



C(Extr.)/24/3

ORIGINAL: Inglés

FECHA: 1 de marzo de 2007

UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES
GINEBRA

CONSEJO

Vigésima cuarta sesión extraordinaria
Ginebra, 30 de marzo de 2007

**EXAMEN DE LA CONFORMIDAD DE LA
LEY DE GEORGIA PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES
CON EL ACTA DE 1991 DEL CONVENIO DE LA UPOV**

Documento preparado por la Oficina de la Unión

Introducción

1. Mediante carta con fecha 1 de febrero de 2007, dirigida al Secretario General de la UPOV, el Sr. David Gabunia, Director General del Centro Nacional de la Propiedad Intelectual de Georgia (SAKPATENTI), solicitó el examen de la Ley de Georgia para la Protección de las Obtenciones Vegetales (en adelante denominada “la Ley”), que fue aprobada por el Parlamento de Georgia el 29 de diciembre de 2006, respecto de su conformidad con el Acta de 1991 del Convenio de la UPOV (en adelante denominada “el Acta de 1991”). Dicha carta se reproduce en el Anexo I del presente documento. En el Anexo II figura una traducción de la Ley al inglés proporcionada por el Gobierno de Georgia.
2. Georgia no ha firmado el Acta de 1991. Por consiguiente, de conformidad con el artículo 34.2) del Acta de 1991, ha de depositar un instrumento de adhesión a fin de hacerse Parte Contratante con arreglo al Acta de 1991. Según el artículo 34.3) del Acta de 1991, sólo puede depositarse un instrumento de adhesión si el Estado depositante 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.
3. El Gobierno de Georgia ya había iniciado el procedimiento para hacerse miembro de la UPOV mediante carta de 1 de marzo de 1999, en la que el Excmo. Sr. Amiran Kavadze, Embajador Extraordinario y Plenipotenciario y Representante Permanente de Georgia, solicitó

la opinión del Consejo de la UPOV acerca de la conformidad de la Ley de Protección de las Obtenciones, aprobada por el Parlamento de Georgia el 18 de octubre de 1996, con el Convenio de la UPOV.

4. En su decimosexta sesión extraordinaria, celebrada el 26 de marzo de 1999, el Consejo decidió, sobre la base de las conclusiones expuestas por la Oficina de la Unión en los párrafos 30 y 31 del documento C(Extr.)/16/4:

a) comunicar al Gobierno de Georgia que la Ley de Protección de las Obtenciones sienta las bases de una Ley que está en conformidad con el Convenio y que, una vez aprobado el Reglamento correspondiente, podrá depositar su instrumento de adhesión al Convenio;

b) comunicar también al Gobierno de Georgia que convendría corregir las (posibles) discrepancias e incongruencias consignadas en el documento C(Extr.)/16/4 en la primera ocasión en que sea posible;

c) solicitar a la Oficina de la Unión que preste asistencia al Gobierno de Georgia en la redacción del reglamento (si fuera necesario), la corrección de la Ley y la preparación de una traducción más satisfactoria a uno o varios de los idiomas oficiales de la UPOV;

d) solicitar al Secretario General que notifique al Gobierno de Georgia su decisión.

5. La referida decisión del Consejo, de 26 de marzo de 1999, ya no es pertinente, puesto que la Ley de 2006 ha derogado la Ley de 1996 (véase el artículo 44 de la Ley). Por ello, y con arreglo al artículo 34.3) del Acta de 1991, el Gobierno de Georgia formuló una nueva solicitud (véase el párrafo 1 de este documento), a fin de obtener la opinión del Consejo acerca de la conformidad de la Ley con el Acta de 1991.

Fundamento de la protección de las obtenciones vegetales en Georgia

6. La protección de las obtenciones vegetales en Georgia está regulada por la Ley. En el Anexo III del presente documento figura información facilitada por el Gobierno de Georgia sobre su Constitución, Código Penal, Código Civil y Código de Procedimiento Civil de interés para la protección de las obtenciones vegetales. Se llama la atención especialmente respecto del artículo 6.2) de la Constitución de Georgia:

“2. La legislación de Georgia deberá cumplir los principios y normas del Derecho internacional generalmente reconocidos. Los tratados o acuerdos internacionales suscritos por Georgia, salvo que sean contrarios a la Constitución de Georgia, el convenio constitucional, prevalecerán sobre las normas de la legislación nacional.”

7. El artículo 6.2) de la Constitución de Georgia establece la jerarquía entre los tratados y la legislación nacional, previendo que, en caso de conflicto entre un tratado y la legislación, prevalecerá el tratado. El principio general recogido en el artículo 6 de la Constitución subsanará cualquier laguna o discrepancia menor respecto del fondo del Acta de 1991 señaladas en el presente documento.

Artículo 1 del Acta de 1991: Definiciones

8. En el artículo 2 de la Ley figuran las definiciones de los términos pertinentes empleados en la Ley. En especial, la definición de “variedad” está en concordancia con la definición de variedad del artículo 1.vi) del Acta de 1991. Asimismo, la definición de “obtentor” está en concordancia con la definición de obtentor del artículo 1.iv) del Acta de 1991.

9. En el artículo 2.g) de la Ley se establece que “[e]l Convenio Internacional para la Protección de las Obtenciones Vegetales significa ‘el Convenio para la Protección de las Obtenciones Vegetales’ adoptado el 2 de diciembre de 1961;”. Las palabras “adoptado el 2 de diciembre de 1961” deben interpretarse como una referencia al Convenio “revisado el 19 de marzo de 1991”.

