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UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES
GINEBRA

CONSEJO

**Decimoctava sesión extraordinaria
Ginebra, 6 de abril de 2001**

EXAMEN DE LA CONFORMIDAD DE LA LEY DE YUGOSLAVIA
CON EL ACTA DE 1991 DEL CONVENIO DE LA UPOV

Documento preparado por la Oficina de la Unión

Introducción

1. Por carta de fecha 16 de febrero de 2001, que se reproduce en el Anexo I del presente documento, el Sr. Saša Vitošević, Ministro Federal de Agricultura de Yugoslavia, indicó que ese país prevé adherirse a la Unión y solicitó la opinión del Consejo de la UPOV acerca de la conformidad con el Acta de 1991 del Convenio de la UPOV de la Ley de Protección de Cultivares de Plantas Agrícolas y Forestales (denominada en adelante “la Ley”) sancionada por el Parlamento Nacional el 30 de junio de 2000, en Belgrado. En el Anexo II del presente documento figura una traducción al inglés de la Ley, presentada por las autoridades yugoslavas. A continuación se analiza la conformidad de la Ley con el Acta de 1991 del Convenio de la UPOV (denominado en adelante “el Convenio”).

2. Yugoslavia no firmó el Convenio y deberá entonces, con arreglo al Artículo 34.2) depositar un instrumento de adhesión para pasar a ser un Estado miembro de la UPOV sobre la base del Convenio. Con arreglo al Artículo 34.3), un instrumento de esa índole sólo puede depositarse si el Estado en cuestión ha solicitado la opinión del Consejo acerca de la conformidad de su legislación con las disposiciones del Convenio y si la decisión del Consejo haciendo oficio de opinión es positiva.

El Anexo II está en inglés solamente

Fundamento de la protección de las obtenciones vegetales en Yugoslavia

3. La protección de las obtenciones vegetales se rige en Yugoslavia por la Ley y su Reglamento. A continuación se analiza la Ley según el orden de las disposiciones sustantivas del Convenio.

Artículo 1 del Convenio: Definiciones

4. En el Artículo 2 de la Ley figura una definición de “cultivar” cuyo texto es similar al del Artículo 1.vi) del Convenio. Sin embargo, cabe aclarar que lo importante no es la descripción de las propiedades de cierto genotipo o combinación de genotipos, sino la expresión de los caracteres resultantes de ellos y que, para conformarse a esa definición, un cultivar no debe necesariamente satisfacer las condiciones de obtención de protección. La definición de “obtentor” es muy similar a la del Artículo 1.iv). La definición de “día de prioridad” debería ponerse en consonancia con el requisito del Artículo 11 del Convenio y el Artículo 7 de la Ley, que establece que el plazo de prioridad se calculará a partir de la fecha de presentación de la primera solicitud.

Artículo 2 del Convenio: Obligación fundamental de las Partes Contratantes

5. Tal como se establece en el Artículo 1, la Ley reglamenta la protección de las variedades vegetales mediante la concesión del derecho especificado en la legislación de Yugoslavia. La Ley cumple así con el Artículo 2 del Convenio. Sin embargo, cabe observar que el Acta de 1991 del Convenio exige a una nueva Parte Contratante que ofrezca protección a las variedades de todos los géneros y especies vegetales a más tardar 10 años después de quedar obligada por el Convenio. Por lo tanto, se sugiere que el alcance de la Ley no se limite a las plantas agrícolas y forestales, y que ese alcance se especifique en el reglamento de aplicación.

Artículo 3 del Convenio: Géneros y especies que deben protegerse

6. La Ley no especifica a qué géneros o especies se aplica. Al depositar su instrumento de adhesión, Yugoslavia deberá notificar un mínimo de 15 géneros o especies a los que se aplicará el Convenio en la fecha en que quede obligada por el mismo.

Artículo 4 del Convenio: Trato nacional

7. El Artículo 3 de la Ley dispone que los nacionales y entidades jurídicas de otros países gozarán de los mismos derechos previstos en la Ley para los ciudadanos y entidades jurídicas de Yugoslavia. Es decir que la Ley está en conformidad con el Artículo 4 del Convenio.

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

8. Las condiciones de la protección se establecen en los Artículos 8, 9, 11, 12 y 13 de la Ley, cuyo texto contiene elementos de los Artículos 5 a 9 del Convenio de la UPOV y de la

Ley tipo de la UPOV, con excepción de la definición de novedad, que deberá disponer que también la venta o entrega del producto de la cosecha de la variedad podrían ser problemáticas. En la definición de estabilidad, no se menciona el caso de un ciclo particular de multiplicación o de reproducción, y es necesario aclarar que los caracteres deben permanecer inalterados después de reproducciones o multiplicación *sucesivas*. También cabe observar que la Ley utiliza el texto “especies vegetales perennes” que, en algunos casos, no es lo mismo que “árboles o vides”. En lugar de las expresiones “muy conocidas” o “ampliamente conocidas” utilizadas en la segunda y la tercera frase del Artículo 11, se sugiere aplicar la expresión “notoriamente conocidas” para mantenerse en armonía con el Artículo 7 del Convenio y con la primera frase del Artículo 11 de la Ley. Es importante aclarar que el Artículo 11 sólo presenta una lista no excluyente de ejemplos de casos de variedades notoriamente conocidas.

