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UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES
GINEBRA

CONSEJO

Vigésima quinta sesión extraordinaria
Ginebra, 11 de abril de 2008

EXAMEN DE LA CONFORMIDAD DE LA LEY DE PROTECCIÓN DE LAS
OBTENCIONES VEGETALES AGRÍCOLAS DE LA EX REPÚBLICA YUGOSLAVA
DE MACEDONIA CON EL ACTA DE 1991 DEL CONVENIO DE LA UPOV

documento preparado por la Oficina de la Unión

Introducción

1. Mediante nota cursada el 18 de febrero de 2008 al Secretario General de la UPOV, la Misión Permanente de la ex República Yugoslava de Macedonia ante la Oficina de las Naciones Unidas y otros organismos internacionales en Ginebra, remitió una carta de fecha 30 de noviembre de 2007, que el Sr. Antionio Milošoski, Ministro de Asuntos Exteriores de la ex República Yugoslava de Macedonia, dirigiera al Secretario General de la UPOV y en la cual se solicitaba el examen de la Ley de Protección de las Obtenciones Vegetales Agrícolas de la ex República Yugoslava de Macedonia (“la Ley”), la cual fue sancionada por el Parlamento de la ex República Yugoslava de Macedonia el día 4 de julio de 2007, con la finalidad de determinar si la citada Ley es conforme a lo establecido en el Acta de 1991 del Convenio de la UPOV (“Acta de 1991”). La Nota y la carta antedichas se reproducen en el Anexo I del presente documento.

2. En el Anexo II figura una traducción de la Ley al inglés proporcionada por el Gobierno de la ex República Yugoslava de Macedonia. En diversos supuestos, será preciso consultar el original de la Ley para comprobar la fidelidad de la traducción, así como la terminología utilizada. Hasta que no se haya culminado dicha labor de comprobación, no será posible determinar si las contradicciones que, al parecer, presenta la Ley con respecto al Acta de 1991 son fruto de problemas de traducción o, si por el contrario, tienen su origen en el propio original de la Ley.

3. El artículo 34.3) del Acta de 1991 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”.

4. El Gobierno de la ex República Yugoslava de Macedonia ya inició el procedimiento para adherirse a la UPOV mediante carta del 4 de septiembre de 2000, en la cual la Sra. Verica Demirovska, Directora del Ministerio de Agricultura, Silvicultura y Recursos Hídricos solicitó la opinión del Consejo de la UPOV sobre la conformidad con el Acta de 1991 de la “Ley de Semillas, Material de Siembra y de Reproducción, y de Reconocimiento, Aprobación y Protección de la Variedad”, que fue sancionada en mayo de 2000.

5. En su trigésima cuarta sesión ordinaria, el 26 de octubre de 2000, el Consejo decidió:

a) comunicar al Gobierno de la ex República Yugoslava de Macedonia que en la Ley de Semillas, Material de Siembra y de Reproducción, y de Reconocimiento, Aprobación y Protección de la Variedad, no se recogen ciertas importantes disposiciones del Acta de 1991;

b) solicitar a la Oficina de la Unión que ofrezca su asistencia al Gobierno de la ex República Yugoslava de Macedonia con la finalidad de redactar las enmiendas que sea necesario efectuar en la Ley de 2000 y, asimismo, para realizar una traducción mejor a uno o más de los idiomas oficiales de la UPOV;

c) comunicar, además, al Gobierno de la ex República Yugoslava de Macedonia que, una vez aprobadas las enmiendas necesarias que se estipulan en el documento C/34/13, a satisfacción de la Oficina de la Unión, y después de establecido el reglamento, el Gobierno podrá proceder a depositar el instrumento de adhesión al Acta de 1991.

6. La antedicha decisión del Consejo de fecha 26 de octubre de 2000 ya no es pertinente, habida cuenta de que la Ley de 2000 fue derogada por la Ley de 2007 (véase el artículo 55 de la Ley). Por dicho motivo, y de conformidad con lo dispuesto en el artículo 34.3) del Acta de 1991, el Gobierno de la ex República Yugoslava de Macedonia formuló una nueva solicitud (véase el párrafo 1 de este documento), con la finalidad de recabar 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 la ex República Yugoslava de Macedonia

7. En la ex República Yugoslava de Macedonia, la protección de las obtenciones vegetales se rige por la Ley. A continuación, se analiza esta Ley en el orden en el que figuran las disposiciones fundamentales del Acta de 1991.

Artículo 1 del Acta de 1991: Definiciones

8. En los artículos 3.1), y 12.1) y 12.3) de la Ley, se recogen algunos elementos de la definición de “obtentor” que están estipulados en el artículo 1.iv) del Acta de 1991. En el artículo 12.3) de la Ley se establecen disposiciones de naturaleza contradictoria en lo que respecta a las posibles cláusulas del contrato de trabajo.

9. En aras de la claridad, convendría establecer en el artículo 3.1) de la Ley los elementos de la definición de obtentor que se indican en el artículo 1.iv) del Acta de 1991. Cabe señalar que la antedicha modificación obligará a reformar en consecuencia disposiciones concordantes de la Ley.

10. Con la finalidad de recoger la definición de “variedad” estipulada en el artículo 1.vi) del Acta de 1991, se recomienda modificar el artículo 3.6) de la Ley por la vía de incluir antes de la expresión “a condición de que” la siguiente frase: “con independencia de si se cumplen o no plenamente las condiciones para que sea concedido el derecho de obtentor”.

11. Sería preciso aclarar dos definiciones de la Ley: la de “titular del derecho de obtentor” (artículo 3.3) y la de “propietario del derecho de obtentor” (artículo 3.5). Como, al parecer, ambos preceptos guardan relación con el mismo sujeto, ello suscita confusión con respecto a la definición del “derecho de obtentor”, que figura en el artículo 3.2) de la Ley, y a la definición de “obtentor” con las modificaciones propuestas (véase el anterior párrafo 9). La señalada precisión obligará a reformar en consecuencia las disposiciones concordantes de la Ley (véanse, en particular, los artículos 16.3), 23, 28.4), 51 y 56.1) de la Ley).

12. En el artículo 3.9) de la Ley se establece la definición de “interés público”: “Por ‘interés público’ se entiende el interés que posee el Estado en la protección y el mantenimiento de las obtenciones vegetales”.

13. Será preciso aclarar asimismo otras definiciones que se establecen en el artículo 3 de la Ley, como la de “muestra protegida” y la de “examen DHE” o, en su caso, comprobar si el texto de la traducción es fiel a la letra de la Ley (véanse posteriormente los párrafos 35 a 37).

14. En el artículo 3.12) de la Ley se dispone que “el banco de gen[es]” es: “una institución en la cual se depositan y conservan de forma permanente las semillas y el material de reproducción o de multiplicación correspondientes a las poblaciones divergentes y los tipos autóctonos con la finalidad de proteger la biodiversidad y de conservar muestras específicas de semillas y de material de reproducción o multiplicación correspondientes a las obtenciones vegetales que figuran inscritas en el Catálogo Nacional de Obtenciones Vegetales”. Las medidas que se adopten para proteger la biodiversidad deben ser independientes del derecho de obtentor. Por ende, es recomendable que se aclaren, los artículos 3.12), 43 y 45 (véanse posteriormente los párrafos 37 y 50).

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

15. En el artículo 1 de la Ley se dispone lo siguiente: “La presente Ley regirá el procedimiento para proteger las obtenciones vegetales agrícolas y las condiciones que deban cumplirse para adquirir y proteger el derecho de obtentor sobre la obtención vegetal agrícola que sea objeto de protección. Quedan exceptuadas del objeto de la Ley las plantas forestales”.

16. Según se desprende de la letra del artículo 1, del alcance de la Ley quedarían excluidos determinados grupos de plantas, como “las plantas forestales”, ya que, al parecer, la disposición pretende reglamentar exclusivamente las plantas agrícolas. Por tanto, a juzgar por lo que se expone en dicho artículo 1, la materia de la Ley no se ajusta a lo dispuesto en el artículo 3.2) del Acta de 1991.

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

17. El artículo 2 de la Ley establece lo siguiente: “El objeto de la presente Ley será la protección de las obtenciones de toda clase de plantas agrícolas, en particular, los híbridos obtenidos mediante el cruce de géneros y especies de dicha clase de plantas”. Asimismo en el artículo 21.3) de la Ley se establece esto otro: “En el Registro de obtenciones vegetales inscritas y protegidas se conservarán, al menos, 15 tipos de plantas agrícolas y, con posterioridad a la adhesión de la República de Macedonia a la UPOV, en el correr de 10 años, se llevará un registro de todas las especies y variedades de plantas agrícolas”.

18. El artículo 3.2) del Acta de 1991 prevé la facultad de optar por un período de transición para aplicar las disposiciones del Acta de 1991 a “todos los géneros y especies vegetales” (un plazo máximo de 10 años), pero no permite excluir géneros ni especies. Del artículo 2 de la Ley, parece desprenderse que la protección está disponible únicamente para las plantas agrícolas. Esta restricción también figura en el artículo 21.3) de la Ley. Además, el artículo 1 de la Ley excluye las “plantas forestales” (véase el párrafo 16 del presente documento).

19. En conclusión, los artículos 1, 2 y 21.3) de la Ley contienen disposiciones que no se ajustan al artículo 3.2) del Acta de 1991.

Artículo 4 del Acta de 1991: Trato nacional

20. El artículo 13 de la Ley contiene disposiciones sobre las personas facultadas a presentar solicitudes, en sintonía con el artículo 4 del Acta de 1991.

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

21. En el artículo 4 de la Ley se identifican los criterios que hay que satisfacer para obtener la protección, en sintonía con el artículo 5.1) del Acta de 1991.