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

10. En el artículo 1 de la Ley se establece: “[e]sta Ley regula relaciones vinculadas a la protección jurídica de las obtenciones vegetales [...]”, en consonancia con el artículo 2 del Acta de 1991.

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

11. En el artículo 1 de la Ley se establece que la Ley “[...] se aplica a todos los géneros botánicos y especies vegetales”, en consonancia con el artículo 3.2) del Acta de 1991.

Artículo 4 del Acta de 1991: Trato nacional

12. La Ley no contiene disposiciones contrarias al artículo 4 del Acta de 1991. Tanto los nacionales y los residentes de Georgia, como los nacionales y residentes de otros países tienen derecho a solicitar la concesión del derecho de obtentor.

Artículos 5 a 9 del Acta de 1991: Condiciones de la protección, Novedad, Distinción, Homogeneidad y Estabilidad

13. En los artículos 10 a 14 de la Ley figuran las disposiciones relativas a las condiciones de la protección establecidas en los artículos 5 a 9 del Acta de 1991.

14. A fin de cumplir el artículo 6.1) del Acta de 1991, relativo a la condición de novedad, deben añadirse las palabras “o un producto de la cosecha” a los artículos 11.1) y 16.f) de la Ley, del siguiente modo:

“11.1) La variedad será considerada nueva si, en la fecha de presentación de la solicitud de derecho de obtentor, el material de reproducción o de multiplicación vegetativa o un producto de cosecha de la variedad no ha sido vendido o entregado a terceros de otra manera, por el obtentor o con su consentimiento, a los fines de la explotación de la variedad [...]”

“16 La solicitud deberá constar de:

[...]

f) la indicación de la fecha en que el material de reproducción o de multiplicación vegetativa o un producto de cosecha de la variedad vegetal se haya vendido o entregado a terceros de otra manera, por el obtentor o con su consentimiento.”

15. Por el momento, con la remisión al principio general del artículo 6 de la Constitución, la Ley cumple con el artículo 6.1) del Acta de 1991.

16. En el artículo 11.2) de la Ley figuran disposiciones relativas a un régimen de transición en lo que respecta a la novedad para las variedades de reciente creación, en consonancia con la disposición facultativa del artículo 6.2) del Acta de 1991. Se recomienda rectificar un error del artículo 11.3) de la Ley, sustituyendo “dos” por “cuatro”, en consonancia con los períodos de gracia previstos en el artículo 11.1) de la Ley y el artículo 6.1) del Acta de 1991.

“3. El obtentor puede disfrutar de las ventajas descritas en el párrafo 2 de este artículo si los actos referidos en los apartados de dicho párrafo se ejecutaron antes de los plazos de un año, ~~de~~ cuatro años, y seis años establecidos en el párrafo 1 de este artículo, si bien durante un plazo no superior a dos años.”

Artículo 10 del Acta de 1991: Presentación de solicitudes

17. En los artículos 15 a 18 y 20 de la Ley figuran disposiciones sobre la presentación de solicitudes que están en consonancia con el artículo 10 del Acta de 1991. Habida cuenta del principio de independencia de la protección (artículo 10.3) del Acta de 1991), y salvo que se reivindique la prioridad, debe entenderse que la información requerida en la primera solicitud de acuerdo con el artículo 18 de la Ley se facilita a los fines del examen.

Artículo 11 del Acta de 1991: Derecho de prioridad

18. En el artículo 21 de la Ley figuran disposiciones relativas al derecho de prioridad que están en consonancia con el artículo 11 del Acta de 1991.

Artículo 12 del Acta de 1991: Examen de la solicitud

19. En los artículos 3.2) y 3) y los artículos 17, 18, 22, 23, 25, 26, 27, 28 y 30 de la Ley figuran disposiciones relativas al examen de la solicitud que están en consonancia con el artículo 12 del Acta de 1991.

Artículo 13 del Acta de 1991: Protección provisional

20. En el artículo 31 de la Ley figuran disposiciones sobre la protección provisional que concuerdan con el artículo 13 del Acta de 1991.

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

21. En los artículos 32 y 33 de la Ley figuran las disposiciones esenciales sobre el alcance del derecho de obtentor, en consonancia con el artículo 14.1), 2) y 5) del Acta de 1991. Por motivos de claridad, la referencia del artículo 32.1) de la Ley a la “obtención vegetal” debe entenderse como referencia al material de producción o reproducción (multiplicación) de la variedad protegida, según lo dispuesto en el artículo 14.1) del Acta de 1991.

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

22. En el artículo 34 de la Ley figuran las excepciones al derecho de obtentor, que están en consonancia con el artículo 15 del Acta de 1991.

23. En el artículo 34.2) de la Ley se recogen las disposiciones esenciales sobre la excepción facultativa prevista en el artículo 15.2) del Acta de 1991. La referencia al “párrafo 1 del presente artículo”, al final del artículo 34.2), parece ser redundante.

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

24. En el artículo 35 de la Ley figuran disposiciones relativas al agotamiento del derecho de obtentor que están en consonancia con el artículo 16 del Acta de 1991.

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

25. En el artículo 41.1) de la Ley se establece que “podrá concederse una licencia obligatoria a petición de cualquier persona interesada, sólo por razones de interés público”, en consonancia con el artículo 17.1) del Acta de 1991.