Artículo 10 del Convenio: Presentación de solicitudes

9. El Artículo 3 de la Ley dispone que el obtentor de una nueva variedad o una entidad jurídica estarán facultados a presentar una solicitud para obtener la protección jurídica de una variedad vegetal que satisfaga los requisitos del Artículo 10 del Convenio.

Artículo 11 del Convenio: Derecho de prioridad

10. El Artículo 7 de la Ley permite reivindicar la prioridad sobre la base de una solicitud anterior, sin embargo, no se especifica el plazo durante el cual un obtentor puede gozar del derecho de prioridad. Tal como lo exige el Artículo 11.1) del Convenio, este plazo debería ser de 12 meses a partir de la fecha de la primera solicitud. La Ley exige al solicitante que presente una prueba de la primera solicitud, pero el plazo destinado a presentar un documento de esa índole es de 30 días, mientras que el plazo fijado a tal efecto en el Artículo 11.2) del Convenio es de tres meses como mínimo.

Artículo 12 del Convenio: Examen de la solicitud

11. En el Artículo 18 de la Ley figuran disposiciones relativas al examen de las variedades candidatas; este Artículo se conforma al Artículo 12 del Convenio.

Artículo 13 del Convenio: Protección provisional

12. El Artículo 31 de la Ley prevé medidas ideadas para salvaguardar los intereses del obtentor entre la presentación y la concesión, con un lenguaje que se encuentra en armonía con el Artículo 13 del Convenio.

Artículo 14 del Convenio: Alcance del derecho de obtentor

13. En el Artículo 28 de la Ley no figura el contenido fundamental del Artículo 14 del Convenio, es decir, el derecho de impedir a terceros que realicen los actos mencionados en el Artículo 14.1)a) del Convenio. Será necesario formular nuevamente el texto. En la lista de actos que exigen la autorización del obtentor (tras la sugerida nueva formulación del texto),

no figura “la posesión ...”. El Artículo 14.1)b) del Convenio, que declara que un obtentor podrá subordinar su autorización a condiciones y a limitaciones, no se encuentra reflejado en la Ley. Tampoco existe en la Ley disposición alguna respecto del material de cosecha, como lo exige el Artículo 14.2) del Convenio. El primer párrafo del Artículo 27 ya no sería necesario tras formular nuevamente el texto del Artículo 28 de la Ley.

14. El Artículo 28 de la Ley también amplía el derecho del obtentor a las variedades indicadas en el Artículo 14.5)a)i), ii), y iii) del Convenio. Teniendo en cuenta algunas dificultades que podrían haberse presentado en la traducción del serbio al inglés, la redacción del Artículo 10 de la Ley puede considerarse similar a la de la definición de variedad esencialmente derivada que figura en el Artículo 14.5)b) del Convenio.

Artículo 15 del Convenio: Excepciones al derecho de obtentor

15. El Artículo 29 de la Ley establece excepciones obligatorias al derecho de obtentor en términos análogos a los del Artículo 15.1) del Convenio. Sin embargo, es importante que se contemple el derecho de realizar los actos mencionados en el Artículo 14.1) respecto de las variedades creadas utilizando una variedad protegida, en la medida en que no sea una variedad esencialmente derivada.

Artículo 16 del Convenio: Agotamiento del derecho de obtentor

16. No queda claro si en el Artículo 30 de la Ley figura el contenido fundamental del Artículo 16 del Convenio. Se sugiere formularlo nuevamente en armonía con el Convenio y aclarar si se refiere a cualquier material, y no sólo material de multiplicación o reproducción.

Artículo 17 del Convenio: Limitación del ejercicio del derecho de obtentor

17. En el Artículo 37 de la Ley figuran disposiciones relativas a la concesión de licencias obligatorias por las autoridades. El requisito para la concesión de licencias obligatorias parece ser muy general y se sugiere que se lo limite a los casos de interés público. Podría recomendarse que se transfieran al reglamento las disposiciones muy detalladas de la última parte del Artículo 37.

18. El Artículo 37 de la Ley dispone además que al conceder una licencia obligatoria las autoridades fijarán las cuantías que el licenciatario deberá pagar al titular de la patente. Especifica que la cuantía fijada de ese modo deberá constituir una remuneración equitativa, como exige el Artículo 17.2) del Convenio.

