can fully or partially transfer that right by a contract to another person.
- (2) The provisions under paragraph (1) of this Article shall also apply to the applicant.
- (3) Transfer of the rights referred to in paragraph (1) and (2) of this Article is implemented by a contract and entered in the Register of Transferred Breeder's Right.
- (4) A contract which is not entered in the Register of Transferred Breeder's Right does not affect legally the third parties.
- (5) A contract not made in writing on one of the official languages in Bosnia and Herzegovina and in a single type of script shall not be entered in the Register of Transferred Breeder's Right.
- (6) The Administration prescribes the method and content of keeping the Register of Transferred Breeder's Right.

Article 32 (Contractual Licenses)

- (1) Licensing the breeder's right is carried out by a license agreement, in accordance with this Law and other regulations.
- (2) The license agreement must be in writing.
- (3) The agreement referred to in paragraph (1) of this Article may be concluded also by the applicant.
- (4) If several persons applied for the breeder's right or if this right is obtained by more persons, the license agreement requires the consent of all persons.
- (5) License agreement shall be entered in the Register of the Contractual Licenses..
- (6) The agreement which is not entered in the Register of the Contractual Licenses. will not have effects for the third parties.
- (7) The agreement which is not made in writing on one of the official languages in Bosnia and Herzegovina and in a single type of script shall not be entered in the Register of Contractual Licenses.
- (8) The Administration prescribes the method and content of keeping the Register of Contractual Licenses.

Article 33 (License Agreement)

License Agreement includes the following information:

- a) the duration of the license,
- b) the scope and content of the license,
- c) the amount of compensation for licensing the breeder's right.

Article 34 (Compulsory License)

- (1) The Administration may, at the request of an interested party, grant a compulsory license when the use of the breeder's right is in the public interest.
- (2) A person referred to in paragraph (1) of this Article may obtain the compulsory license only if he can prove that he disposes of reproductive material, professional, production-technical and financial conditions for the full use of the breeder's right.

(3) The holder of the compulsory license has the obligation to pay compensation to the holder of the breeder's right, which shall be agreed upon by both sides, and if the agreement is not reached, the amount of equitable remuneration and method of payment is determined by the responsible court.

(4) The compulsory license is granted for a period of three (3) years with the possibility of extension when it is determined that there are conditions for its renewal.

(5) The application for obtaining the compulsory license may not be filed before the expiration of five (5) years from the day the breeder's right was obtained.

CHAPTER IX- REPRESENTATION

Article 35 (Persons Authorised to Represent)

(1) Legal and natural persons dealing with representation in the process of obtaining the breeder's right must be registered in the Register of Representatives.

(2) Administration regulates the manner and content of keeping record in the Register of Representatives.

(3) Method and procedure as well as the basics that must be met by legal and natural persons referred to in paragraph (1) of this Article are defined by the Administration.

CHAPTER X - CIVIL PROTECTION

Article 36 (Claims)

(1) In case of violation of the breeder's right, the prosecutor can request by a claim:

- a) to identify the violation of the right;
- b) to ban the further carrying out of committed violation and of future similar violations by the cessation or the abstention from actions that violate that right;
- c) to remove the situation which resulted from the violation of the right;
- d) to withdraw infringing goods from the market while respecting the interests of third conscientious parties;
- e) to completely remove the objects of the violation of economic flows;
- f) to destroy the objects by which the violation of the right was carried out;
- g) to destroy the resources which are exclusively or mainly intended to or used for committing violations and which are owned by the offender;
- h) to give the objects of the violation over to the right holder with compensations of the production costs;
- i) to compensate for property damage and reasonable costs of the proceeding;
- j) to make public the verdict at the expense of defendant.

(2) In deciding on the claims under paragraph (1) items. c) d) e), f), g) and h) of this Article, the court must take into account all the circumstances of the case, especially in proportion to the gravity of the committed violation and the claim, as well as the interest of the authorized person to ensure the effective protection of the right.

(3) In the proceeding against the persons whose services were used for the violation of rights, and the existence of that violation has already been legally established in the procedure towards the third party, it is assumed that there is a violation of rights.

(4) The proceeding based on the claim under paragraph (1) of this Article should be expeditious.

Article 37 (Violation of the Breeder's Right)

Each unauthorized act covered by Article 21 of this Law is considered a violation of the breeder's right.