26. En el artículo 41.7) de la Ley se establece que “al concederse la licencia obligatoria, el obtentor tendrá derecho a recibir una remuneración equitativa”, en consonancia con el artículo 17.2) del Acta de 1991.

Artículo 18 del Acta de 1991: Reglamentación económica

27. Al parecer, la Ley no contiene ninguna disposición contraria al artículo 18 del Acta de 1991.

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

28. En el artículo 4 de la Ley figuran las disposiciones relativas a la duración del derecho de obtentor, que están en consonancia con el artículo 19 del Acta de 1991.

Artículo 20 del Acta de 1991: Denominación de la variedad

29. En el artículo 19 de la Ley figura la mayoría de las disposiciones sobre la denominación de las variedades que se establecen en el artículo 20 del Acta de 1991.

30. Se recomienda incorporar en la Ley en la primera ocasión en que sea posible hacerlo, y, por el momento, en el reglamento de aplicación, las disposiciones del artículo 20.5) del Acta de 1991, a fin de establecer que “las variedades deberán presentarse a SAKPATENTI con la misma denominación que se haya propuesto o registrado en otros miembros de la UPOV. SAKPATENTI registrará la denominación de la variedad del modo en que haya sido presentada, salvo que la considere inadecuada en Georgia. En este último caso, SAKPATENTI exigirá que el obtentor que presente otra denominación.” El artículo 20.5) del Acta de 1991 es esencial para facilitar el registro de la misma denominación en todos los miembros de la Unión.

31. Con la remisión al principio general del artículo 6 de la Constitución, la Ley cumple con el artículo 20 del Acta de 1991.

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

32. En el artículo 37 de la Ley figuran las causas de nulidad del derecho de obtentor, que están en consonancia con el artículo 21 del Acta de 1991.

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

33. En el artículo 38 de la Ley figuran las causas de la caducidad del derecho de obtentor, que están en consonancia con el artículo 22 del Acta de 1991.

Artículo 30 del Acta de 1991: Aplicación del Convenio

34. En relación con el artículo 30.1)i) del Acta de 1991, el capítulo VIII de la Ley, titulado “Violación de los derechos del obtentor y responsabilidad”, establece en su artículo 42 que “[e]l incumplimiento de los requisitos de la presente Ley se considerará una violación de los derechos del obtentor y dará lugar a responsabilidad de conformidad con la legislación vigente en Georgia”. En el Anexo III del presente documento figura información facilitada por el Gobierno de Georgia el 1 de febrero de 2007 en relación con los recursos legales de que se dispone en Georgia para defender el derecho de obtentor. En especial, se hace referencia al artículo 189 del Código Penal y a las acciones civiles que pueden ejercitarse de conformidad con el Código Civil y el Código de Procedimiento Civil.

35. En el artículo 3.1) de la Ley se dispone que el Centro Nacional de la Propiedad Intelectual (SAKPATENTI) deberá “asegurar la concesión del derecho de obtentor” como se requiere en el artículo 30.1)ii) del Acta de 1991.

36. En el artículo 3.1) de la Ley se establece también que SAKPATENTI deberá informar “al público, por medio de la publicación de un boletín oficial, de las solicitudes correspondientes a las obtenciones vegetales y de la concesión del derecho de obtentor”; en el artículo 24.2) de la

Ley se establece la información que debe publicarse en relación con las solicitudes de derecho de obtentor; en el artículo 29.4) de la Ley figura la información que debe publicarse en relación con la concesión del derecho de obtentor; y en el artículo 38.3) de la Ley se regula la publicación de las decisiones nulidad y caducidad. La Ley cumple las obligaciones establecidas en el artículo 30.1)iii) del Acta de 1991.

Conclusión general

37. En opinión de la Oficina de la Unión, la Ley contiene las disposiciones esenciales del Acta de 1991. Las discrepancias respecto de los artículos 6.1) y 20.5) del Acta de 1991 referidas en los párrafos 14 y 30 del presente documento se subsanarán, por el momento, en virtud del principio general del artículo 6 de la Constitución (véanse los párrafos 6 y 7 de este documento).

38. *Se invita al Consejo a:*

a) tomar nota de la información facilitada en el presente documento, en especial de que las discrepancias de la Ley respecto de los artículos 6.1) y 20.5) del Acta de 1991 se subsanarán, por el momento, en virtud del principio general del artículo 6 de la Constitución;

b) adoptar una decisión favorable respecto de la conformidad de la Ley de Georgia para la Protección de las Obtenciones Vegetales con las disposiciones del Acta de 1991, con arreglo al artículo 34.3) de dicha Acta, permitiendo a Georgia depositar su instrumento de adhesión al Acta de 1991;

c) autorizar al Secretario General a notificar al Gobierno de Georgia dicha decisión.

[Siguen los Anexos]

ANEXO I

[Traducción de la Oficina de la Unión de una carta con fecha 1 de febrero de 2007]

Enviada por: Sr. David Gabunia, Director General del Centro Nacional de la Propiedad Intelectual de Georgia (SAKPATENTI)

A: Dr. Kamil Idris, Secretario General de la UPOV

Ref: GE/F-549

Estimado Secretario General Idris:

Me es grato comunicarle que el 29 de diciembre de 2006 el Parlamento de Georgia aprobó la Ley de Georgia para la Protección de las Obtenciones Vegetales.

Georgia se propone 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 (el Convenio de la UPOV).