Artículo 18 del Convenio: Reglamentación económica

19. La Ley no contiene disposición alguna que entre en conflicto con el Artículo 18 del Convenio; sin embargo, cabe añadir un comentario general. El Artículo 22 impone condiciones para la comercialización de las variedades. La protección de las variedades debería ser independiente de las reglamentaciones del mercado. Además, la experiencia demuestra que pueden darse casos en que los obtentores, por distintas razones, no consideren necesario proteger sus variedades o, por ejemplo, en que el plazo de protección de antiguas

variedades ya se haya vencido y esas variedades aún puedan comercializarse. Los requisitos pueden entorpecer innecesariamente la comercialización.

Artículo 19 del Convenio: Duración del derecho de obtentor

20. El Artículo 32 de la Ley dispone que la protección durará 25 años en caso de “cultivos perennes” y 20 años para todas las demás variedades. Esos plazos de protección son los mismos que exige el Convenio, y merecen la misma observación que se formula en el párrafo 8 en cuanto a los “cultivos perennes”. Además, debería aclararse que el plazo comienza en la fecha de concesión de la protección.

Artículo 20 del Convenio: Denominación de la variedad

21. En los Artículos 14 a 17 de la Ley figuran disposiciones relativas a la denominación de la variedad que satisfacen los requisitos del Artículo 20 del Convenio. Debería incluirse en la Ley una referencia a las denominaciones cubiertas por derechos anteriores de terceros.

Artículo 21 del Convenio: Nulidad del derecho de obtentor

Artículo 22 del Convenio: Caducidad del derecho de obtentor

22. Los Artículos 34 y 38 a 40 de la Ley deberían reorganizarse de manera que en un artículo figuren las disposiciones de nulidad y en otro las de caducidad. Actualmente, las disposiciones no reproducen el contenido de fondo de los Artículos 21 y 22 ni hacen una real distinción entre anulación y caducidad. Debería verificarse si la referencia del Artículo 40 al Artículo 18 párrafo 2 es correcta.

Artículo 30 del Convenio: Aplicación del Convenio

23. El Artículo 30.1)i) del Convenio exige que los Estados que se adhieren prevean los recursos legales apropiados para defender eficazmente los derechos de obtentor. Los Artículos 43 a 45 de la Ley obligan al Estado a proteger el derecho del titular y determinar los procedimientos que deberán realizarse. Los Artículos 46 a 48 de la Ley disponen que las personas y entidades jurídicas que realicen acciones consideradas ilegales serán responsables y deberán cumplir con la legislación vigente en Yugoslavia. De esta forma, la Ley está en armonía con el Artículo 30.1)i).

24. El Artículo 30.1)ii) del Convenio exige a los Estados que se adhieren el establecimiento de “una autoridad encargada de conceder derechos de obtentor...”. En los Artículos 2 a 4 de la Ley se designa al Organismo Federal, que la legislación de Yugoslavia señala como la autoridad competente en la esfera de la protección jurídica de los derechos de obtentor en Yugoslavia. Así pues, la Ley se encuentra en armonía con el Artículo 30.1)ii) del Convenio.

25. El Artículo 30.1)iii) del Convenio exige a los Estados la publicación periódica de informaciones sobre las solicitudes y los derechos de obtentor concedidos, así como las denominaciones propuestas y aprobadas. El Artículo 21 de la Ley faculta al Organismo Federal a publicar información oficial sobre la concesión de derechos de obtentor en el

Boletín Oficial. Estas disposiciones satisfacen los requisitos del Artículo 30.1)iii) del Convenio.

Conclusión general

26. La Ley, en sus disposiciones principales, incorpora gran parte del contenido fundamental del Convenio. Sin embargo, necesita una extensa reorganización y una nueva redacción.

27. La Oficina de la Unión sugiere que el Consejo:

a) informe al Gobierno de Yugoslavia de que la Ley no incorpora algunas disposiciones importantes del Convenio;

b) pida a la Oficina de la Unión que ofrezca su asistencia al Gobierno de Yugoslavia para redactar las enmiendas necesarias a la Ley y para preparar una traducción más satisfactoria a uno o más de los idiomas oficiales de la UPOV;

c) informe al Gobierno de Yugoslavia de que, tras la adopción de las enmiendas necesarias según las observaciones propuestas por la Oficina de la Unión y la elaboración del reglamento, podrá depositar un instrumento de adhesión al Convenio.

28. Se invita al Consejo a tomar nota de la información proporcionada y a tomar las decisiones pertinentes de acuerdo con la propuesta establecida en el párrafo anterior.

[Sigue el Anexo I]

ANEXO I

[Traducción de la Oficina de la Unión de una carta con fecha 16 de febrero de 2001]

Enviada por: Sr. Saša Vitošević, Ministro Federal de Agricultura

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

Tengo el honor de informarle que el 30 de junio de 2000 el Parlamento de la República Federal de Yugoslavia adoptó la Ley de Protección de Cultivares de Plantas Agrícolas y Forestales.

La República Federal de Yugoslavia prevé adherirse a la Unión Internacional para la Protección de las Obtenciones Vegetales (Convenio de la UPOV del 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 (Acta de 1991)).