22. El artículo 5 de la Ley contiene disposiciones sobre la condición de novedad, que se basan en el artículo 6 del Acta de 1991.

23. Se solicita comprobar la fidelidad de la traducción del artículo 5.1) con la versión original de la Ley, en particular, si las palabras “vendido o explotado comercialmente” corresponden en la versión original a “vendido o entregado a terceros o de otra manera [...] a los fines de la explotación de la variedad”. Si la versión original de la Ley no refleja las palabras del artículo 6.1) del Acta de 1991, deberá modificarse el artículo 5.1) de la Ley.

24. Para cumplir con el artículo 6.1)ii) del Acta de 1991, “variedades frutales plurianuales” deberá sustituirse por “árboles”.

25. Se recomienda asimismo reemplazar “titular del derecho” por “obtentor” en el artículo 5.2) de la Ley.

26. El artículo 6.1) de la Ley incorpora la primera frase del artículo 7 del Acta de 1991 relativa a la condición de distinción.

27. Se recomienda sustituir el artículo 6.2) de la Ley por la segunda frase del artículo 7 del Acta de 1991. En dicho artículo de la Ley se omite la referencia a “[e]n particular, el depósito, en cualquier país, de una solicitud de concesión de un derecho de obtentor [...] se reputará que hace a esta otra variedad notoriamente conocida a partir de la fecha de la solicitud, si ésta conduce a la concesión del derecho de obtentor [...]”.

28. El artículo 7 de la Ley contiene los elementos de la condición de homogeneidad presentes en el artículo 8 del Acta de 1991. Además, las palabras “cuya importancia es pertinente a los fines de su diferenciación de otras variedades” se han añadido al final del artículo 7 de la Ley. Se recomienda que en dicho artículo quede reflejado el texto del artículo 8 del Acta de 1991.

29. El artículo 8 de la Ley contiene los elementos de la condición de estabilidad presentes en el artículo 9 del Acta de 1991. Cabe observar que las palabras “cuya importancia es pertinente a los fines de su diferenciación de otras variedades” figuran en lugar de la palabra “pertinentes”, y que antes de la palabra “inalterados” se han añadido las palabras “permanentes e”. Se recomienda que, en el artículo 8 de la Ley, quede reflejado el texto del artículo 9 del Acta de 1991.

Artículo 10 del Acta de 1991: Presentación de solicitudes

30. Los artículos 25 y 26 de la Ley contienen disposiciones sobre la presentación de solicitudes.

31. En relación con los requisitos mínimos que la solicitud debe satisfacer, según dispone el artículo 25.3) de la Ley, para cumplir con el Acta de 1991 será necesario aclarar el requisito “datos relativos a la creación de la variedad mediante ingeniería genética”. Esta frase parece indicar que la protección únicamente está disponible para las variedades creadas mediante ingeniería genética. El Acta de 1991 es neutral en relación con la tecnología utilizada para desarrollar obtenciones vegetales. A ese respecto, la protección deberá estar a disposición de las variedades vegetales con independencia de los métodos de mejoramiento utilizados para su desarrollo. Además, si bien es posible que la producción o comercialización de variedades modificadas genéticamente estén supeditadas a otras medidas, esas medidas deberán ser independientes del derecho de obtentor (véase el artículo 18 del Acta de 1991). Se recomienda modificar en consecuencia el artículo 25.3) de la Ley.

32. Es necesario aclarar el artículo 26.3) de la Ley en relación con la fecha de presentación de la solicitud.

Artículo 11 del Acta de 1991: Derecho de prioridad

33. El artículo 27 de la Ley contiene disposiciones sobre el derecho de prioridad.

34. El artículo 27.5) de la Ley prevé un plazo de dos años para reivindicar la prioridad de la primera solicitud, en lugar de los 12 meses previstos en el artículo 11.1) del Acta de 1991. Además, no se han incluido en la Ley las disposiciones del artículo 11.3) del Acta de 1991, relativas al plazo para presentar cualquier información, documento y material necesarios para el examen. En conclusión, es preciso modificar el artículo 27 de la Ley, para que se ajuste a las disposiciones del artículo 11 del Acta de 1991.

Artículo 12 del Acta de 1991: Examen de la solicitud

35. Los artículos 30 a 32 de la Ley contienen disposiciones sobre el examen de la solicitud. La traducción plantea algunas dudas respecto de la conformidad con el Acta de 1991 y la coherencia interna del texto de la Ley. Por ejemplo, en el artículo 30.1) de la Ley, se utiliza la palabra “permanente” mientras que en el artículo 31.1) de la Ley, la palabra utilizada es “homogénea”. Sólo la palabra “homogénea” es correcta. La palabra “condiciones”, en el artículo 31.1) y en el título del artículo 32 de la Ley, no es adecuada. En el artículo 31.1) de la Ley la palabra “condiciones” parece referirse a las medidas procedimentales y, en el artículo 32, a la información, los documentos y el material necesarios para el examen. Se recomienda comprobar la fidelidad de la traducción de la Ley.

36. El artículo 31.1) a 4) de la Ley contiene disposiciones sobre el examen de la solicitud que imponen otros requisitos además de los que prevé el artículo 12 del Acta de 1991. Por ejemplo, “[I]a evaluación profesional de la obtención se realizará a partir de los resultados obtenidos mediante el examen de la variedad realizado en el terreno y en el laboratorio (examen DHE) en la República de Macedonia, o por una autoridad de otro Estado”. Un caso semejante se plantea en la disposición siguiente: “la Dirección puede valerse de los resultados del examen de la variedad obtenidos en otro país que cuente con las condiciones agroecológicas adecuadas, análogas a las de la Republica de Macedonia.”

37. Se recomienda aclarar las disposiciones del artículo 31.1) a 4) de la Ley, ajustándolas a las disposiciones del artículo 12 del Acta de 1991. Es posible que como consecuencia de esta aclaración deban modificarse otras disposiciones de la Ley (artículos 3.7), 8), 11), 12), 22, 30, 32.1), 33.1), 43 y 45 de la Ley).

Artículo 13 del Acta de 1991: Protección provisional

38. Teniendo en cuenta las modificaciones recomendadas respecto del artículo 15 de la Ley sobre alcance del derecho de obtentor (véase el párrafo 43 del presente documento), el artículo 18.2) de la Ley contiene disposiciones sobre la protección provisional, en sintonía con el artículo 13 del Acta de 1991. En el artículo 18.2) de la Ley, por “compensación adecuada de los daños” debe entenderse al menos “remuneración equitativa”, conforme al requisito mínimo del artículo 13 del Acta de 1991.

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

39. Los artículos 14.2) y 15 de la Ley contienen disposiciones sobre el alcance del derecho de obtentor.

40. El artículo 14.2) de la Ley dispone que “[e]l derecho de obtentor es el derecho a la utilización económica de la obtención protegida”. Habida cuenta de que el derecho a comercializar la variedad (producción, comercialización, importación, exportación, etc.) puede depender de otras medidas, y esas medidas deben ser independientes del derecho de obtentor (véase el artículo 18 del Acta de 1991), se recomienda eliminar el artículo 14.2) de la Ley.

41. En el artículo 15 de la Ley, debe comprobarse la fidelidad de la traducción con la versión original de la Ley.

42. Además de la necesidad de comprobar la traducción, deberán incorporarse en el artículo 15 de la Ley los elementos siguientes del artículo 14 del Acta de 1991:

- en el párrafo 1): la referencia al “material de reproducción o de multiplicación”; la inclusión de los actos de “preparación a los fines de la reproducción o de la multiplicación”, “oferta en venta”, “o cualquier otra forma de comercialización”, después de “venta”, “posesión para cualquiera de los fines antes mencionados”; y la inclusión de la disposición “[e]l obtentor podrá subordinar su autorización a condiciones y a limitaciones”;
- en el párrafo 2): la referencia al “producto de la cosecha”;
- en el párrafo 3): la frase “en los casos mencionados en el párrafo 1) del presente artículo, no se exigirá autorización para” deberá sustituirse por “[l]as disposiciones de los párrafos 1 y 2 también se aplicarán”;
- en el párrafo 4): la definición de “variedad esencialmente derivada” deberá sustituirse por la definición que da el artículo 14.5)b) del Acta de 1991. Asimismo, faltan las disposiciones del artículo 14.5)c) del Acta de 1991.

43. En conclusión, deberá eliminarse el artículo 14.2) de la Ley, y el artículo 15 de la Ley deberá ser sustituido por las disposiciones correspondientes del artículo 14.1), 2) y 5) del Acta de 1991.

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

44. Los puntos primero y segundo del artículo 16.1), y el artículo 16.3) de la Ley contienen disposiciones sobre dos excepciones obligatorias al derecho de obtentor, en armonía con el artículo 15.1)i) y ii) del Acta de 1991. Es necesario comprobar si la traducción de “[e]l derecho de obtentor puede utilizarse sin la autorización del obtentor”, del artículo 16.1) de la Ley, corresponde en la versión original de la Ley a “[e]l derecho de obtentor no se extenderá”.

45. En relación con el tercer punto del artículo 16.1) de la Ley, “para los actos realizados a los fines del mejoramiento de otras variedades”, en aras de la conformidad con el artículo 15.1)iii) del Acta de 1991 deberá añadirse lo siguiente, “y, a menos que las disposiciones del artículo 15.3) sean aplicables, a los actos mencionados en el artículo 15.1) y 2) realizados con tales variedades”. En relación con esta recomendación, véanse las recomendaciones propuestas respecto del artículo 15 de la Ley (párrafos 42 y 43 del presente documento).