Article 38 (Damage Compensation)

(1) General rules on damage compensation and liability for damage shall apply in case of violation of this Law, unless otherwise defined by this Law.

(2) A person who violates the breeder's right shall pay the right holder a compensation to the extent that is determined by the general rules on damage compensation, or to the extent appropriate to contractual or usual compensation for the legal use of the breeder's right.

Article 39
(Penal Provisions)

(1) If a violation of the breeder's right is done on purpose or in extreme negligence, the holder of the right may seek compensation from the person who violated the right up to a triple amount of the amount agreed, and if the amount is not agreed, up to a triple amount of the respective usual license fees which the holder would receive for the use of the breeder's right.

(2) In deciding on the Application for payment of penalty the court shall take into account all the circumstances of the case, and in particular the scope of the damage incurred, the degree of the violation, the agreed amount or the usual license fee and preventive penalty goal.

(3) If the incurred damage is greater than the penalty under paragraph (1) of this Article, the right holder is authorized to require the difference to the amount of full compensation of damage.

Article 40
(Active Legitimation for Lawsuit)

A lawsuit due to violation of the breeder's right may be filed by the holder of the breeder's right and the holder of the exclusive license.

Article 41
(Deadline for Filing a Lawsuit)

A lawsuit due to violation of the breeder's right may be filed within three years from the date when the plaintiff learned of the violation and of the offender, and no later than five years from the date when the violation was first made.

Article 42
(Temporary Measures)

(1) The court shall appoint a temporary measure to ensure the claim under the provisions of this Law, if the proponent ensures:

- a) that he is the right holder under this Law and
- b) that his right has been violated or that there is a real threat of the violation of the right;

(2) The right holder must also ensure one of the following assumptions:

- a) the risk that the implementation of the claim will be prevented or substantially hindered;
- b) that the temporary measure is needed to prevent potential damage which shall be difficult to repair later, or
- c) that the presumed offender would not, by passing the temporary measure which would later in the process prove unjustified, suffer greater negative consequences than those which would affect the right holder without the adoption of such temporary measure.

(3) The right holder who proposes the adoption of the temporary measure without prior notification and hearing of the other side shall, except for the conditions referred to in paragraph (1) and (2) of this Article, make it likely that any delay in the adoption of the temporary measure would cause that the right holder suffers the damage that would be difficult to repair.

(4) In case of adoption of the temporary measure under the provisions of paragraph (3) of this Article, the court will submit the Decision about the temporary measure to the opposite side immediately after its implementation.

(5) The right holder does not need to prove the existence of potential threat that the implementation of the claim will be prevented or substantially hindered if he ensures that the proposed temporary measure will supposedly cause only minor damage to the offender.

(6) It is assumed that there is a threat if the claims should be realised abroad.

(7) The court may order for the purpose of ensuring the claim, under paragraph (1) of this Article, any temporary measure which would provide the guarantee, in particular:

- a) that the acts which violate the right under this Law are forbidden to the assumed offender;
- b) to take away, remove from circulation and store objects of violation and instruments of violation which are exclusively or mainly intended that is they are used to commit violations.

(8) If the measure is determined prior to filing the lawsuit, the court shall in the decision also specify the deadline within which the proponent must file the lawsuit for the purpose of justifying that measure.

(9) The deadline referred to in paragraph (8) of this Article shall not be longer than 20 working days that is 31 calendar days from the day the decision was submitted to the proponent, depending on which deadline expires later.

(10) The court must decide on the objection against the Decision on the temporary measure within 30 days from the day the answer to the complaint is filed, that is from the expiration of deadline for filing such answer.

(11) The proceeding in relation to the temporary measure is considered urgent.

Article 43 (Securing the Evidence)

(1) The Court shall render a Decision on securing the evidence if the proponent provides the court with a reasonable proof that:

- a) that he is the right holder under this Law and
- b) that his right has been violated or that there is a real threat of the violation of the right;
- c) that the evidence about that violation will be destroyed, or that later they will not be available for the presentation.

(2) The right holder, who seeks that the Decision is passed to secure the evidence without prior notification and hearing of the other side, shall make it likely, except the conditions referred to in paragraph (1) of this Article, that there is the existence of a threat that the evidence about violation, due to the action of the offender, will be destroyed, or that later the evidence will not be available for the presentation.