De conformidad con las disposiciones del Artículo 34.3) del Acta de 1991, le agradecería que el Consejo de la UPOV examinara la conformidad de la Ley de la República Federal de Yugoslavia con las disposiciones del Acta de 1991.

Aprovecho esta oportunidad para expresarle el testimonio de mi más distinguida consideración.

(Firmado)

Anexo: Traducción oficial al inglés de la Ley.

[Sigue el Anexo II]

ANEXO II

[in English only]

LAW OF YUGOSLAVIA

I. BASIC PROVISIONS

Article 1

This law regulates the procedure for protecting domestic and foreign agricultural and forest plants (hereinafter: cultivars) and the plant breeder's rights.

Article 2

The meaning of the terms used in this law:

- 1) 'Cultivar' – a plant grouping within a single botanical taxon of the lowest known rank, which is defined by the description of the properties of given genotype or combination of genotypes and is distinguished from any other plant grouping by the expression of at least one of the characteristics and represents a unit with regard to its suitability for being propagated unchanged.
- 2) 'Initial cultivar' – one from which new cultivar is derived.
- 3) 'Protected cultivar' – cultivar protected by the provisions of this law.
- 4) 'Breeder' – a legal person, an entrepreneur or a physical person who bred, or discovered and developed a cultivar.
- 5) 'Priority day' – a date of first public announcement of a cultivar.
- 6) 'Federal Office in charge' – a federal organ which is engaged in agricultural issues.
- 7) 'Federal Agency' – a federal agency in charge of issues concerning protecting cultivars of agricultural and forest plants.

II. THE PROCEDURE OF CULTIVAR PROTECTION

Application for Cultivar Protection

Article 3

The procedure for protecting domestic cultivars is started on the basis of filing an application by a breeder, and for foreign cultivar – when a breeder of the foreign cultivar or his authorized representative in Federal Republic in Yugoslavia file an application (hereinafter: application).

Article 4

The application from Article 3 is submitted to the Federal Agency in charge.

The form and the contents of the application form from item 1 of this Article are regulated by the Federal Office.

On receiving the application, the Federal Agency assesses whether the application has been properly filled, i.e. whether it meets the conditions stated in Article 3 of this law.

If not correct, the Federal Agency shall, stating the reasons, call the submitter to eliminate the assessed defects within 30 days from the announcement.

If the submitter does not act accordingly within the time prescribed, the application will be turned down.

Article 5

The duly made application is entered in the Register of Applications for the Protection of New Cultivars (hereinafter: Register of Applications).

The content of this Register is regulated by the Federal Office.

Article 6

Documentation on developing a new cultivar and the samples of the propagating material of the cultivar for the purpose of evaluation and preservation, i.e. a certificate that mother trees of perennial species of plants of that cultivar are grown, stating the locality and the data on mother trees, are also enclosed with the application.

Right of Priority

Article 7

If two or more breeders have, independently, bred, discovered or developed a new cultivar, the right of priority shall enjoy the breeder who was the first to file an application for cultivar protection.

The priority is in effect from the date of filing an application to the Federal Agency, if the applicant has not called on the day of priority.

In order to claim the right of priority on the basis of the day of priority, the applicant has to submit a proof of the day of priority to the Federal Agency within 30 days of filing an application.

If the Federal Agency accepts the proof of the day of priority, the application is considered as submitted on the day of priority.

If an earlier filed application is rejected or withdrawn, the Federal Agency shall start the procedure for protecting the cultivar on the basis of later submitted application.

Conditions for the Cultivar Protection

Article 8

A cultivar can be protected according to the provisions of this law if it is new, distinct, uniform, stable and meets the requirements for denomination as a protected cultivar.

Article 9

A cultivar is considered to be a new one if on the day of filing the application or on the day of priority the propagating material of that cultivar has not been sold or disposed of to others in some other way with the consent of the breeder, legal successor or the heir of the breeder's right, for purposes of exploitation of the cultivar on the territory of the Federal Republic of Yugoslavia for a period longer than a year, or on a foreign territory – for longer than four years, and, in the case of perennial plant species – for longer than six years.

The cultivar from item 1 of this Article is also considered to be new if it has been marketed for commercial use as follows:

- 1) by a contract on the transfer of a breeder's right;
- 2) by a contract which allows the propagation of the propagating material of the cultivar in the name of the breeder, legal successor or the heir of the breeder's right, provided that the multiplied material is returned to the breeder, legal successor or to the heir of the breeder's right, and that the multiplied propagating material is not used for the production of another cultivar;
- 3) by a contract that allows investigations in the experimental field and laboratories for cultivar evaluation;
- 4) if trading a cultivar means fulfilling a legal obligation, particularly as regards biological safety or cultivar registration according to the Law on Release and Denomination of Agricultural and Forest Plants.