Con arreglo a lo dispuesto en el artículo 34.3) del Convenio de la UPOV, le agradecería que el Consejo de la UPOV examinara la conformidad de la Ley de Georgia con las disposiciones del Convenio de la UPOV.

Atentamente,

David Gabunia
Director General

Anexo: Traducción oficial de la Ley al inglés y artículos pertinentes de la Constitución y el Código Penal de Georgia.

[Sigue el Anexo II]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[In English only / En anglais seulement /
Nur auf englisch / En inglés solamente]

Law of Georgia for the Protection of New Varieties of Plants

**Chapter I
General Provisions**

Article 1

This Law regulates relations linked with the legal protection of new varieties of plants and applies to all the botanical genera and species of plants.

Article 2

1. The terms used in the Law shall have the following meaning:

(a) Breeder:

(a.a) the person who discovered and developed, or bred a plant variety;

(a.b) the person who is the employer of the person referred to in subparagraph (a.a) or who has commissioned the latter's work;

(a.c) the successor in title of the person referred to in subparagraph (a.a) or (a.b);

(b) Application means the package of documents, necessary for the registration of a new plant variety and the granting of a certificate, drawn up under the requirements established by this Law;

(c) Certificate means the protective document certifying the registration of the new plant variety and the breeder's right under this Law;

(d) Propagation material means the seed, plant or its part intended for the propagation of a plant variety;

(e) Harvest means any output received as a result of the propagation of a plant variety;

(f) Plant variety means a plant grouping within the lowest rank of a single botanical taxon, 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 the combination of genotypes; it is distinguished from any other plant grouping by the expression of at least one of the said characteristics and may be considered as a unit with regard to its suitability for being reproduced unchanged;

(g) The International Convention for the Protection of New Varieties of Plants means "the International Convention for the Protection of New Varieties of Plants" adopted on December 2, 1961;

(h) Initial variety means a plant variety selected by the breeder for breeding a new variety;

(i) Union means the Union for the Protection of New Varieties of Plants founded by the International Convention for the Protection of New Varieties of Plants.

Article 3

1. The National Intellectual Property Center “Sakpatenti” (hereinafter “Sakpatenti”) shall ensure granting of the breeder’s right and informing of the public by means of publication of an official bulletin on applications for the new plant varieties and granting of the breeder’s right.
2. Testing of the new plant variety for distinctness, uniformity and stability in Georgia shall be performed by a person accredited by the legal entity of the public law - united national body of accreditation – accreditation center, under the requirements and testing methods approved by the Ministry of Agriculture of Georgia on the basis of an order. On the basis of the results of aforesaid test, the Council of Experts existing at the Ministry of Agriculture of Georgia shall issue a conclusion in regard to the distinctness, uniformity and stability of the plant variety. The Ministry of Agriculture of Georgia shall be responsible for implementation of these procedures.
3. Sakpatenti may also base its decision concerning the grant of the breeder’s right on the results of the tests carried out by competent authorities of other members of the Union or tests carried out by the breeder in regard to distinctness, uniformity and stability.

Article 4

The duration of a breeder’s exclusive rights in the new plant variety shall be 25 years from the day of registration of the new plant variety by Sakpatenti and 30 years for vine, caulescent, fruit, decorative, tea, subtropical cultures and forest varieties, including rootstocks.

Chapter II Breeder and Holder of Certificate

Article 5

1. The breeder shall acquire breeder’s exclusive (economic) rights as a result of the registration of the new plant variety at Sakpatenti and granting of a certificate.
2. If the breeder requests so, Sakpatenti shall be obliged not to publish his name.
3. Where the new plant variety was discovered and developed, or bred as a result of joint intellectual creation of several natural persons, each shall be deemed as a co-breeder.
4. Relations between the co-breeders shall be defined on the basis of a contract.

Article 6

1. A breeder shall be entitled to register the new plant variety and obtain a certificate.
2. The right to register and obtain a certificate for the new plant variety discovered and developed, or bred as a result of intellectual creation of several natural persons shall be enjoyed by all the breeders jointly, as well as each of them, in the case the other breeders refuse to register and obtain a certificate.

Article 7

1. Where discovering and developing, or breeding of the new plant variety is connected with the fulfilment of duties or a special task by the employee, the right to register and obtain the certificate shall be enjoyed by the employer, if the contract concluded between the

employee and employer does not provide for otherwise. If the certificate granted as a result of the registration of the new plant variety belongs to the employer, the employee shall be entitled to receive from the employer the remuneration adequate to the use of the new plant variety, on the basis of their mutual agreement.

2. Where discovering and developing, or breeding of the new plant variety is not connected with the fulfilment of duties or a special task by the employee, the right to register and obtain the certificate shall be enjoyed by the employee. In this case from the day of filing the application, the employer shall enjoy the prior right to obtain a license to use the new plant variety and/or, resulting from registration of the new plant variety and granting of the certificate, to purchase the breeder's exclusive rights.

Article 8

If the employer refuses to register the new plant variety and obtain the certificate, the employee shall be entitled to register and obtain the certificate.

Article 9

Where for one and the same new plant variety two or more applications are filed with Sakpatenti at various times, the plant variety shall be registered and a certificate granted in the name of the first applicant.

Chapter III **Protectability of the New Plant Variety**

Article 10

1. The new plant variety shall be registered and granted a certificate, if it meets the protectability criteria.
2. Protectability criteria of the new plant variety shall be novelty, distinctness, uniformity, and stability.