46. El cuarto punto del artículo 16.1), y el artículo 16.2) y 4) de la Ley parecen incorporar la excepción facultativa al derecho de obtentor prevista en el artículo 15.2) del Acta de 1991. La traducción de esas disposiciones plantea algunos interrogantes. Por ejemplo, cabe aclarar si por “especies distintas” debe entenderse determinadas especies o una lista de especies. Por otra parte, cabe aclarar qué se entiende por “utilización a título personal” en relación con el requisito de utilizar el producto de la cosecha “a fines de reproducción o de multiplicación, en su propia explotación”. Esas aclaraciones en relación con la versión original de la Ley son necesarias para evaluar si ésta cumple con el artículo 15.2) del Acta de 1991.

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

47. En el artículo 17 de la Ley faltan ciertas disposiciones del artículo 16.1) y 2) del Acta de 1991. Se recomienda modificar el artículo 17 de la Ley para que se ajuste al artículo 16.1) y 2) del Acta de 1991.

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

48. El artículo 42 de la Ley contiene disposiciones acerca de una “licencia impuesta”. En el artículo 42.3) de la Ley se hace referencia al interés público y a otras razones para conceder una licencia obligatoria. Para cumplir con el artículo 17.1) del Acta de 1991 se recomienda eliminar los motivos adicionales.

49. Con la referencia a la “remuneración adecuada” del artículo 42.11) de la Ley se da cumplimiento al requisito del artículo 17.2) del Acta de 1991.

Artículo 18 del Acta de 1991: Reglamentación económica

50. Teniendo presentes las recomendaciones relativas a los artículos 3.12), 14.2), 25.3), 43 y 45 de la Ley (véase los párrafos 14, 31 y 40 del presente documento), ésta 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

51. El artículo 18.1) de la Ley contiene disposiciones sobre la duración del derecho de obtentor. A efectos de cumplir con el artículo 19 del Acta de 1991, deberá insertarse la palabra “árboles” en el artículo 18.1) de la Ley para garantizar que, en lo que atañe a los árboles, la duración del derecho de obtentor sea de 25 años a partir de la fecha de la concesión.

Artículo 20 del Acta de 1991: Denominación de la variedad

52. Los artículos 9 a 11 y 38 de la Ley contienen disposiciones sobre la denominación de variedades.

53. Se recomienda aclarar o modificar los artículos 9 a 11, 21.5), 25.3) y 38 de la Ley para ajustarlos a las disposiciones del artículo 20 del Acta de 1991, en particular:

- a) la palabra “protegida” deberá eliminarse del artículo 9 de la Ley;
- b) el texto del artículo 10.2) de la Ley deberá ser sustituido por el del artículo 20.2) y 4) del Acta de 1991;
- c) los artículos 10.3) y 4) y 11.3) de la Ley deberán ser modificados para ajustarlos al artículo 20.2), 4) y 5) del Acta de 1991;
- d) en el artículo 10.5) de la Ley cabe aclarar qué se entiende por “tipos distintos de plantas agrícolas”;
- e) para evitar crear confusión con las disposiciones sobre las excepciones al derecho de obtentor, se recomienda eliminar el artículo 11.2) de la Ley;
- f) la referencia a “sinónimos”, del artículo 21.5) de la Ley, debería aclararse, para ajustar ese artículo a las disposiciones del artículo 20.5) del Acta de 1991;
- g) en el quinto punto del artículo 25.3) de la Ley, “la denominación en latín y macedonio de las especies a las que pertenece la obtención”, la palabra “denominación” debería ser sustituida por “nombre”; y
- h) el artículo 38.1) de la Ley permite cambiar la denominación cuando lo solicite el titular del derecho de obtentor. Se recomienda aclarar esa disposición para ajustarla a los requisitos del artículo 20.7) del Acta de 1991.

54. En conclusión, si bien ciertas disposiciones del artículo 20 del Acta de 1991 se han incorporado en los artículos 9 a 11 y 38 de la Ley, es necesario modificar dichos artículos para que guarden coherencia interna y cumplan con el Acta de 1991.

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

55. El artículo 35 de la Ley, “Procedimiento de revocación de la decisión de proteger una obtención” parece estar relacionado con las causas de nulidad del artículo 21 del Acta de 1991. Se recomienda comprobar la fidelidad de la traducción y seguir el tenor del artículo 21 del Acta de 1991. Además, también deberá verificarse que el texto guarde coherencia con el artículo 18.3) de la Ley.

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

56. El artículo 36 de la Ley, “Revocación de la decisión” parece contener las causas de caducidad del derecho de obtentor previstas en el artículo 22 del Acta de 1991. Se recomienda comprobar la fidelidad de la traducción y seguir el tenor del artículo 22 del Acta de 1991. Además, también deberá verificarse que el texto guarde coherencia con el artículo 18.3) de la Ley.

57. Los artículos 43 a 45 de la Ley deberán aclararse para evitar repeticiones y para no imponer al titular del derecho de obtentor otras obligaciones además de las que se prevén en el artículo 22 del Acta de 1991.

Artículo 30 del Acta de 1991: Aplicación del Convenio

58. En relación con la obligación de prever “los recursos legales apropiados que permitan defender eficazmente los derechos de obtentor” (artículo 30.1)i) del Acta de 1991), los artículos 46 a 53 de la Ley se refieren a los recursos civiles, las sanciones y las multas disponibles. Como se explica en los párrafos siguientes, se recomienda introducir algunas modificaciones en aras de la coherencia con las modificaciones recomendadas respecto de otras disposiciones de la Ley.

59. Los artículos 46.1), 47.3) y 52.1) de la Ley deberán modificarse, introduciendo una referencia a los actos no autorizados previstos en el artículo 15 de la Ley, una vez modificado este último según lo que se recomienda en los párrafos 42 y 43 del presente documento.

60. Se recomienda hacer referencia en la Ley a toda norma de la ex República Yugoslava de Macedonia que prevea medidas provisionales.

61. Los artículos 50 y 51 de la Ley prevén la adopción de medidas en frontera en relación con la posibilidad de infracción del derecho de obtentor.

62. Será necesario modificar el artículo 53 de la Ley como consecuencia de las modificaciones recomendadas respecto de los artículos 11 y 16 de la Ley, relativos a la denominación de la variedad y las excepciones al derecho de obtentor, respectivamente.

63. El artículo 3 de la Ley prevé que “la ‘Autoridad’ para la protección de las obtenciones agrícolas es la Dirección de Semillas y Material de Reproducción o Multiplicación del Ministerio de Agricultura, Silvicultura y Recursos Hídricos”. El artículo 20.1) de la Ley dispone que: “[i]ncumbe a la Comisión de Expertos para la Protección de Obtenciones Agrícolas la tramitación del título de protección de una obtención a partir de la solicitud y los documentos presentados. Además, el artículo 33.1) de la Ley dispone que si “la variedad cumple con las condiciones [...], el Ministro concederá la protección a la obtención.” Se recomienda aclarar la función de la Dirección y de la Comisión en relación con la obligación prevista en el artículo 30.1)ii) del Acta de 1991. Se recomienda prever en el reglamento de aplicación la información detallada contemplada en el artículo 20.2) de la Ley acerca de la Comisión.

64. Los artículos 19, 26.2) y 33.3) de la Ley cumplen con la obligación de publicar la información sobre las solicitudes de derecho de obtentor y los títulos concedidos, así como las denominaciones propuestas, según se exige en el artículo 30.1)iii) del Acta de 1991. Se recomienda aclarar en la Ley que la publicación de la decisión relativa al derecho de obtentor también contendrá la denominación aprobada, según exigen el artículo 20.3) y el artículo 30.1)iii) del Acta de 1991.

65. Convendrá aclarar el artículo 28 de la Ley, relativo a la publicación de la solicitud, en lo que atañe a la persona facultada a presentar objeciones.

66. En aras de la coherencia interna del texto, se recomienda aclarar los artículos 21 y 22 de la Ley en lo que atañe a la información que ha de publicarse en el Boletín Oficial, la información del Registro accesible a las personas interesadas y las medidas adecuadas para salvaguardar los intereses legítimos del obtentor.

Conclusión general

67. El análisis expuesto en el presente documento sugiere que la Ley incorpora algunas disposiciones del Acta de 1991. Sin embargo, en ese análisis se ha identificado un número significativo de disposiciones de la Ley que no guardan conformidad con el Acta de 1991 (véanse los párrafos 16, 19, 24, 25, 27, 31, 34, 40, 42, 43, 45, 47, 48, 51, 53, 54, 59 y 62 del presente documento). Además, ciertas disposiciones de la Ley parecen no guardar coherencia con otras, y hay disposiciones que es preciso aclarar (véanse los párrafos 8, 9, 10, 11, 13, 14, 28, 29, 32, 37, 53, 54, 55, 56, 57, 60, 63, 64, 65 y 66 del presente documento). Por otra parte, en varios casos, será necesario comprobar con la versión original de la Ley la fidelidad de la traducción y la terminología utilizadas (véanse los párrafos 13, 23, 35, 41, 44, 46, 55 y 56 del presente documento). En conclusión, para que la ex República Yugoslava de Macedonia esté en condiciones de dar cumplimiento a las disposiciones del Acta de 1991 según exige el artículo 30.2) de esta última, se recomienda que se modifique la Ley según se indica en el presente documento.

68. *Se invita al Consejo a:*

a) tomar nota del análisis expuesto en el presente documento;

b) recomendar que la ex República Yugoslava de Macedonia incorpore en su Ley las disposiciones y modificaciones adicionales pertinentes, según se indica en el documento C(Extr.)/25/4, y recomendar que una vez incorporadas en la Ley las disposiciones y modificaciones adicionales, la Ley modificada deberá ser sometida al Consejo a los fines de examinar su conformidad en virtud del artículo 34.3) del Acta de 1991;

c) pedir a la Oficina de la Unión que ofrezca asistencia, lo antes posible, al Gobierno de la ex República Yugoslava de Macedonia en la redacción de las disposiciones y modificaciones adicionales que es necesario incorporar en la Ley; y

d) autorizar al Secretario General a informar al Gobierno de la ex República Yugoslava de Macedonia sobre esta decisión.