Article 10

A new cultivar is considered to be derived from the initial cultivar in the following cases:

- 1) if it has been mainly derived from the initial cultivar – as long as it retains relevant characteristics deriving from the genotype or from the combination of genotypes of the initial cultivar;
- 2) if it is distinct from the initial cultivar and the initial cultivar was used in the procedure of breeding new cultivar;

3) if it resembles the initial cultivar in the expression of the major properties which are the result of the genotype or the combination of genotypes of the initial cultivar, except for the differences caused by the very fact of deriving.

Article 11

A cultivar shall be deemed to be distinct if it is clearly distinguishable from any other cultivar, whose existence is a matter of common knowledge at the time of filing an application or on the day of priority.

A cultivar is considered as being well known if its exploitation has been already under way, if the cultivar has been entered in an official register of cultivars or if the data on the cultivar have been published in scientific publications.

If the application for the protection of cultivar release has been filed in a foreign country, the cultivar shall be considered as widely known from the day of filing application, provided that the cultivar has been entered in the appropriate register according to the required procedure.

Evaluation of cultivar distinctness is done using the methods regulated by the Federal Office.

Article 12

A cultivar 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.

Evaluation of cultivar uniformity is done using the methods regulated by the Federal Office.

Article 13

The cultivar shall be deemed to be stable if its relevant characteristics remain unchanged after propagation.

Evaluation of cultivar stability is done using the methods regulated by the Federal Office.

Article 14

The applicant is obliged to propose the cultivar denomination in the application.

The applicant may temporarily postpone denomination. In that case, the applicant shall propose the denomination for the cultivar within 30 day of filing the application. If the applicant does not submit the proposal in due time, the application shall be rejected.

The interested legal person, an entrepreneur or a physical person can file an objection to the proposed denomination within 30 days following the entry in the Register of applications.

The Federal Agency shall notify the applicant about the objection according to item 3 of this Article that he should submit a reply within 30 days from receiving the objection.

The applicant can propose a new denomination on the basis of the objection.

If the denomination proposed does not comply with the provisions of Article 15 of this law, the Federal Agency shall order the applicant to submit a proposal for a new denomination within 30 days of being notified.

If the applicant within the time prescribed does not submit a proposal for a new denomination, the application shall be rejected.

The Federal Agency shall grant the denomination handing down the decision on cultivar protection.

Article 15

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

If the denomination had already been used in the Federal Republic of Yugoslavia or in a foreign country, or proposed or registered in Yugoslavia or in a foreign country, then only that denomination may be used in the procedure of protecting cultivars before the Federal Agency, except if there exist reasons for rejection under Article 16 of this law. All synonyms will be entered in the Register of Applications and the Register of Protected Cultivars.

The identical or a similar denomination in the Federal Republic of Yugoslavia or in a foreign country may not be used for another variety of the same or of a related species. The denomination may not be used even after its usage if the stated denomination has a particular significance with regard to the cultivar.

The legal person, an entrepreneur or a physical person, who deals with marketing or advertising of the propagating material of the protected cultivar, is obliged to use the cultivar denomination.

The obligation concerning the denomination is valid even after expiring of cultivar protection, i.e. breeder's rights referred to in Article 31 of this law.

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

Article 16

The Federal Agency shall reject the proposal for the denomination if it establishes that the proposed denomination is:

- 1) unsuitable for the cultivar identification;

- 2) composed exclusively of marks and indications which may serve for determination of cultivar, species, quality, quantity, desired aim, value of geographical origin or the production time;
- 3) composed in such a way that it might be mistaken or confused with regard to its properties, value or geographical origin of the cultivar;
- 4) identical or very similar to the denomination which has already marked the cultivar of the same or related species.

The Federal Agency shall determine the related species.

Article 17

The Federal Agency shall cancel the denomination upon breeder's request or on the basis of the decision prohibiting denomination issued by the Court.

The Federal Agency shall notify the breeder that the denomination has been cancelled on the basis of the Court decision and ask him to propose a new denomination within 30 days.

Article 18

The cultivar is evaluated in the experimental field or laboratory in order to assess whether it fulfills the requirements for the protection.

For the above mentioned evaluation, the applicant is obliged to submit the necessary quantity of the cultivar propagating material to the Federal Agency. If the applicant does not submit the adequate quantity of the propagating material, the application will be rejected.

Article 19

The cultivar is evaluated in the experimental field or laboratory by the legal person, who satisfies the requirements for the mentioned research in terms of specialization, equipment and facilities (hereinafter: trial contractor).

The requirements concerning the specialization, equipment and facilities which the contractor has to fulfill, are determined by the Federal Agency.

The Federal Agency checks the conditions from item 1 of this Article and issues a decision whether the conditions have been met.

The list of the trial contractors is published in 'Slu`beni list SRJ' (*Yugoslav Official Register*).

Article 20

The Federal Agency signs the contract with the trial contractor.

The Federal Agency processes the trial results obtained in the experimental field or laboratory.

The results from item 2 of this Article are processed according to the methods regulated by the Federal Office.