(3) In case the decision on securing the evidence under the provisions of paragraph (2) of this Article, the court will submit the Decision on Securing the Evidence to the opposite side immediately after the presentation of evidence.

(4) The court may by the decision under paragraph (1) of this Article determine to present any evidence, and in particular:

- a) investigation of the rooms, business documents, inventory, database, computer memory units, or other things;
- b) withdrawal of samples of the objects of violation;
- c) review and delivery of documents;
- d) identifying and hearing of expert witnesses;
- e) hearing of witnesses.

(5) Securing the evidence may be requested also after the legally completed proceeding, if necessary to initiate the proceeding to extraordinary legal remedies, or during such proceeding.

(6) In the process of securing the evidence, according to the provisions of this Article, use the appropriate provisions of the law which regulates the execution and security, and which are related to the temporary measures, unless otherwise provided by this Law.

(7) The proceeding on securing the evidence is considered urgent.

(8) If it is shown later that the proposal for securing the evidence is unjustified, or if the right holder does not justify that proposal, the opposing party has the right to request:

- a) return the seized items;
- b) ban the use of collected information;
- c) compensation of damage.

(9) The court must, in the process of securing the evidence, and according to the provisions of this Article, ensure the protection of confidential data and make sure that the court proceeding is not misused for a specific purpose to obtain confidential information of the opposing party.

Article 44
(Duty of Notification)

(1) The Court may in the course of the lawsuit, due to violation of the right under this Law, on the basis of a justified claim by one of the parties, order the offender to submit the data on the source and distribution channels of goods or services which violate the right of this Law.

(2) The Court may order that the information referred to in paragraph (1) of this Article be delivered to the court also by the persons who, to the extent of commercial activities:

- a) have the goods which are suspected to violate the right under this Law, or
- b) use the services that are suspected to violate the right under this Law, or
- c) provide services which are suspected to violate the right under this Law.

(3) It is believed that some action is taken in the scope of commercial activities, if undertaken for the provision of direct or indirect economic benefit.

(4) The term commercial activity does not involve actions of conscientious end consumers.

(5) The Court may order that the information referred to in paragraph (1) of this Article shall be delivered to the court also by the person who is one of the persons mentioned in paragraph (2) of this Article, indicated as involved in the production, development and distribution of goods or providing services for which it is suspected that they violate the right of this Law.

(6) Information required under paragraph (1) of this Article may in particular include:

- a) name, address, or firm and seat of the producer, developer, distributor, supplier and other previous owners of the goods, that is of service providers, as well as intended wholesale and retail salesmen;
- b) data on the quantities produced, developed, delivered, received or ordered goods or services, as well as on prices achieved for the relevant goods and services.

Article 45
(Presentation of Evidence)

(1) If the court decides to present the proposed evidence which is in the possession of the opposite side, this side is obliged to submit to the court the existing evidence which stays at its disposal.

(2) Paragraph (1) of this Article applies to the banking, financial and business documentation, which is under control of the opposite side, in case of a violation which reaches the scope of commercial activity.

(3) Relevant provisions of the Law which governs civil procedure are applied in the process of presentation of evidence, unless otherwise provided in this Law.

(4) After the presentation of evidence, and in accordance with paragraph (1) of this Article, the court shall ensure the protection of confidential data and make sure that the court proceeding is not misused for a specific purpose to obtain confidential information of the opposing party.

Article 46
(The Guarantee Instrument for Opposing Side)

At the request of the person against whom a proceeding is initiated to determine a temporary measure or provide the evidence, the court may determine the appropriate amount of money as a guarantee instrument in case of a groundless claim, at the expense of the applicant.

Article 47
(Lawsuit to Deny the Granted Breeder's Right)

(1) If a person who is not eligible for the breeder's right is granted this right, the person who is eligible for the breeder's right may file a lawsuit to request that the court pronounce him as the holder of the breeder's right.

- (2) If the court adopts the claim referred to in paragraph (1) of this Article, it requires that the Administration within 30 days of the verdict enters the new holder of the right into the Register of the Breeder's Right.
- (3) If a third person obtains the breeder's right from the previous holder of the breeder's right, that right is valid also for the new right holder, if the person's name was entered in the appropriate register or properly registered for the entry into the register prior to the note about the court proceeding.
- (4) The lawsuit under paragraph (1) of this Article may be filed as long as the process of obtaining of the breeder's right is ongoing and while that right is valid.