[Siguen los Anexos]

ANEXO I

Nota de la Misión Permanente de la ex República Yugoslava de Macedonia

[Traducción por la Oficina de la Unión de una nota con fecha 18 de febrero de 2008]

Enviada por: Misión Permanente de la ex República Yugoslava de Macedonia ante la Oficina de las Naciones Unidas y otros organismos internacionales en Ginebra

A: Dr. Kamil Idris, Secretario General de la Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV)

La Misión Permanente de la ex República Yugoslava de Macedonia ante la Oficina de las Naciones Unidas y otros organismos internacionales en Ginebra presenta sus atentos saludos al Secretario General de la Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV) y tiene el honor de transmitir, junto con la presente, el original de la carta de fecha 30 de noviembre de 2007, enviada por S.E. Sr. Antonio Milošoski, Ministro de Relaciones Exteriores de la ex República Yugoslava de Macedonia al Dr. Kamil Idris, Secretario General de la Unión Internacional para la Protección de las Obtenciones Vegetales.

Se adjunta a la presente la traducción oficial (al inglés) de la Ley de Protección de las Obtenciones Agrícolas de la ex República Yugoslava de Macedonia.

(Firmado)

[Sigue la carta]

[Traducción por la Oficina de la Unión de una carta con fecha 30 de noviembre de 2007]

Enviada por: S.E. Sr. Antionio Milošoski, Ministro de Relaciones Exteriores de la ex República Yugoslava de Macedonia

A: Dr. Kamil Idris, Secretario General de la Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV)

Tengo el agrado de informarle que, el 4 de julio de 2007, el Parlamento de la ex República Yugoslava de Macedonia sancionó la Ley de Protección de las Obtenciones Agrícolas.

A este respecto me complace informarle que la ex República Yugoslava de Macedonia 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).

Con arreglo a las disposiciones del artículo 34.3) del Convenio de la UPOV, agradecería que el Consejo de la UPOV examinara la conformidad de la Ley de Protección de las Obtenciones Agrícolas de la ex República Yugoslava de Macedonia con las disposiciones del Convenio de la UPOV.

(Firmado)

[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 ON NEW VARIETIES OF AGRICULTURAL PLANTS
OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Translation in English provided by the Government
of The former Yugoslav Republic of Macedonia)

Pursuant to Article 75 paragraphs 1 and 2 of the Constitution of the Republic of Macedonia, the President of the Republic of Macedonia and the President of the Assembly of the Republic of Macedonia issue this

DECREE
FOR PROMULGATION OF
THE LAW ON NEW VARIETIES OF AGRICULTURAL PLANTS

The Law on New Varieties of Agricultural Plants, adopted by the Assembly of the Republic of Macedonia on its session held on 20 June 2007, is hereby promulgated.

No. 07-2892/1
20 June 2007
Skopje

President of the
Republic of Macedonia,
Branko Crvenkovski

President of the
Assembly of the Republic of
Macedonia,
Ljubisha Georgievski

1. LAW ON PROTECTION OF NEW VARIETIES OF AGRICULTURAL PLANTS

I. GENERAL PROVISIONS

Article 1

Subject

This Law shall regulate the procedure for protection of new varieties of agricultural plants, except forest plants, as well as the manner of the procedure for acquisition and protection of the breeder's right to the protected new variety of agricultural plants.

Article 2

Purpose of the Law

The purpose of this Law shall be the protection of new variety of all types of agricultural plants, including hybrids among genera and species of agricultural plants.

Article 3

Meaning of Terms

The terms used in this Law shall have the following meaning:

1. "Breeder" means one or more national or foreign legal entities or natural persons who have bred, or discovered and developed, a variety;
2. "Breeder's right" means the rights of the breeder arising from this Law;
3. "Holder of a breeder's right" means a legal entity or natural person who has the right to submit an application for the protection of a new variety and has received a decision and a certificate for the protection of a new variety;
4. "Applicant" means a legal entity or natural person who has submitted an application;
5. "Owner of a breeder's right" means a legal entity or physical person who, by protecting the variety, acquires the breeder's right;
6. "Variety" means a plant grouping within the frames of the meaning of the botanical taxon of the lowest known rank, if it can be:
 - defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
 - distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
 - considered as a unit, if those characteristics remain unchanged in the reproduction;
7. "Protected variety" means a variety for which a decision has been issued for the protection of new variety, which contains a description of the variety;
8. "Protected sample" means a definite sample of seed material from the protected new variety;
9. "Public interest" is the state interest for protection and maintenance of new varieties;
10. "Authority" for the protection of new varieties of agricultural plants means the Seed and Propagating Material Directorate within the Ministry of Agriculture, Forestry and Water Economy;

11. DUS test means a procedure for recognition of the variety based on certification of distinctness, uniformity and stability of the variety according to the UPOV Convention;
12. Gen Bank means an institution in which the seed and propagating material of divergent populations and autochthonous types is permanently kept and maintained, in order to protect the biodiversity and keep definite samples of seed and propagating material of varieties registered in the National Variety List; and
13. UPOV means International Union for the Protection of New Varieties of Plants with headquarters in Geneva, Switzerland.

II. CONDITIONS FOR VARIETY PROTECTION

Article 4

Protection Criteria

- (1) The variety shall be protected by gaining the breeder's right.
- (2) Every variety can be protected if it is:
 - new,
 - distinct,
 - uniform,
 - stable and
 - designated by a denomination in accordance with the provisions of Article 10 of this Law.

Article 5

New Variety

- (1) The variety shall be deemed to be new if, at the date of submitting of the application for variety protection, it has not been sold or commercially exploited by or without the consent of the breeder of the variety in the Republic of Macedonia earlier than one year before the date of submitting the application for protection of the new variety at most, and in another country earlier than four years before the date of submitting the application for protection of new variety, while for multi-annual fruit plants and grapevine earlier than six years before the date of submitting the application for protection of new variety.
- (2) Within the meaning of paragraph (1) of this Article, the following shall not be deemed as selling or commercial exploitation of the new variety:
 - transfer of the rights to the variety by an agreement,
 - contracted production, reproduction, finalisation or storing the propagating material or the products from that variety at the expense of the holder of the right, under the condition that the holder of the right keeps the exclusive ownership right to reproduction of the propagating material, the variety products or the products thereof,
 - examination of the variety on the field or in a laboratory, i.e. in an experimental production, in order to determine the variety use value if that is done by the right holder or a person authorized by the right holder,
 - official variety examination for the purpose of registration in the National Variety List, i.e. risk assessment for genetically modified varieties and
 - selling agricultural products created as side-products, i.e. as surplus during the development of the new variety, under the condition that those products be intended for end use and that the denomination of the variety not be given.

Article 6
Distinct variety

- (1) 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 on the day of submitting the application for protection of a new variety.
- (2) The variety shall be deemed to be a matter of common knowledge if on the day of submitting the application in the Republic of Macedonia:
 - it is registered in the National Variety List in any country by the day of submitting the application,
 - an application is submitted and the procedure is completed by which the variety is registered in the National Variety List in any country; and
 - the propagating material of the variety or a product of the variety has already been traded or it has been used for making profit.

Article 7
Uniform variety

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, which are of relevant importance for differentiation from other varieties.

Article 8
Stable variety

The variety shall be deemed to be stable if its characteristics, which are of relevant importance for differentiation from other varieties, remain permanent and unchanged after repeated propagation or, in case of a particular cycle of propagation, at the end of each such cycle.

Article 9
Designation of New Variety

The protected variety should be designated by a denomination which will be its generic designation for differentiation from other protected varieties, pursuant to Article 10 of this Law.

Article 10
Denomination of Protected New Variety

- (1) Any designation can be registered as denomination of a protected new variety, which enables differentiation of the variety from another variety and can be a word, a word combination, a combination of words and figures or a combination of letters and figures unless it is not otherwise agreed upon this law.
- (2) A designation cannot be registered as a denomination of a protected new variety if it:
 - is not adequate in terms of the language,
 - disables the variety to be identified,
 - consists solely of figures, unless otherwise provided in the country,

- is equal or similar to the denomination of any other variety whose existence is a matter of common knowledge of a group of plants species, while it is in use,
 - is liable to mislead or to cause confusion concerning the origin, characteristics, values, use, and recognition of the geographical origin,
 - consists of a botanical or a denomination whose existence is a matter of common knowledge of a genus or species or includes such denomination which is liable to mislead,
 - includes words such as genus, species, variety, form, hybrid or a translation of those words into another language,
 - is liable to mislead concerning the breeder or the holder of the breeder's right,
 - is against the public order and moral; and
 - is against the industrial property regulations.
- (3) In case a certain variety has already been registered in the National Variety List or an application has been submitted for such an entry in any signatory country of international agreements or conventions which are signed i.e. acceded by the Republic of Macedonia, in the Republic of Macedonia only the denomination of the variety that was registered can be registered, entered in the National Variety List or listed in the application in another state.
- (4) As an exception of paragraph (3) of this Article in the Republic of Macedonia a certain variety can be registered under another denomination only if the use of the first denomination was not adequate in the terms of the language or because that would be against the public order and moral.
- (5) The manner of registering the denomination of the protected new variety of the separate types of agricultural plants referred to in paragraph (4) of this Article shall be prescribed by the Minister for Agriculture, Forestry and Water Economy (hereinafter referred to as: the Minister).