On the basis of the examination results, the Federal Agency estimates whether the conditions for plant protection have been met for granting the breeder's right to the applicant.

Article 21

The Federal Agency issues a decision on plant protection or rejects the application for it.

The cultivar which was approved is entered in the Register by the Federal Agency.

The contents of the Register on cultivars protected is regulated by the Federal Agency.

The list of the cultivars protected with the data on denomination, the breeder, holder of the right and their seat, i.e. residence, is announced in 'Slu`beni glasnik SRJ' (*Yugoslav Official Register*) within 30 days from the decision issue.

Article 22

The propagating material of the protected cultivars of agricultural and forest plants may be marketed if the Federal Agency has issued a decision on plant protection.

The propagating material of the protected cultivars which are imported must be followed by the appropriate papers issued by the Federal Office of the exporting countries, which has inspected trueness-to-name and quality in the production of the propagating material.

Article 23

A legal person, an entrepreneur or a physical person may have an insight into:

- 1) the applications for cultivar protection;
- 2) the documentation on cultivar evaluation and protection procedure;
- 3) the documentation on protected cultivars, i.e. on breeder's rights.

If a cultivar production requires repeated use of another cultivar (components), the applicant may demand that the documents and the trial results of the components be an official secret.

Objections

Article 24

Effective from the day of the entry of the application in the Register of applications, i.e. the entry of the cultivar in the Register of the protected cultivars, a legal person, an

entrepreneur or a physical person interested may submit to the Federal Agency an objection to the entry within 30 days.

The objection must be submitted in written form with the appropriate evidence.

Article 25

The objection to the entry in the Register of the applications must be based on the statement that the applicant does not hold the right of the breeder or he does not have the right of priority.

The Federal Agency will forward the objection from item 1 of this Article to the applicant informing him to send the reply to the objection in which he should state whether he intends to retain, alter or withdraw his application within 30 days from the day of the objection receipt.

If the applicant does not reply within the time prescribed, the objection will be considered withdrawn. If the applicant replies and demands the objection to be re-evaluated, with alterations or without them, i.e. without additions, his reply will be submitted to the submitter of the objection who is obliged to reply within 30 days.

The decision concerning the objection from item 1 of this Article is finally under the administrative procedure.

Article 26

The objection to the entry in the Register of the protected cultivars must be based on the statement that the cultivar is not new, distinct, uniform or stable.

The Federal Agency may order an additional testing of the cultivar to assess the statements in the objection.

At the request of the Federal Agency, the objection submitter must within 30 days submit additional information and documents on which his objection is based or the propagating material needed for evaluation.

If the objection submitter does not meet the conditions from item 3 of this Article, the objection will be rejected.

The decision concerning the objection from item 1 of this Article is finally under the administrative procedure.

III. RIGHTS AND OBLIGATIONS OF THE HOLDER OF THE PLANT BREEDER'S RIGHT

The Rights of the Holder of the Plant Breeder's Right

Article 27

The rights of the breeder are as follows: property rights (the right of the holder of the right to use the protected cultivar and dispose of it, as well as to enjoy other commercial benefits of the protected cultivar) and moral rights (that the denomination, i.e. the name of the breeder be stated in the application, files, registers, documentation and publications).

The breeder's right to the protected cultivar will be acknowledged to the breeder, his legal successor or the heir of his right by issuing a decision on cultivar protection (hereinafter: the holder of the right).

If two or more breeders jointly bred, discovered or developed a cultivar, they hold the same protection right. If the breeders reached some other agreement, their rights will be stated by the contract.

Article 28

Effective from the day of the cultivar entry in the Register of the protected cultivars, the holder of the right is entitled to:

- 1) production or propagation (multiplication) of the protected cultivar;
- 2) assessment of the conditions for propagating the protected cultivar;
- 3) inclusion in traffic of the protected cultivar;
- 4) marketing of the protected cultivar;
- 5) exporting and importing of the protected cultivar;
- 6) using the denomination of the protected cultivar.

The holder of the right may also have the right to:

- 1) the cultivar which derives from a protected cultivar which has not been originally derived cultivar;
- 2) the cultivar which cannot be clearly distinguished from the protected cultivar;
- 3) the cultivar the production of which requires repeated use of the protected cultivar.

Article 29

The breeder's right does not include the right for the protection of the procedures:

- 1) which are undertaken privately or for the purposes which are not commercial;

- 2) which are taken for experimental purposes;
- 3) which are carried out for breeding other cultivars.

Article 30

The breeder's right does not refer to the rights from Article 28 of this law concerning the propagating material of the cultivar included in traffic by the holder of the right or with his approval on the territory of the Federal Republic of Yugoslavia for further propagation of the cultivar which is in the procedure of the evaluation or for the export of propagating material of the cultivar into a country which has no protection of the cultivars of a plant, genus or species to which this cultivar belongs.