Article 48
(Lawsuit for the Recognition of the Breeder's Properties)

- (1) The breeder may request by filing a lawsuit that his name be mentioned in appropriate registries and public documents relating to the grant of the breeder's right.
- (2) If the court adopts the claim referred to in paragraph (1) of this Article, it requires that the Administration within 30 days of the verdict enters the name of the breeder in the relevant registers and documents.
- (3) The right to a complaint under paragraph (1) of this Article, after the death of the breeder passes to his successors.

CHAPTER XI – CUSTOMS MEASURES

Article 49
(Application from the Right Holder)

- (1) The holder of exclusive rights under this Law, which justifiably suspects that it will come to the import, transit or export of goods manufactured in contravention with the provisions of this Law, may by the competent customs authorities (hereinafter: the customs authority) apply for protection of his rights by customs measures to temporarily keep the goods from further release on the market.
- (2) Customs measures include also the obligation to inform the authorized phytosanitary inspection which carries out the measures under the provisions of this Law.
- (3) The application for the protection of rights under paragraph (1) of this Article shall include in particular:
- information about the applicant and the holder of exclusive rights under this Law, if it is not the case of the same person;
 - a detailed description of the goods, which allows its identification;
 - evidence that the applicant, or the person whom he authorized, is the holder of exclusive rights under this Law in relation to the goods;
 - evidence that the exclusive right is probably violated;
 - other information relevant to deciding on the application at the disposal of the applicant, such as the information about the location of the goods and its destination, the expected date of arrival or departure of the shipment, information on means of transport, data about importer, exporter, recipient, etc.;
 - the time period in which the customs authorities shall handle the application, and which cannot be longer than two years from the date on which the application was filed.
- (4) The customs authority may, before making a decision which meets the requirement under paragraph (1) of this Article, require the right holder to provide guarantees for costs of storage and transportation of goods, as well as for compensation of damages, which in relation with the goods may incur towards customs authority, as well as towards the side against which the application paragraph (1) of this Article was received.
- (5) If the customs authority shall satisfy the request referred to in paragraph (1) of this Article, he shall inform all customs branch offices and rights' holders.

Article 50
(The Procedure after the Temporary Retention of the Goods)

- (1) If the customs branch office in the implementation of customs procedure finds that the goods match the description of the goods from the decision of the competent customs authority, it will keep the goods temporarily from further release on the market.

- (2) Decision on the temporary retention of the goods is delivered to its importer.
- (3) The decision under paragraph (2) of this Article shall determine that the owner of the goods, or the person who is authorized to dispose of the goods, may state, within ten working days from the temporary retention, whether it is counterfeit goods or other violation of rights under this Law.
- (4) If the customs authority does not receive a written statement of the owner or person who is authorized to dispose of goods in the period referred to in paragraph (3) of this Article, he may at the request and expense of the right holder seize and destroy the temporarily retained goods.
- (5) If the owner of the goods or the person who is authorized to dispose of goods submits a statement, within the deadline under paragraph (3) of this Article, that it is not counterfeit goods, or that there is no other violation of rights under this Law, the right holder may, within ten working days from the receipt of notification about such statement file a complaint about the violation of rights.
- (6) If the special circumstances of the case justify it, the customs authority may, at the request of the right holder, determine the additional period for filing a complaint under paragraph (5) of this Article, which cannot be longer than ten working days.
- (7) The right holder or the person whom he authorised may during the temporary retention carry out the inspection and control of goods and accompanying documentation to the extent that is needed to determine his requirements for the provision of judicial protection of his rights while ensuring the protection of confidential data.
- (8) The right to inspect and control the goods is also given to the importer of the goods.
- (9) If the right holder does not file a complaint under paragraph (5) of this Article, the temporarily retained goods are released in the required customs permitted use, or on the market.
- (10) If the right holder initiates a court procedure, the customs authority shall pass a Decision to confiscate the goods until the adoption of a binding court decision.