Article 11 **Use of the Denomination**

- (1) The use of the denomination of the protected new variety shall be mandatory. The propagating material of the protected new variety can be released in trade only if the denomination has been attached on the protected new variety. The obligation for use of the denomination of the protected new variety continues even after the termination of the protection of the variety pursuant to Article 21 paragraph (6) of this Law.
- (2) The provision of paragraph (1) of this Article shall not apply if the propagating material of the protected new variety is used for non-commercial purposes.
- (3) The protected new variety must be designated by the same registered denomination in all states, except in the case referred to in Article 10 paragraph (4) of this Law.
- (4) In trade in propagating material of the protected new variety, apart from the registered denomination, the denomination of a trade mark can be used i.e. another designation provided that the registered denomination is clearly visible and recognisable.
- (5) The denomination of the protected new variety or a denomination which can be replaced with that denomination must not be used for another variety of the same or closely related species of agriculture plants.

III. EXERCISING THE RIGHT TO PROTECTION

Article 12

Right to Protection

- (1) The breeder shall be entitled to ask for a protection of the new variety, as well as his/her legal successor or legal heir.
- (2) If during the process of creating the variety several breeders have participated together, the collective right of protection shall belong to them or to their legal heirs. In case when one or more persons who participated in the creation of the new variety waive the right to protection the other persons, who participated in the creation of the variety may exercise that right.
- (3) If the variety creation is based on an employment agreement between the employee and the employer, in accordance with the tasks, the employee to create new varieties, the right to protection of the new variety shall belong to the employer. When the mutual rights and obligations have been regulated by this agreement, the right to protection of the new variety shall be determined by this agreement.

Article 13

Persons Entitled to Submit an Application for Protection of New Variety

- (1) An application for protection of new variety can be submitted, pursuant to Article 12 paragraph (1) of this Law, by a person or a breeder, which is a citizen of the Republic of Macedonia, other natural persons with permanent stay in the Republic of Macedonia or legal entities established in the Republic of Macedonia.
- (2) The foreign legal entities and natural persons as far as the breeder's right is concerned in the Republic of Macedonia shall have the same rights as the national persons, if it derives from the international agreements signed or acceded by the Republic of Macedonia, or on the grounds of reciprocity. The reciprocity shall be proved by the person referring to the reciprocity.
- (3) The foreign legal entities and natural persons, in the action before the authority, pursuant to Article 19 form this Law, shall exercise their rights by submitting an application through authorised representatives who are national legal entities or natural persons and who deal with representing in the procedure for new variety protection.

IV. THE RIGHTS OF THE BREEDER

Article 14

Acquiring the Breeder's Right

- (1) The breeder shall acquire the breeder's right for new variety protection by entry of that right in the register for protected novelties referred to in Article 21 of this Law.
- (2) The breeder's right shall be right to economic use of the protected new variety.

Article 15
Authorisation of the Breeder

- (1) The authorisation of the breeder shall be required when the protected new variety is used by legal entities and natural persons for:
 - production or reproduction,
 - selling; and
 - exporting and importing.
- (2) The authorisation referred to in paragraph (1) of this Article shall be required when:
 - the propagating material has been obtained without the authorisation for reproduction of the protected new variety; and
 - the breeder has not had reasonable opportunity to require breeder's right for the material for the propagating material of that variety due to justified reasons.
- (3) In the cases referred to in paragraph (1) of this Article an authorisation shall not be required for:
 - varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
 - varieties which are not clearly distinguishable from the protected variety; and
 - varieties i.e. hybrids whose production requires the repeated use of the protected variety.
- (4) A variety shall be deemed to be essentially derived from another variety when:
 - it is mostly predominantly derived from the initial (original) variety, or from a variety which is itself predominantly derived from the initial variety; and
 - it is clear distinguishable from the initial variety by at least one characteristic.

Article 16
Exceptions to the Breeder's Right

- (1) The breeder's right can be used without the breeder's authorisation:
 - for acts done privately and for non-commercial purposes,
 - for acts done for experimental purposes,
 - for acts done for the purpose of breeding other varieties and
 - if the protected new variety from separate species of agriculture plants is produced on the producer's own property for personal use and he/she pays a certain fee to the holder of the breeder's right, with the exception of the small producers of propagating material.
- (2) The fee referred to in paragraph (1) indent 4 of this Article shall be less than the licensed production of the reproduction material from that variety on the same territory.
- (3) The producer who uses it for further harvest pursuant to paragraph (1) indent 1 of this Article shall be bound to provide all data concerning the further reproduction to the breeder upon request of the holder of the breeder's right.
- (4) The small producers of propagating material from the protected new variety shall be determined by the minister depending on the genera and species of the plants.

Article 17
Exhaustion of the Breeder's Right

The authorisation of the breeder shall not be required for the use of certain parts of plants for further multiplication with the exception when it:

- involves further propagation of the variety; or
- involves an export into a country which does not protect the new varieties of the plant genus or species to which the variety belongs.

Article 18

Duration and Termination of the Right to Protection

- (1) The breeder's right for grapevine, fruit plants, hop and potato shall last for 25 years, while for all other genera or species it shall last for 20 years from the day of obtaining the breeder's right by the end of the calendar year.
- (2) If during the procedure for protection of the new variety it has been used for commercial purposes, contrary to Article 15 of this Law, the person who submitted an orderly application for granting a breeder's right shall be entitled to a suitable damage compensation, according to the general regulations for damage compensation, but only for the period from the date of publication of the application in the Official Gazette of the Republic of Macedonia by the date of recognition of the breeder's right.
- (3) The breeder's right shall cease to be valid if:
 - the holder of the breeder's right has cancelled,
 - the time frame referred to in paragraph (1) from this Article has expired; and
 - the decision with which the right was gained is annulled.

V. PROCEDURE FOR VARIETY PROTECTION

Article 19

Authority

The Directorate shall be authorised to:

- conduct an administrative procedure for protection of the new variety and registration of the denomination of the new variety ,
- keep a register of applications for protection of novelties and a register for the protected novelties,
- publish data in the Official Gazette of the Republic of Macedonia concerning the applications, including the proposal for the variety denomination, the rejection of the applications, the entry and possible changes of the registration in the register of applications, the withdrawal of the applications, the decisions for protection of the new variety and its possible changes, as well as other official notifications,
- cooperate with other state bodies within the Directorate, international organisations and associations, with associations of citizens, as well as with nongovernmental organisations in the area of protection of the new variety,
- exchange results from the examinations of the varieties and other information within their competences with the authorities from other states,
- control the fulfilment of the obligations of the holders of the breeder's right; and
- perform other activities laid down by this Law.

Article 20

Commission for Protection of New Varieties

- (1) The procedure for protection of the new variety on the basis of the application and the submitted documentation shall be conducted by Expert Commission for Protection of New Varieties of Agriculture Plants.
- (2) The commission for protection of new varieties of agriculture plants (hereinafter referred to as: the Commission) shall be appointed by the Government upon a proposal of the minister. The Commission shall consist of five members, of which four members are selected from among experts with at least seven years of work experience in the area of plant production and one member of the Directorate's employees which elect a president and his/her deputy from among themselves.
The president of the Commission shall be elected by the members. The president and members of the Commission shall be elected for a period of four years with the right to re-election. The president and the members shall be entitled to remuneration in the amount determined by the minister, and provided in accordance with the Programme for Protection of New Varieties of Agriculture Plants.
- (3) The manner of operation of the Commission shall be laid down by the Commission's Rules of Procedure.
- (4) The Commission shall submit a report for its operation to the minister at least once a year.

Article 21

Registers

- (1) The Directorate shall keep a register of application for protection of new varieties and a register for protected new varieties.
- (2) Data concerning the submitted applications and the granted rights shall be entered in the register.
- (3) The register of registered and protected new varieties shall keep records, for at least 15 types of agriculture plants, and after the membership of the Republic of Macedonia in UPOV within ten years records shall be kept for all species and varieties of agriculture plants.
- (4) The register of applications shall keep records on the following:
 - data on the applicant, breeder or the authorised representative,
 - date of submission of the application,
 - plant genera and species,
 - proposal for temporary designation on the variety i.e. application for the denomination of the variety,
 - application for stopping i.e. termination of the action and
 - comments on the court decision in terms of the right of submitting an application.
- (5) The register of protected new varieties shall keep records on the:
 - plant genera and species and the registered denomination of the variety with all synonyms,
 - variety description and appropriate documents,
 - varieties the breeding of which requires constant use of certain ingredients for the production of propagating material of the protected variety, those ingredients are also stated,
 - the name and surname of the holder of the breeder's right, the breeder and the authorised representative,

- the date of the commencement and termination of the variety protection with the reasons for the termination,
 - the name and address of the person who has transferred the right for commercial use of the variety by a license agreement,
 - the name and address of the person who has been granted a forced license, followed by the conditions under which it has been granted and the date of termination of that right; and
 - comments on the court decisions concerning the breeder's right.
- (6) The Directorate must keep the collection of documents for individual cases in original and copies for at least five more years after the withdrawal or rejection of the application, i.e. five years after the termination of the breeder's right.
- (7) The species and varieties subject to mandatory protection, the form and contents and the manner of keeping the register of applications for protection of new variety and the register for protected new varieties shall be prescribed by the minister.