Article 31

During the period from submitting an application for cultivar protection until assessing breeder's right, the holder of the right is entitled to an appropriate remuneration paid by a legal person, an entrepreneur or a physical person who exploited the cultivar over the period mentioned.

Article 32

The right of the breeder to the cultivar protected lasts 20 years, and for perennial crops – 25 years.

Obligations of the Holder of the Breeder's Right

Article 33

The holder of the right is obliged to maintain the cultivar protected or its hereditary components unchanged as long as the cultivar protection is valid.

Article 34

The Federal Agency shall estimate whether the cultivar protected or its hereditary components are maintained unchanged during the protection period.

If the Federal Agency finds out that the holder of the right has failed to maintain the cultivar, it will issue a decision on canceling the breeder's right.

Article 35

At the request of the Federal Agency, the holder shall provide an appropriate sample of propagating material or its hereditary components for assessing or renewing the samples or comparative trials of other cultivars for the purpose of the protection.

At the request of the Federal Agency, the holder of the right shall maintain or keep the official sample.

Licenses

Article 36

The holder of the right from Article 28 of this law may contract to transfer his rights wholly or partially to a legal person, an entrepreneur or a physical person (hereinafter: license).

The license is transferred by the contract which must be in written form and contain scope of the rights, the term of the license, remuneration, as well as state other rights from the contract.

The holder of the right is under obligation to submit the license contract to the Federal Agency for entry into the Register of the protected cultivars.

Article 37

The request for refusal of the compulsory license is submitted to the Federal Agency.

If the exploitation of the protected cultivar is beneficial to agriculture, health service, defense of the country, protection and improvement of the environment, or is of special interest to a particular branch of economy, the Federal Agency will issue a decision granting the compulsory license.

The compulsory license will be granted under the following conditions:

- 1) if the applicant is qualified to use the breeder's right in an expert and efficient way;
- 2) if the holder of the right refuses to grant the license or grants it under unacceptable conditions;
- 3) if three years have elapsed since the day of establishing the breeder's right.

The Federal Agency shall grant the compulsory license with the entitlement to all or particular rights stated in Article 28 of this law.

The Federal Agency shall fix an adequate payment for the compulsory license which will be paid to the holder of the right by a legal person, entrepreneur or a physical person who were granted the license.

The holder of the right is obliged, at the request of the Federal Agency, to deliver the amount of the propagating material necessary for utilization of the compulsory license to the legal person, entrepreneur or physical person to whom the compulsory license has been granted, with the adequate payment to the holder of the right.

The compulsory license is issued for the two-to-four year period. Exceptionally, the compulsory license can be granted for a period shorter than two or longer than four years. The compulsory license can be extended if the Federal Agency finds out that there exist reasons for which the compulsory license was granted after its expiry.

The Federal Agency shall cancel the compulsory license if a legal person, an entrepreneur or a physical person to whom the license was granted does not fulfil the conditions under which it had been granted.

IV. TERMINATION OF THE BREEDER'S RIGHT

Article 38

Breeder's right is terminated before the expiry of the term stated in Article 32 of this law in the following cases:

- 1) if the holder of the right states in written form to the Federal Agency that he wants to terminate the breeder's right, in effect from the day mentioned in the statement, i.e. from the day of the receipt of the statement;
- 2) if the annual costs of cultivar protection were not paid on the day when the costs were due.

Article 39

The Federal Agency can nullify the decision on the cultivar protection throughout the duration of the protection, by official duty or at the proposal of the interested legal person, entrepreneur or physical person if it assesses that the cultivar is not new or distinct, uniform or stable or that the breeder's right was given to the legal person, entrepreneur or physical person to whom they are not entitled, and the person who holds the breeder's right has not started the procedure for cultivar protection, or waived the right for cultivar protection.

On the basis of declaring the decision null, the Federal Agency shall annul the cultivar from the Register of the protected cultivars.

Article 40

The Federal Agency will cancel the decision on cultivar protection and enter the data into the Register of the protected cultivars if:

- 1) it assesses that the holder of the breeder's right does not maintain the cultivar protected or its hereditary components during the period of cultivar protection;
- 2) the holder of the breeder's rights does not propose the change of the denomination within the term prescribed according to Article 18, item 2 of this law.

If the breeder's right has been reconfirmed after cancellation, the request submitter cannot ask for the fulfillment of his rights from the legal person, entrepreneur or physical person who did not misuse the cultivar protected from cancellation of the right and its reconfirming.

V. COSTS

Article 41

The costs of cultivar trials in the field and laboratory, and annual costs for cultivar protection bears the applicant, i.e., the holder of the right.

The costs from item 1 of this Article are fixed by Federal Government.

VI. CONTROL

Article 42

The control over the provisions of this law and its articles shall be performed by the Federal Office through its inspector.

The inspector from item 1 of this article must hold a degree in field crops, vegetable or fruit growing, viticulture, horticulture or forestry.