Article 11

1. The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating 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 Georgia earlier than one year before filing the application with Sakpatenti;

(b) in the territory of other country, earlier than four years before filing the application with Sakpatenti, and in the case of vines and trees, earlier than six years.

2. Notwithstanding the requirements of paragraph 1 of this Article, granting of the breeder's right shall be possible to the variety of plant, which for the day of enacting of this Law is no longer new, provided that the application was filed with Sakpatenti within one year from the day of entry into force of this Law and one of the following conditions is complied with:

(a) the plant variety was entered in the national catalogue of plants admitted for trade;

(b) the plant variety was protected by the breeder's right in any state member of the Union, or an application was filed in any state member of the Union and filing of this application led to granting of a breeder's right;

(c) there exists an evidence acceptable for Sakpatenti in regard to the date, when the variety was deemed to be no longer new in accordance with paragraph 1 of this Article.

3. The breeder may enjoy advantages defined in paragraph 2 of this Article, if actions referred to in subparagraphs of said paragraph were performed earlier than one year, two years and six years terms fixed in paragraph 1 of this Article, but no longer than during two years.

4. Duration of the breeder's right, granted in accordance with paragraphs 2 and 3 of this Article, shall be calculated from the day of entry in the catalogue referred to in subparagraph (a), paragraph 2 of this Article, from the day of granting of the breeder's right referred to in subparagraph (b), paragraph 2 of this Article or from the day, when the plant variety was deemed to be no longer new, referred to in subparagraph (c), paragraph 2 of this Article. In relevant cases the earliest of these dates shall be used.

5. Where the breeder's right is granted in accordance with the requirements of this Article, the breeder shall be obliged to grant a license on reasonable conditions to enable a third person to continue exploitation of the plant variety, which he had begun in bona fide before filing the application by the breeder with Sakpatenti.

Article 12

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 with Sakpatenti. In particular, filing of an application for the granting of a breeder's right or for the entering of the variety in the official register of varieties or the catalogue, in any country, shall make the 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 variety in the official register of varieties or the catalogue, as the case may be.

Article 13

The plant 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 14

The plant 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
Examination, Publication, Registration and Granting of Certificate
for the New Plant Variety

Article 15

1. The breeder shall file the application with the request of the registration of the new plant variety and obtainment of a certificate with Sakpatenti personally or by means of a representative.

Article 16

1. The application shall comprise:

- (a) a request, with the indication of the name and address of the breeder;
- (b) the proposed denomination of the new plant variety;
- (c) the description of the new plant variety, the main morphological, biological and botanical characteristics;
- (d) the photographic image of the new plant variety;
- (e) a written obligation of the breeder to supply to the accredited person, under Article 3(2) of this Law, samples of propagating material of the new plant variety within the prescribed term and quantity, free of charge.
- (f) indication of the date, when the propagation material of the plant variety was sold with the purpose of exploitation or was otherwise disposed of to others by the breeder or with his consent.

2. One application shall be filed for one new plant variety.

3. Where the application is filed by means of a representative, within a month from the day of filing the application, the application materials shall be attached a document confirming the representation.

4. The application shall be filed in the state language, and the other application materials – in any other language. Where the application materials are filed in a foreign language, the applicant within 3 months term shall file their translation into the Georgian language.

5. Where the application is filed by the assignee, within a month from the day of filing the application materials, the application shall be attached a document confirming the assignment.

6. Where the data and materials defined by paragraphs 3 to 5 of this Article are not submitted in relevant terms, the proceeding of the applications shall be terminated.

Article 17

If before its filing with Sakpatenti the application was filed with the competent authority of other member of the Union, the country, where this application was filed, the denomination of the new plant variety, the application number and the date of filing shall be indicated.

Article 18

If the new plant variety described in the application is filed in any other member state of the Union, the applicant shall be obliged to attach to the application materials a certified copy of the first application and its translation into the Georgian language.

Article 19

1. The applicant shall propose the denomination of the new plant variety.
2. The denomination shall be the generic denomination of this plant variety and make the variety easily identifiable. It must be distinguishable from every denomination designating the variety of plant of the same or closely related botanic species, must not be contrary to the commonly recognized norms of morality, must not insult religious feelings, must not consist only of figures except, where this is an established practice and must not cause confusion concerning the characteristics, origin, value, identity of the variety, or the breeder.
3. If the denomination does not satisfy the requirements of paragraph 2 of this Article, or if prior right of third party prevent the use of the variety, the applicant shall be obliged to present the new denomination within a month from the receipt of notification, in accordance with paragraph 4 of this Article.
4. Any person who, within the territory of Georgia, offers for sale or markets a plant variety protected within the said territory shall be 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 (3), prior rights prevent such use.
5. When a plant variety is offered for sale or marketed, it shall be 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 nevertheless be easily recognizable.

Article 20

The application shall be deemed filed with Sakpatenti from the day of the submission of the following materials:

- (a) the request;
- (b) the proposed denomination of the new plant variety;
- (c) the description of the new plant variety.

Article 21

1. Where for one and the same plant variety two or more applications are filed, the priority shall be established for the application filed earlier with Sakpatenti.
2. The applicant wishing to enjoy the priority established under the International Convention for the Protection of New Varieties of Plants shall be obliged to file an

application with Sakpatenti within 12 months from filing of the earlier application in the contracting party of this Convention.