Article 22 **Public Access to Registers**

- (1) The register of applications and the register of protected new varieties shall be public. The registers shall be available to the public only in the presence of an official person. Upon written request of the interested persons, the Directorate shall issue a statement from the registers within 30 days from the submission of the application.
- (2) The Directorate shall be bound to provide access to its documentation and the information on the submitted applications and the recognised rights i.e. granted rights upon written request of every person who will prove to be entitled, with the exception of the documentation which is not published in the Official Gazette of the Republic of Macedonia and concerning the following:
- documents which are submitted with the applications,
 - documents which refer to the breeder's rights that have been obtained, and
 - documentation on official examinations of the varieties.
- (3) The applicant can request for the data concerning the composition of the variety not to be available to the public.
- (4) With the exception of paragraph (1) of this Article it can be requested for the data not to be available to the public in case of hybrid, in the course of the duration of the procedure for protection of the new variety, as well as after the protection has been performed.
- (5) The documentation and information referred to in paragraph (2) of this Article, as well as other services connected to protection of the new variety protection and obtaining the breeder's right shall be available if the claimant has borne all costs incurred.

Article 23 **Costs for Procedure**

- (1) In a procedure for protection of new variety and maintaining the breeder's right, the applicants i.e. the holder of the breeder's right shall pay the costs for the conducted procedure for recognition i.e. granting the right.
- (2) The amount of the separate costs of the procedure referred to in paragraph (1) of this Article and the amount of the costs for providing informative services referred to in Article 22 paragraph (5) of this Law depending on the type of the plant, the complexity of the procedure and the time needed for professional evaluation of the variety shall be

determined by the Government of the Republic of Macedonia upon proposal of the Minister of Finance and they will be revenues in the Budget of the Republic of Macedonia.

Article 24

Administrative procedure for Protection of New Variety

- (1) The Directorate shall make initial decision in the procedure for protection of the new variety and for obtaining the breeder's right.
- (2) In the administrative procedure the Directorate shall act according to the provisions of this Law and the regulations adopted on the basis of this Law, and the Law on General Administrative Procedure will apply for all that has not been provided for with this Law.
- (3) Against the decision adopted by the Director of the Directorate, the party shall be entitled to file a complaint to the minister.
- (4) The complaint shall be submitted within 30 days from the day of delivery of the decision to the party.

Article 25

Commencement of the Procedure for Protection of New Variety

- (1) The procedure for protection of new variety shall commence with the submission of an application to the Directorate:
- (2) For every new variety for which protection has been requested a separated application shall be submitted.
- (3) The orderly application should contain at least the following data:
 - data on the variety the protection of which has been requested,
 - data on the applicant i.e. a orderly power of authority from his/her representative,
 - data on the breeder in case he/she is not the applicant himself/herself,
 - data on the mutual representative, in case several breeders have participated in the creation of the variety,
 - the Latin and Macedonian denomination of the species to which the new variety belongs,
 - proposal on the denomination of the new variety i.e. a temporary designation of the new variety,
 - technical description of the variety,
 - data that the variety has been created by means of genetic engineering. In that case, in addition to the application previous consent for examination of that variety should be enclosed, in accordance with the regulations of the genetically modified organisms; and
 - paid prescribed tax for the application and evidence for completion of the payment.
- (4) In addition to the application referred to in paragraph (1) of this Article other data and attachments are also enclosed upon request of the Directorate.
- (5) If the Directorate finds that the application is not orderly, it shall summon the applicant to eliminate the determined drawbacks within 30 days from the day of summoning.
- (6) Upon an explained request of the applicant, for justified reasons, the time limit referred in paragraph (1) of this Article may be prolonged for 60 days.
- (7) If the applicant fails to eliminate the determined drawbacks and fails to pay the costs within the set time limit referred to in Article 23 paragraph (1) of this Law, the application shall be rejected with a conclusion.

- (8) The data from the rejected or withdrawn application shall be entered in the register of applications and published in the Official Gazette of the Republic of Macedonia.
- (9) The manner and form of the application referred to in paragraph (3) of this Article shall be prescribed by the minister.

Article 26

Date of Submitting and Publishing the Applications

- (1) The date of receipt of the completed application in the Directorate shall be deemed as date of submission of the application.
- (2) The data in the completed application shall be entered in the register of applications and the applicant is issued the application, while the Directorate publishes the application in the Official Gazette of the Republic of Macedonia.
- (3) If the applicant eliminates the drawbacks on the application within the time limit set out in Article 25 paragraph (5) and (6) of this Law, the Directorate shall determine the date of submitting the application.

Article 27

Right of Priority

- (1) The legal entity or natural person who has submitted an orderly application for protection of a new variety in a member state of international agreements and treaties signed and acceded to by the Republic of Macedonia, shall be recognised the right of priority in the Republic of Macedonia from the day of submission of the application.
- (2) An orderly application shall be deemed to be an application whose date of submission is determined according to the national legislation of the country where the application has been submitted.
- (3) If the applicant claims right of priority pursuant to paragraph (1) of this Article, he/she shall be bound to enter all data for the application to which the applicant refers to (state, date and application number) in the application submitted in the Republic of Macedonia and within 12 months from the submission of the application to enclose a transcript of the first application certified by the authority of the member state where the first application has been submitted, as well as translation of the first application into Macedonian language.
- (4) The applicant must explicitly claim the right of priority referred to in paragraph (1) of this Article in the application.
- (5) The applicant may claim right of priority in the Republic of Macedonia within two years from the day of submitting the first orderly application in the member state.

Article 28

Appeal to the Published Application

- (1) The appeal to the published application in the Official Gazette of the Republic of Macedonia pursuant to Article 26 paragraph (1) of this Law can be submitted by a person who is entitled to this. The appeal can be submitted to the Directorate while the procedure for submitting the right to protection of new variety is in progress.
- (2) The appeal can be submitted only regarding the fulfilment of the conditions for protection of the new variety pursuant to Articles 4, 5, 6, 7, 8 and 10 of this Law, i.e. the legitimacy for protection pursuant to Article 12 of this Law.

- (3) The appeal shall be submitted in a written form with an explanation. Appropriate evidence concerning the appeal shall also be enclosed in addition to the appeal.
- (4) For every published application, a separate appeal shall be submitted if the rights of the owner have been violated.

Article 29

Examination of the Appeal

- (1) The Directorate shall examine whether the appeal has been submitted by a person who has the right to file an appeal pursuant to Article 28 paragraph (1) of this Law and whether the appeal has been submitted within the prescribed time limit.
- (2) If the conditions referred to in paragraph (1) of this Article have not been fulfilled, the Directorate shall make a conclusion for rejection of the appeal.
- (3) If the conditions referred to in paragraph (1) of this Article have been fulfilled, the Directorate shall submit the appeal to the applicant and shall summon applicant within 30 days to explain the reasons stated in the appeal.
- (4) If the applicant does not explain the reasons stated in the appeal within the determined time limit referred to in paragraph (3) of this Article, the Directorate will decide on the grounds of the findings in the appeal.
- (5) The Directorate shall inform the applicant of his/her opinion for a period no longer than 90 days.

Article 30

Examination of the Contents of the Application and the Denomination of the Variety

- (1) The Directorate shall examine the contents of the application and on the basis of the data stated in the application it shall check whether the variety is new, stable, permanent and whether the applicant has the right to obtain a breeder's right. If it is found that the conditions for obtaining a breeder's right have not been fulfilled, the application shall be rejected pursuant to the Articles 5 and 12 of this Law.
- (2) The Directorate shall examine the adequacy of the denomination of the new variety. In case the proposed denomination of the new variety is contrary to the provisions of Article 10 of this Law, the Directorate shall summon the applicant to propose a new denomination for the variety within 60 days from the summoning.
- (3) The Directorate will use solely the denomination of the variety, in the procedure for protection of the new variety, which has been entered in the register of applications for protection of the new variety.

Article 31

Professional Evaluation of the Variety

- (1) If the conditions provided for in Articles 26 and 29 of this Law have been fulfilled, professional assessment shall be made of the new variety in order to:
 - check whether the variety belongs to the systematic unit, i.e. plant genera or species which is stated in the application,
 - determine whether the variety is distinct, uniform and stable pursuant to Articles 6, 7 and 8 of this Law; and
 - prepare a description of the variety if it fulfils the conditions referred to in indents 1 and 2 of this paragraph.

- (2) The professional evaluation of the new variety shall be made on the basis of the results obtained in the examination of the variety on field and in laboratory (DUS – test) conducted in the Republic of Macedonia or in another state by an authority.
- (3) The professional evaluation of the new variety can be made by:
 - the Directorate or the Professional Commission referred to in Article 20 of this Law or the authority abroad,
 - in case the examinations are made in comparative agro climate, i.e. agro ecological conditions according to the prescribed procedures and methods; and
 - upon request of the registrator and applicant after the consent of the Directorate.
- (4) In the course of the professional evaluation of the new variety, the Directorate can use the results from the examination of the variety obtained from another country which has the adequate agro ecological conditions as in the Republic of Macedonia, if the examination has been made within the frames of the international examination systems and if the evidence for the results have been derived on the basis of the international agreements signed or acceded to by the Republic of Macedonia.
- (5) The manner of operation and the procedures for professional evaluation shall be prescribed by the minister.

Article 32

Providing Conditions for the Professional Evaluation of the Variety

- (1) The applicant has to deliver the necessary data, documents and propagating material within the time limit referred to in Articles 26 and 29 of this Law for professional evaluation of the new variety pursuant to Article 31 paragraph (1) of this Law.
- (2) If the applicant does not fulfil the requirements referred paragraph (1) of this Article for justified reasons, the Directorate shall reject the application with a decision.