Article 43

While controlling the law, the inspector shall be in charge of:

- 1) inspecting cultivar distinctness, stability and uniformity in the experimental field or laboratory with the contractor;
- 2) inspecting whether the contractor meets the requirements necessary for cultivar evaluation in the experimental field or laboratory;
- 3) inspecting the production and traffic of the propagating material which is protected according to the provisions of this law;
- 4) inspecting the import and export of the propagating material;
- 5) monitoring the application of license rights;
- 6) inspecting the usage of the denomination;
- 7) sampling the propagating material without remuneration for assessing the fulfillment of the requirements prescribed by this law;
- 8) checking business files and documents of legal persons, entrepreneurs and physical persons concerning this law;
- 9) collecting data and information from responsible and other persons and interrogating the witnesses and court experts when necessary for successful job performance.

Article 44

While controlling the law, the inspector shall be in charge of:

- 1) forbidding the traffic, import and export of the propagating material if he assesses that that this material does not meet the conditions mentioned in this law;
- 2) forbidding the contractor to test the cultivars in the field or laboratory if the latter does not eliminate the defects as regards the conditions prescribed by this law and by the regulation passed for the purpose of this law;
- 3) filing actions for infringements done on a criminal or commercial basis and starting the legal procedure due to violation of the provisions of this law;
- 4) ordering taking other measures based on the authorization derived from this law.

Measures from item 1 of this law are regulated by the decision of the Inspector.

This decision can be appealed to the Federal Office.

The objection should be submitted within 8 days from the delivery date and cannot prevent its execution.

The decision of the Federal Office is finally under the administrative procedure.

Article 45

The Federal inspectors must have an official card, uniform and the badge of the Federal inspector.

The form of the card, the uniform and the shape of the badge from item 1 of this law are regulated by the Federal Office.

VII. PENAL PROVISIONS

Article 46

A fine of 150.000 to 450.000 of new dinars shall be imposed on a legal person or an entrepreneur who were entered into the court Register for commercial offense:

- 1) if he uses the denomination without the approval of the Federal Agency (Article 14; item 8);
- 2) if he uses the denomination for cultivar protected, which is identical or very similar to the name of the protected cultivar of the same or related species, as well as after termination of the usage of cultivar protected if denomination of the cultivar protected has a particular significance with regard to that cultivar (Article 15; item 3);
- 3) if he includes into traffic the propagating material which has not been granted the decision on cultivar protection (Article 22; item 1);

- 4) if he imports the propagating material which is not followed by the appropriate documentation issued by the Federal Office of the exporting country which controlled the production of the propagating material (Article 22; item 2);
- 5) if he does not maintain the cultivar protected or its hereditary components throughout the period of cultivar protection (Article 33).

Actions from item 1 of this Article shall be fined for commercial offense and the fine of 3,000 to 30,000 of new dinars shall be imposed on the person responsible for the legal person.

Article 47

A fine of 15,000 to 150,000 new dinars shall be imposed on the legal person or entrepreneur for an offense committed:

- 1) if at the request of the Federal Agency, he does not deliver the adequate sample of the propagating material or hereditary components of the protected cultivar for the purpose of renewing cultivar samples or conducting comparative trials or other cultivars for protection; or if he does not maintain or keep the official sample for the needs of the Federal Agency (Article 34);
- 2) if he does not submit to the Federal Agency the contract on the license for the entry in the Register of the protected cultivars (Article 36; item 3);
- 3) if at the request of the Federal Agency, he does not deliver the appropriate propagating material necessary for the usage of the compulsory license (Article 37; item 5).

Actions from item 1 of this Article shall be fined for an offense and the fine of 900 to 9,000 of new dinars shall be imposed on the person responsible for the legal person.

Article 48

If the action from Article 46, item 1, provision 1 and 3 and 4, and Article 47, item 1 of this law is committed by a physical person, a fine of 900 to 9,000 dinars shall be imposed on him.

VIII. TRANSITIONAL AND FINAL PROVISIONS

Article 49

Regulations for the execution of this law shall be brought within 6 months from the date on which this law comes into force.

Article 50

On the date when this law comes into force, the Law on Approval of New Cultivars, Permission to Introduce into Production Foreign Cultivars and the Protection of the Cultivars

of Agricultural and Forest Plants ceases to be valid (Yugoslav Official Register, No 38/80 and 82/90).

Article 51

The cultivars which are protected according to the provisions of the Law on Approval of New Cultivars, Permission to Introduce into Production Foreign Cultivars and the Protection of the Cultivars of Agricultural and Forest Plants must be tested in the experimental field and laboratory within a year from the date on which this law comes into force in order to assess whether the mentioned cultivar is distinct, uniform and stable.

Article 52

The cultivars for which the applications for the cultivar protection were filed till the date on which this law comes into force, and for which the procedure has not been completed, will be protected according to the provisions of this law.

Article 53

This law comes into force on the 8th day following its publication in the Yugoslav Official Register.

[Fin del Anexo II y del documento]