3. In the application filed with Sakpatenti the date of filing the application in other country must be indicated. The applicant shall be obliged to present within six months from the day of filing the application with Sakpatenti the copy of the application certified by the competent authority of the country, where the application was first filed, and its translation into the Georgian language.

4. The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection or withdrawal, to furnish Sakpatenti any necessary information, document or material required for the purpose of the examination.

Article 22

1. Sakpatenti shall perform the formal examination of the new plant variety application, that includes completeness of the application materials, checking the execution of the application and the confirmation of the application filing date.

Article 23

1. Sakpatenti shall confirm the application filing date in 2 days term from the day of filing.

2. The formal examination of the application shall be performed within one month from the day of filing the application.

3. If the application does not meet the requirements of Articles 16 and 21 of this Law, during the formal requirements examination Sakpatenti may request from the applicant to repair the deficiency and submit the relevant materials. The applicant shall be obliged to repair the deficiency or submit relevant materials within one month from the day of receiving the notification.

4. If the applicant complies with the requirement of paragraph 3 of this Article, then the date of fulfilling the above request shall be deemed to be the date of filing of the application. If the applicant fails to comply with the request, the application shall not be considered filed, and the application materials shall be returned to the applicant.

5. If the application does not comply with the conditions of the formal requirements examination, proceeding of the application for the new plant variety shall be terminated.

Article 24

1. If it is confirmed that the application complies with the conditions of formal requirements examination, Sakpatenti shall publish the data of the new plant variety application in the Official Bulletin and shall take a decision to hand over the plant variety for testing.

2. The following shall be published in the Official Bulletin:

- (a) the data of the breeder;
- (b) the date of filing the application;
- (c) the proposed denomination of the new plant variety;

- (d) the brief reference of the new plant variety.
3. Description of the new plant variety shall be laid open to public for familiarization.

Article 25

Any person shall be authorized to present to Sakpatenti a written objection within 3 months from the publication of the new plant variety data in the Official Bulletin:

- (a) if the new plant variety does not comply with the requirements of protectability;
- (b) if the description of the new plant variety does not convey a complete impression for the evaluation of the new plant variety;
- (c) if the data given in the application are falsified;
- (d) if the priority requested, in accordance with paragraph 2 of Article 21 of this Law, for the new plant variety described in the application is baseless according to the application presented for this plant variety in another country.

Article 26

1. Within one week from the receipt of an objection Sakpatenti shall hand over the objection materials for making a conclusion to the person referred to in paragraph 2 of Article 3 of this Law. A copy of the objection materials shall be handed over to the applicant of the new plant variety as well.
2. Sakpatenti with respect to the objection shall take a decision on the basis of conclusion made by the person defined under paragraph 2 of Article 3 of this Law.
3. Procedures and terms of the objection shall be determined under the rule established by the Ministry of Agriculture of Georgia.

Article 27

1. Following to the completion of the formal requirements examination and the publication of the application materials in the Official Bulletin, the new plant variety shall be handed over within 2 weeks term for testing to the person defined under paragraph 2 Article 3 of this Law.
2. The new plant variety shall be tested for distinctness, uniformity and stability by means of examination.
3. The applicant shall be authorized to request extension of procedure terms of the new plant variety application proceeding or where he fails to comply with the terms, restoration of these terms in accordance with the established rule.
4. The applicant, at any stage of proceeding of the new plant variety application, may withdraw the application or request termination of the application proceeding.

Article 28

1. Results of the new plant variety tests shall be done by the person referred to in Article 3(2), that shall be handed over to Sakpatenti within one month term.

2. In the case of the positive conclusion of the new plant variety testing, the person, who performed tests, together with the applicant shall draw up the description of the plant variety that he together with the conclusion shall send to Sakpatenti.

3. Data of the test results shall be a trade secret of the applicant and their transfer to the other person without agreement with Sakpatenti and the applicant, shall be deemed to be a violation and shall result in liability defined under the existing legislation in Georgia.

Article 29

1. Where the positive conclusion of the new plant variety testing is made, Sakpatenti shall take a decision to register the new plant variety. Sakpatenti shall record the denomination of the new plant variety, description and other data in the Register of New Plant Varieties and issue the certificate, which represents a document certifying the property of the breeder's exclusive right holder.

2. The following shall be recorded in the Register of New Plant Varieties:

- (a) the genus and species of the new plant variety;
- (b) the denomination of the new plant variety;
- (c) the description and photographic image of the new plant variety;
- (d) the name and address of the breeder;
- (e) the number and date of registration.

3. The format of a certificate issued for the new plant variety shall be developed by Sakpatenti.

4. Sakpatenti shall publish in the Official Bulletin: the genus and species of the new plant variety, the denomination of the new plant variety, the description and photographic image of the new plant variety, the name and address of the breeder, the registration number and date.

5. Any person shall be entitled to familiarize with the Register of New Plant Varieties under established order.

Article 30

1. If the application of the new plant variety filed with Sakpatenti concerns the variety protected in other state member of the Union, that variety shall not be a subject of tests for distinctness, uniformity and stability in the territory of Georgia. For such a variety a certified copy of the official documents confirming the breeder's right issued by the authorized body of the respective country and its translation into the Georgian language shall be submitted to Sakpatenti together with the application, or within 2 months term from filing the application. For such an application only the formal requirements examination shall be performed.

2. If the application of the new plant variety filed with Sakpatenti concerns the variety for which tests for distinctness, uniformity and stability have been already performed by the person referred to in Article 3(2) of this Law and the positive conclusion has been issued, only the novelty, denomination requirements and the formal requirements examination shall be performed.