Article 33

Decision and Certificate for Protection of a New Variety

- (1) If the professional evaluation determines that the variety fulfils the conditions referred to in Article 31 of this Law and the applicant fulfils all the necessary conditions, the minister will adopt a decision for protection of the new variety.
- (2) The data from the effective decision for protection of the new variety shall be entered in the register of applicants and in the register for protected new varieties and published in the Official Gazette of the Republic of Macedonia.
- (3) With the effectiveness of the decision for protection of a new variety the minister shall issue a certificate for obtaining a breeder's right to the holder of the breeder's right. The certificate for obtaining the breeder's right shall be valid from the day the decision for protection of a new variety becomes effective, and is issued within six months from the day the decision becomes effective and it is published in the Official Gazette of the Republic of Macedonia.
- (4) An appeal can be submitted to the Government of the Republic of Macedonia – Second Instance Commission for Settling Administrative Affairs in the field of Agriculture, Forestry, Water Economy and Veterinary against the decision referred to in paragraph (1) of this Article.
- (5) The form and contents of the decision and the certificate for protection of a new variety shall be prescribed by the minister.

Article 34

Termination of the Breeder's Right

- (1) The breeder's right shall be terminated before the expiry of its validity if that is requested with a written statement of the holder of the breeder's right.
- (2) If the holder of the breeder's right submits a written statement to the Directorate by which he waives the breeder's right pursuant to Article 18 paragraph (3) indent 1 of this Law, the Directorate shall issue a decree for termination of the breeder's right.
- (3) The breeder's right shall be terminated the following day from the day of orderly submission of the statement of the holder of the breeder's right referred to in paragraph (2) of this Article.
- (4) On the basis of the effectiveness of the decision, the termination of the breeder's right shall be entered in the register of new protected varieties and published in the Official Gazette of the Republic of Macedonia.

Article 35

Procedure for Annuling the Decision for Protection of a New Variety

- (1) The decision for protection of the new variety will be annulled if it is found that there were no conditions provided for with this Law for recognition of that right, i.e. if it is found that:
 - on the day of receipt of the completed application pursuant to Article 5 of this Law the variety was not new or pursuant to Article 6 of this Law it was not different,
 - the variety that was protected, above all, on the basis of the data which were delivered by the applicant on the day of receipt of the completed application pursuant to Article 7 of this Law or it was not uniform or pursuant to Article 8 of this Law was not stable; and
 - the breeder's right is granted to a person without legal basis to be holder of the right, while the person was entitled to this, pursuant to Article 37 of this Law did not ask for a forced transfer of the breeder's right.
- (2) The decision for protection of the new variety can be annulled for the entire duration of the protection ex officio, upon proposal of the interested person or in by a court decision.
- (3) The proposal for annulment of the decision shall be submitted in written form to the Directorate.
- (4) In addition to the proposal referred to in paragraph (2) of this Article the applicant shall be bound to provide the necessary evidence.
- (5) The Directorate shall be bound to provide the proposal to the holder of the right within 15 days from the receipt of the proposal and to summon him/her to make a statement within a determined period which cannot be longer than 60 days from the day of receiving the announcement.
- (6) The decision for annulment of the decision for protection of a new variety shall be entered in the register of the protected new varieties and published in the Official Gazette of the Republic of Macedonia.
- (7) If it is found that there were no conditions provided for in paragraph (1) of this Article, the minister shall annul the previously adopted decision for protection of the new variety by a decision.

Article 36
Annulment of the Decision

The Directorate shall annul the decision for protection of the new variety without the consent or upon request of the parties if it claims that the holder of the breeder's right:

- has not fulfilled the obligations pursuant to Article 44 of this Law or pursuant to Article 7 of this Law the variety is no longer uniform or pursuant to Article 8 of this Law the variety is not stable.
- upon written request to the Directorate within the determined time limit, fails to provide material for multiplication and other documents as confirmation for maintenance of the variety pursuant to Article 44 of this Law,
- upon written request to the Directorate within the determined time limit, fails to provide a new proposal on the denomination of the variety pursuant to Article 38 paragraph (1) of this Law; and
- fails to pay the tax for maintaining the validity of the breeder's right pursuant to Article 43 of this Law.

Article 37
Transfer of the Breeder's Right

- (1) If a person which did not have the right to submit an application for protection of a new variety, has submitted an application or has been recognised the breeder's right, the person who had the right to submit an application for protection of a new variety may initiate a procedure to transfer the breeder's right to himself/herself and to claim damage compensation from that person.
- (2) The request referred to in paragraph (1) of this Article may be submitted the following day after publication of the application but no longer than five years from the publication of the application in the Official Gazette of the Republic of Macedonia.
- (3) If the right obtained without legal grounds pursuant to paragraph (1) of this Article has been transferred to a third person, the decision for transfer of the right will be revoked by the Directorate upon request of the person who has legal grounds.
- (4) An appeal can be submitted to the Government of the Republic of Macedonia – Second Instance Commission for Settling Administrative Affairs in the field of Agriculture, Forestry, Water Economy and Veterinary against the decision referred to in paragraph (1) of this Article.

Article 38
Deletion of Variety Denomination

- (1) The registered denomination of the new variety shall be deleted from the register of applications for protection of a new variety and the register of protected new varieties in cases when:
 - the applicant or the holder of the breeder's right request so, while the request for deletion of the variety denomination must state the reasons for deletion and proposal for a new denomination,
 - it is additionally determined that the variety denomination is registered despite the existence of reasons for rejection pursuant to Article 10 of this Law; and
 - the holder or another person has been prohibited to use that denomination.
- (2) The Directorate shall inform in written form the applicant or the holder of the breeder's right of the proposal or of the request for deletion of the denomination of the new

- variety and shall summon him/her to submit a proposal for a new denomination within three months from the receipt of the request.
- (3) After the conducted procedure pursuant to Article 30 of this Law, the proposed denomination shall be entered in the appropriate register and published in the Official Gazette of the Republic of Macedonia, while at the same time the previous denomination shall be deleted from the register.

Article 39

Return to Previous Condition

- (1) If the application, the holder of the breeder's right or a third person fails to pay the costs and taxes or fails to fulfil the other liabilities to the Directorate in the procedure for protection of a new variety, due to justified reasons, within the prescribed period, due to which he/she has lost his/her rights pursuant to Article 36 of this Law, he/she may request return of those rights.
- (2) The request shall be submitted within two months after the reasons for non-fulfilment, non-settlement and non-performance of the liabilities have ceased, but no longer than one year from the expiry of the time limit for non-fulfilment, non-settlement and non-performance of the liabilities.
- (3) In addition to the request, an explanation for the non-fulfilment, non-settlement and non-performance of the liabilities shall be enclosed, as well as evidence for non-payment of tax and costs.
- (4) If the request for return in previous condition is accepted, the Directorate shall set a new time limit within which the non-settled liabilities should be completed or settled, which may not be longer than one year, starting from the day of receipt of the decision for acceptance of the request.
- (5) The person submitting the request for return in previous condition shall not be entitled to claim damage compensation, if during the time between losing the right and its return, the protected new variety was not subject to use or to a concluded agreement for use of the protected new variety.

VI. TRANSFER AND CONCESSION OF THE BREEDER'S RIGHT

Article 40

Agreement for Transfer of the Breeder's Right

- (1) The holder of the breeder's right may be entirely or partially transfer the breeder's right to another person.
- (2) The person who has the right to submit an application, i.e. the applicant may transfer the right for submission of an application for protection of a new variety or the rights deriving from the submitted application for protection of the new variety to another person.
- (3) The agreement for transfer of the breeder's right must be drawn up in written form and the signatures of the contracting parties must be certified by a public notary.
- (4) The agreement referred to in paragraph (3) of this Article shall be entered in an appropriate register kept in the Directorate.
- (5) The agreement referred to in paragraph (3) of this Article which has not been drawn up in written form and not certified by a public notary shall not have legal effect.

- (6) The agreement for transfer of the breeder's right which has not been entered in the appropriate register referred to in Article 21 of this Law shall not have legal effect towards third persons.

Article 41
License Agreement

- (1) The holder of the breeder's right may transfer the breeder's right for commercial use of the protected new variety to a third person with a license agreement. The license agreement must be drawn up in written form.
- (2) If several persons are holders of the breeder's right, consent from all persons shall be necessary for conclusion of the license agreement.
- (3) If there is no consent for conclusion of the license agreement referred to in paragraph (2) of this Article for concession of the breeder's right for usage, the regulations in the area of the ownership shall apply.
- (4) The license agreement which has not been drawn up in written form shall not have legal effect.
- (5) The license agreement, upon request of one of the parties, shall be entered in the appropriate register kept in the Directorate.
- (6) The license agreement which has not been entered in an appropriate register referred to in Article 21 of this Law shall not have legal effect towards third persons.

Article 42
**Contents of the Agreement for Forced License
and Granting a Forced License**

- (1) The license agreement must contain provisions on the case, duration of the license, scope of the license, determination whether the license is exclusive, as well as provisions on the amount of the compensation for the conceded use of the breeder's right, if the compensation has been agreed.
- (2) In the license agreement, every provision which determines limitations to the user of the license shall be null and void, which do not derive from the breeder's right which is subject to an agreement or is necessary for retaining that right.
- (3) If there is public interest, and the protected new variety is not used for commercial purposes or is insufficiently used by the holder of the breeder's right or with his authorisation by other persons and there is no interest for conclusion of an agreement for transfer of the right to another person for the purpose of using or unjustified conditions are set, a forced license may be granted to another person.
- (4) The forced license may be granted only to a person which will prove to have at disposal material for reproduction, as well as professional, technical and financial conditions for use of the breeder's right.
- (5) The forced license shall not be granted if the holder of the breeder's right proves that there are justified reasons for non-utilisation or insufficient utilisation of the protected new variety.
- (6) The forced license shall not be granted if from the day of granting the breeder's right by the day of submitting the request for granting the forced license at least three years have not passed.
- (7) With the forced license, only the holder of the license shall have the right for full or partial performance of the activities referred to in Article 15 of this Law, partially or as a whole, for the purpose of supplying the domestic market.