Article 51
(The Procedure ex Officio)

- (1) If the customs branch office in the implementation of customs procedures related to import, transit or export of goods has a reasonable suspicion that the rights are violated under this Law by certain goods, it will temporarily retain the goods and notify the customs authority.
- (2) The customs authority informs in writing the right holder about the retention of the goods, about the suspicion his right may be violated and about the possibility to file an application under Article 49 of this Law within five working days from the day the goods are kept in retention.
- (3) If the right holder submit the application in accordance with paragraph 2 of this Article, the goods is retained until the decision of the customs authorities is passed.
- (4) If the customs authority shall answer positively to the application under Article 49 of this Law, the goods are temporarily retained for further ten working days.
- (5) The right holder must, within the deadline under paragraph (4) of this Article, carry out acts under Article 50 paragraph (7) of this Law.
- (6) The provisions of Art. 50 and 51 of this Law shall not apply to the import, transit or export of goods in small quantities intended for personal and non-commercial use, which is imported or exported as a part of personal luggage or sent in small consignments.

Article 52
(Use of Other Customs Regulations)

- (1) Other customs regulations shall apply in the appropriate manner to the customs procedure relating to the goods which infringe the rights under this Law, unless otherwise provided under this Law.

(2) More detailed regulations on implementation of customs measures in this Chapter of the Law shall be defined by the Council of Ministers upon the proposal of the Ministry of Foreign Trade and Economic Relations.

(3) Customs procedure related to the goods which infringe the rights of this Law is considered urgent.

CHAPTER XII – OFFENCES

Article 53 (Offences)

(1) The legal entity or the entrepreneur shall be fined at least KM 5,000 for the violation of the breeder's right under Article 37 of this Law.

(2) The responsible person of the legal entity and of the entrepreneur shall be fined at least KM 3,000 for the violation under paragraph (1) of this law.

(3) The physical entity shall be fined at least KM 3,000 for the violation under paragraph (1) of this Article.

(4) Items that are incurred in the process of carrying out offences under paragraph (1) of this Article shall be seized and destroyed, and objects, or devices designed or used to carry out those offences will be seized.

(5) Penalty procedure based on the provisions of this Article shall be urgent.

Article 54 (Protective Measures)

(1) The legal entity and entrepreneur who make violations of Article 53 paragraph (1) of this Law in carrying out activities may be imposed protective measures prohibiting the performance of activities or parts of activities which offend the seal, up to one year, if the offense made is especially difficult because of the way in which it was carried out, the consequence of acts or other circumstances of the offense committed.

(2) The legal person, the entrepreneur, who makes the offense under Article 53 paragraph (1) of this Law in restitution will be imposed protective measures prohibiting activities or parts of activities which offend the seal of at least one year.

Article 55
(Inspection in Relation to Offences)

(1) Inspection in relation to the customs measures as well as measures related to the offenses, sanctioned in Article 53 of this Law, is carried out by the responsible phytosanitary inspection.

(2) The inspection procedure is considered urgent.

PART THREE

CHAPTER XIII – SUPERVISION OF LAW ENFORCEMENT

Article 56
(Supervision of Law Enforcement)

Administrative supervision over the enforcement of this Law is carried out by the Ministry of Foreign Trade and Economic Relations.

CHAPTER XIV – TRANSITIONAL AND FINAL PROVISIONS

Article 57
(Deadline for the Adoption of Regulations)

(1) Regulations for the implementation of this Law passes the Council of Ministers upon the proposal of the Administration, in cooperation with the competent authorities of the entities and Brčko District of Bosnia and Herzegovina within one year from the date this Law enters into force.

(2) Notwithstanding the Article (7) of paragraph (1) of this Law, the varieties which are recognized in accordance with the regulations that were in force until the entry into force of this Law, the breeder of the variety or his legal representative may, within one year from the date of entry into force of this Law, submit the Application for the grant of the breeder's right.

(3) By the beginning of the performance of activities in the Administration on the basis of Article (1) paragraph (1) of this Law and the regulations in this Law, but with the maximum period of one year from the date of entry into force of this Law, the activities in the Administration will be carried out according to regulations that are in force until the entry into force of this Law.

Article 58
(Termination of the Validity of Previous Regulations)

Upon entry into force of this Law, the Law on Protection of New Varieties of Plants of Bosnia and Herzegovina shall no longer be valid ("Official Gazette of BiH", number 46/04).

Article 59
(Entry into Force)

This Law shall enter into force on the eighth day from the day of its publishing in the "Official Gazette of BiH".

Chair of the
House of Representatives
of the Parliamentary Assembly of BiH

Chair of the
House of Peoples
of the Parliamentary Assembly of BiH

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