3. If the applications referred to in paragraphs 1 and 2 of this Article comply with the conditions of the formal requirements examination, Sakpatenti shall take a decision to register

the new plant variety, shall record the data in the Register of New Plant Varieties, issue a certificate and publish the registration data in the Official Bulletin.

Article 31

1. Under Article 24 of this Law from the day of publication of the new plant variety data to the day of registration, the applicant provisionally shall be granted the same rights of the breeder, he would have in the case of registration. If a third party, from the day of publication of the new plant variety data to the day of registration, has carried out acts which require the breeder's authorization, the breeder shall be entitled to demand equitable remuneration only after registration of the new plant variety.

Chapter V **Rights and Liabilities of the Holder of Breeder's Exclusive Right**

Article 32

1. The exclusive right of the breeder shall be the right to perform, authorize and/or prohibit the following with respect to the new plant variety:

- (a) production or reproduction;
- (b) conditioning for the purpose of propagation;
- (c) offering for sale, alienation or other transfer of rights;
- (d) exporting;
- (e) importing;
- (f) stocking for any of the purposes mentioned in subparagraphs (a), (b),(c), (d), (e), paragraph 1 of the Article.

2. The breeder may authorize the acts referred to paragraph 1 of this Article with certain conditions and restrictions.

3. Taking into account the requirements of Article 34 of this Law, the acts defined by 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 exclusive rights in relation to the said propagating material.

4. The exclusive right of the new plant variety breeder shall also apply 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 12 of this Law from the protected variety, and
- (c) varieties whose production requires the repeated use of the protected variety.

Article 33

1. A variety shall be deemed to be essentially derived from another 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 distinguishable from the initial variety by external properties, except for the differences which result from the act of propagation, and 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.

2. Essentially derived varieties may be obtained 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 34

1. Exclusive right of the breeder shall not apply 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 32(4) apply, acts referred to in Article 32(1) to (3).

2. The Ministry of Agriculture of Georgia, subject to the safeguarding of the legitimate interests of the breeder and within reasonable limits, shall be entitled to restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the propagating material which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 32(4)(a)(b) or paragraph 1 of this Article.

Article 35

1. The breeder's exclusive right shall not apply to acts concerning any material of the protected variety or any material derived from the said material, which has been included into the civil circulation by the breeder or with his consent in the territory of Georgia, unless such acts

(a) involve further propagation of the protected variety or

(b) involve an export of plant material of the protected variety, which enables the propagation of the variety, into a country which does not protect the varieties belonging to this genus and species, except where the exported material is for final consumption purposes.

2. For the purposes of paragraph 1 of this Article, the term "material" means, in relation to a variety,

(a) propagating material of any kind;

(b) harvested material, including entire plants and parts of plants;

(c) any product made from the harvested material.

Article 36

The breeder shall be obliged to ensure, during the whole period of validity of the exclusive rights, obtainment of the propagating materials of the plant variety enabling to produce the plant variety having the features referred to in the description of the new plant variety.

Chapter VI

Cancellation and Nullity of New Plant Variety Registration and Certificate

Article 37

Upon request of the interested person, the new plant variety registration and certificate shall be recognized as null from the registration day, only when it is established that at the time of taking the decision concerning the registration and issuing of the certificate of the new variety of plant:

- (a) the plant variety did not comply with the requirements of Articles 11 and 12 of this Law;
- (b) the grant of the breeder's right was based upon information and documents furnished by the breeder, and when granting the breeder's right the requirements of Articles 13 and 14 of this Law were not complied with;
- (c) the breeder's right was granted to a person who was not entitled to it, unless it is transferred to the person who was so entitled.

Article 38

1. Upon request of the interested person, the new plant variety registration and certificate may be cancelled from the day of taking the relevant decision, when it is established that:

- (a) the new plant variety does no longer fulfil the requirements of Articles 13 and 14 of this Law;
- (b) the breeder failed to present the information, documents or material deemed necessary for verifying the maintenance of the variety in accordance Article 36 of this Law upon the request of the Ministry of Agriculture of Georgia within the fixed term;
- (c) the breeder failed to satisfy the requirements established for maintenance of rights;
- (d) the breeder did not propose, where the denomination of the variety was cancelled after the grant of the right, another suitable denomination.

2. The registration and certificate of the new plant variety may be recognized as null or cancelled on the basis of a written request submitted to Sakpatenti by the breeder.

3. The data of the recognition of the new plant variety registration and certificate as null or cancelled shall be entered by Sakpatenti in the Register of the New Plant Varieties and the reference of the above mentioned shall be published in the Official Bulletin.

Article 39

On the basis of a written request submitted to Sakpatenti, the breeder during the validity term of the new plant variety registration shall be authorized to enter changes or additions in the

registered data of the new plant variety only in respect to the address of the breeder or his representative.