- (8) A forced license may be granted for a period of at least three years, but no longer than five years.
- (9) The forced license may be continued if when re-examining the conditions referred to in paragraph (1) of this Article it is determined that there are reasons to grant a forced license. The Directorate shall make decisions concerning the request for granting, i.e. continuing the forced license.
- (10) Prior to adopting the decision to grant a forced license, the Directorate may ask for opinion from the interested associations.
- (11) In case of granting a forced license, the owner of the breeder's right shall be entitled to appropriate remuneration.
- (12) The holder of the breeder's right shall determine the amount of the remuneration referred to in paragraph (11) of this Article with the person who has been granted the forced license.
- (13) If no agreement is reached on the amount of the remuneration referred to in paragraph (12) of this Article, it shall be determined by the Directorate depending on the genera and species and the category of the propagating material.
- (14) On the basis of the forced license, the Directorate may require the holder of the breeder's right to provide a sufficient quantity of propagation material for reproduction and use of the variety to the holder of the forced license. The holder of the breeder's right shall receive an appropriate remuneration for the reproduction material from the holder of the forced license depending on the genera and species and the category of the propagating material.
- (15) In the case of a forced license, the holder of the breeder's right may request information on the production of the material for reproduction of the protected variety from a professional institution, authorised to perform professional control of the production of the reproduction material.

VII. LIABILITIES OF THE HOLDER OF THE BREEDER'S RIGHT

Article 43

Means for Performing Activities for Maintaining the Breeder's Right

- (1) The means for financing the setup of comparative examinations and keeping the definite samples in Gen bank shall be provided in accordance with the annual Programme for Protection of New Varieties.
- (2) Besides the funds referred to in paragraph (1) of this Article for maintaining the breeder's right, the funds shall also be provided from the remuneration paid by the holder of the breeder's right.
- (3) The remuneration referred to in paragraph (2) of this Article shall be paid at the beginning of the calendar year, by 31 January at the latest.
- (4) The time limit referred to in paragraph (3) of this Article may be extended up to six months from the orderly submission of the notification upon an explained request of the holder of the breeder's right.
- (5) If the remuneration for maintaining the breeder's right has not been paid even after the expiry of the additional time limit referred to in paragraph (3) of this Article, the right shall cease to be valid.
- (6) The amount of the remuneration referred to in paragraph (2) of this Article shall be determined by the Government of the Republic of Macedonia, upon proposal of the

Minister for Finance depending on the plant genera and species and the category of the propagating material and they are revenue of the Budget of the Republic of Macedonia.

Article 44

Maintaining the Protected Variety

- (1) While the protection of the new variety is ongoing, the holder of the breeder's right shall be bound to maintain the protected variety, i.e. to keep its inherited characteristics unchanged.
- (2) Upon request of the Director, the holder of the breeder's right must provide the Directorate with documents or material for reproduction necessary to examine the maintenance of the variety.
- (3) If during the examination it is found that the holder of the breeder's right does not maintain the variety the Directorate shall initiate a procedure for repealing i.e. annulling that breeder's right.

Article 45

Protected Variety

- (1) The holder of the breeder's right must provide a protected variety from the propagating material for reproduction of the protected new variety to the Directorate within a determined time limit, for:
 - renewal of the protected sample,
 - conducting comparative examinations with the other varieties which are in procedure for protection; and
 - storing in a Gen bank.
- (2) The Directorate may authorise the holder of the breeder's right to keep or renew the protected material for reproduction himself/herself, if there are appropriate storing conditions.

Article 46

Right to Information in Case of Violation of the Right

- (1) If a person economically exploits and produces reproducing material of a protected new variety with no agreement to that purpose in place i.e. contrary to an agreement concluded with the holder of the breeder's right, this person shall be bound to provide all necessary data upon request from the holder of the right.
- (2) If data is not provided voluntarily, the holder of the breeder's right may request that the Inspectorate adopt a decision ordering the violator to submit the data requested.
- (3) The decision referred to in paragraph (2) hereunder may be appealed in front of the Minister.
- (4) The appeal shall not delay the enactment of the decision.

VIII. COURT PROTECTION

Article 47

Damage Compensation Lawsuit

- (1) A person having violated the right with the reported i.e. protected new variety shall be considered responsible for the damage in accordance with general damage compensation regulations.
- (2) A person whose rights have been violated may, in addition to damage compensation, request that further violation of rights be prohibited to the person having violated the rights.
- (3) Breeder's right violation shall refer to any unauthorised economic exploitation of a protected new variety i.e. production, finishing, release in trade, export or import, without previous consent thereto from the holder of the breeder's right to the specific protected new variety.

Article 48

Lawsuit for Breeder's Right Violation

- (1) A lawsuit for breeder's right violation may be launched within three years following the date on which the plaintiff learned about the violator i.e. the violation. No lawsuit may be launched if more than five years have passed the date of the violation.
- (2) The lawsuit referred to in paragraph (1) of this Article shall be launched with the competent court.

IX. SUPERVISION

Article 49

Enactment

Supervision over the enactment of provisions contained in the present Law and of regulations adopted on the basis of the present Law shall be performed by the Ministry of Agriculture, Forestry and Water Economy.

Article 50

Supervision Performed by Agriculture Inspectors

- (1) Supervision over the enactment of provisions contained in Articles 11, 15, 16 and 46 of the present Law shall be performed by the State Agricultural Inspectorate via state agriculture inspectors and by phytosanitary inspectors located on border crossings.
- (2) Should justified doubt arise with the state agriculture inspector during supervision of a violation having been done, the state agriculture inspector shall temporarily seize objects having been used or intended to be used within the violation or objects having been obtained with the violation as such.
- (3) The state agriculture inspector shall with no delay hand over objects he/she has temporarily seized, accompanied by a proposal for initiating a misdemeanour procedure.

Article 51

Supervision Performed by Phytosanitary Inspectors

- (1) In case an owner of a breeder's right draws attention to the possibility of his/her breeder's right being violated with the export of certain protected new varieties from the Republic of Macedonia or during import to the Republic of Macedonia, the phytosanitary inspector may, upon proposal from this breeder's right owner, order that the following be done at the border crossing:
 - that the owner or owner's representative inspect the material in question; and
 - that the material in question be seized, removed from trade and stored.
- (2) Within the proposal referred to in paragraph (1) of this Article, the breeder's right holder shall have to submit the following to the phytosanitary inspector: a more detailed description of the protected new variety material, satisfactory evidence towards the existence of the breeder's right and of potential violation thereof;
- (3) Upon request from the phytosanitary inspector, the breeder's right owner shall be bound to deposit security for any damage likely to occur with the enactment of such measures.
- (4) The phytosanitary inspector shall immediately inform the importer, exporter or receiver of the protected new variety propagating material on measures undertaken if import is involved of a protected new variety propagating material to the Republic of Macedonia;
- (5) The phytosanitary inspector shall revoke measures undertaken if the holder of the breeder's right does not launch an appeal thereto within seven days.

X. MISDEMEANOUR PROVISIONS

Article 52

Fines

- (1) A fine of EUR 3,000 to 5,000 in denar countervalue shall be imposed for a misdemeanour to a legal entity in the following cases:
 - it has, without any previous permission from the owner of the breeder's right, produced or reproduced propagating material of the protected reproduction variety (Article 15, paragraphs (1) and (2)); and
 - it has released into trade, imported or exported any propagating material of the protected new variety without having fulfilled conditions pursuant to the present Law (Articles 14, 15, 16, 17 and 18).
- (2) A fine of EUR 500 to 1,000 in denar countervalue shall be imposed for the misdemeanour mentioned in paragraph (1) of this Article also to the responsible person at the legal entity.
- (3) A fine of EUR 200 to 800 in denar countervalue shall be imposed to a natural person for the misdemeanour referred to in paragraph (1).

Article 53

Fines

- (1) A fine of EUR 1,000 to 3,000 in denar countervalue shall be imposed for a misdemeanour to a legal entity in the following cases:
 - it has, contrary to Article 11, paragraph (1) of the present Law, released in trade propagating material of the protected new variety, in case the variety's registry

- denomination has not been specified or in case the specific denomination has not been stated correctly,
- it has, contrary to Article 11, paragraph (5) of the present Law, used the denomination of a new variety protected by the present Law or another denomination that may easily be confused with the denomination of another variety belonging to the same or related species, and
 - it has, contrary to Article 16, paragraph (3) of the present Law i.e. Article 46 of the present Law, fail to issue requested data to the owner of the breeder's right.
- (2) A fine of EUR 200 to 500 in denar countervalue shall be imposed for the misdemeanour referred to in paragraph (1) of this Article also to the responsible person at the legal entity.
- (3) A fine of EUR 300 to 500 in denar countervalue shall be imposed to a natural person for the misdemeanour referred to in paragraph (1).

XI. TRANSITIONAL AND FINAL PROVISIONS

Article 54

Coordination of Work

- (1) A breeder's right over a variety having been protected prior to the entry into force of the present Law shall continue to exist by the expiration of the obtained breeder's right validity.
- (2) A breeder's right over a variety referred to in paragraph (1) of this Article may be annulled or cancelled prior to the expiration of its validity period only if it be found that conditions in terms of distinctness, uniformity and stability have not been fulfilled with the granting of such right.

Article 55

Cessation of Validity of the Previous Law

The day this Law enters into force, the provisions of Articles 61 through 85 of the Law on Seeds, Seedlings and Propagating Materials, and Variety Recognition, Approval and Protection (Official Gazette of the Republic of Macedonia No. 41/2000) shall cease to be valid.

Article 56

Entry into Force

This Law shall enter into force on the eighth day from the date of its publication in the Official Gazette of the Republic of Macedonia.

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