Chapter VII

License

Article 40

1. The breeder (licensor) shall be authorized to grant a license to use the registered new plant variety to other person (licensee).
2. Granting of the license for the use of the new plant variety shall be admissible for the new plant variety permitted for distribution in the territory of Georgia.
3. The license may be simple or exclusive.
4. On the basis of the simple license agreement, the licensor shall transfer to the licensee the right to use the new plant variety. At the same time, the licensor shall preserve all the exclusive rights and the right to conclude other simple license agreements.
5. On the basis of the exclusive license agreement, the licensor shall transfer the right to use the new plant variety only to the licensee. At the same time, the licensor during the validity term of the exclusive license agreement shall forfeit the exclusive rights transferred on the basis of this agreement as well as the right to conclude other license agreements.
6. The license agreement shall be made in the written form and shall provide for: the accurate data of the new plant variety, types of use, the validity term of the agreement and the territory, amount of the remuneration or the rule of determining the amount and term, as well as other conditions considered essential by the parties.
7. The right to use the new plant variety in any way not provided for directly by the license agreement shall belong to the licensor.
8. The licensee shall not be allowed to transfer the right resulting from the license agreement or to grant a sublicense if it is not provided for directly in the license agreement.

Article 41

1. The compulsory license may be granted upon the request of any interested person only for reasons of public interest.
2. The compulsory license shall be issued on the basis of a recommendation given by the National Council of Seeds functioning at the Ministry of Agriculture of Georgia, by the decision of the Minister of Agriculture of Georgia.
3. The compulsory license may be issued only when the interested person earlier was trying to obtain the license from the breeder with reasonable conditions and terms, but his attempt was not successful.
4. The decision on granting the compulsory license shall define the scope of use of the new plant variety, duration, rights and obligations of the breeder and the licensee and the amount of remuneration. The decision on granting the compulsory license shall be legalized with the order of the Minister of Agriculture of Georgia.

5. The duration of the compulsory license agreement may be extended if by examination performed by the Ministry of Agriculture of Georgia it is ascertained that conditions of the license agreement are complied with and there is a necessity of extension.

6. If during the validity term of the compulsory license the examination proves that there are no longer grounds for granting the compulsory license, the effect of the compulsory license shall be terminated on the basis of a decision taken by the Ministry of Agriculture of Georgia.

7. At granting of the compulsory license, the breeder shall be entitled to receive the equitable remuneration.

Chapter VIII

Violation of Breeder's Rights and Liability

Article 42

The failure to observe the requirements of this Law shall be deemed to be a violation of the breeder's rights and shall result in liability under the existing legislation in Georgia.

Chapter IX

Transitional and Final Provisions

Article 43

1. Applications filed for registration of the new plant varieties with the Center of Protection of Plant Varieties Breeders' Rights of Georgia "Sakjishtsenti" under the Laws of Georgia "on Permission for Distribution of Agricultural Crops, Quality Seeds and Planting Materials" and "on Protection of Selective Achievements", proceeding of which has not been terminated, shall be transferred to the National Intellectual Property Center of Georgia Sakpatenti for continuing the proceeding.

Article 44

The Law of Georgia "on Protection of Selection Achievements" of October 18, 1996 ("Parlamentis utsqebani", N27-28/4, November 21, 1996, p.42) shall be declared invalid.

Article 45

1. Within three months term from the entry into force of this Law, the Ministry of Agriculture of Georgia together with the National Intellectual Property Center "Sakpatenti" shall prepare and approve the rule of consideration of the opposition of the interested persons in connection with publication of the new plant variety data, the rule of the application proceeding, extension of procedural terms, the rule of termination and reinstatement, as well as the rule of granting of compulsory licenses.

2. The Ministry of Agriculture of Georgia, within six months after entry into force of this Law, shall ensure approval of the requirements for distinctness, uniformity and stability with respect of the new plant variety and methods of testing, taking into account the international practice.

3. The Ministry of Agriculture of Georgia within 2 months from the entry into force of this Law shall ensure establishment of the Council of Experts on the basis of Article 3(2) of this Law and shall approve its regulations.

Article 46

The Law shall enter into force on publication.

[Annex III follows/
L'annexe III suit/
Anlage III folgt/
Sigue el Anexo III]

ANNEX III / ANNEXE III / ANLAGE III / ANEXO III

[In English only / En anglais seulement /
Nur auf englisch / En inglés solamente]

Information provided by the Government of Georgia on February 1, 2007

The Constitution of Georgia

Article 6

1. Constitution of Georgia shall be the supreme law. All the other legal acts shall comply with the Constitution.
2. The legislation of Georgia shall comply with the generally recognized principles and norms of the international law. The international treaty or agreement of Georgia, if it does not contradict with the Constitution of Georgia, constitutional agreement, shall have prevalence with respect to the statutory acts of the national law.

Article 23

1. Freedom of the intellectual creativity shall be ensured. The intellectual property right shall be indefeasible.

The Criminal Code of Georgia

Article 189. Encroachment of Intellectual Property Rights

1. Misappropriation of authorship or forcing on co-authorship of invention, industrial design, topography of integrated circuit, selection achievement – shall be punishable by penalty or correctional labor up to two years term.
2. The action, provided for in the first part of this Article, committed repeatedly – shall be punishable by custodial restraint up to three years term or detention during the same term.
3. Illegal use of other person's invention, utility model, industrial design, topography of integrated circuit, selection achievement, knowingly, with the purpose of gaining income – shall be punishable by penalty or custodial restraint up to two years term.
4. The action, provided for by the third part of this Article, committed by the group on the basis of a preliminary concord – shall be punishable by custodial restraint up to three years term or detention during the same term.

The Civil Code and the Civil Procedure Code of Georgia

The breeder can also enforce his rights on the base of civil action, in accordance with the Civil Code and the Civil Procedure Code of Georgia.

[End of Annex III and of document/
Fin de l'annexe III et du document/
Ende der Anlage III und des Dokuments
Fin del Anexo III y del documento]