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UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES
GENÈVE

CONSEIL

Quarante et unième session ordinaire
Genève, 25 octobre 2007

**EXAMEN DE LA CONFORMITÉ DE LA LOI SUR LA PROTECTION
DES VARIÉTÉS VÉGÉTALES DE LA RÉPUBLIQUE DU MONTÉNÉGR0
AVEC L'ACTE DE 1991 DE LA CONVENTION UPOV**

Document établi par le Bureau de l'Union

Introduction

1. Dans une lettre datée du 11 septembre 2007, adressée au Secrétaire général de l'UPOV, Son Excellence M. Milutin Simovic, Ministre de l'agriculture, de la sylviculture et de l'hydrologie de la République du Monténégro (ci-après dénommée "le Monténégro"), a demandé l'examen de la "loi sur la protection des variétés végétales" (ci-après dénommée la "loi"), que le Parlement a adoptée le 24 juillet 2007, pour en déterminer la conformité avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé l' "Acte de 1991"). Cette lettre est reproduite à l'annexe I du présent document. L'annexe II contient une deuxième lettre de S. E. M. Simovic avec une traduction officielle vérifiée en anglais de la loi reçue le 12 octobre 2007.

2. Le Monténégro n'a pas signé l'Acte de 1991. En vertu de l'article 34.2) de cet Acte, il doit donc déposer un instrument d'adhésion pour devenir partie contractante sur la base de l'Acte de 1991. Conformément à l'article 34.3) de l'Acte de 1991, un instrument de ce type ne peut être déposé que si l'État en question a demandé l'avis du Conseil au sujet de la conformité de sa législation avec les dispositions de l'Acte de 1991 et si la décision faisant office d'avis est positive.

Fondement de la protection des obtentions végétales au Monténégro

3. Au Monténégro, la protection des obtentions végétales est régie par la loi. On trouvera ci-après une analyse de cette loi dans l'ordre des dispositions de droit matériel de l'Acte de 1991.

Article premier de l'Acte de 1991 : Définitions

4. L'article 2 de la loi contient des définitions conformes aux définitions correspondantes que contient l'article premier de l'Acte de 1991.

Article 2 de l'Acte de 1991 : Obligation fondamentale des Parties contractantes

5. Le premier paragraphe de l'article premier de la loi stipule que “[c]ette loi régit les modalités et la procédure de protection des variétés végétales (ci-après appelées les variétés) ainsi que les droits et obligations des titulaires de droits d'obtenteur”; ce faisant, elle s'acquitte de l'obligation fondamentale prévue par l'article 2 de l'Acte de 1991.

Article 3 de l'Acte de 1991 : Genres et espèces devant être protégés

6. Le deuxième paragraphe de l'article premier de la loi stipule que “[c]ette loi s'applique à tous les genres et espèces végétaux”, ce qui est conforme à l'article 3.2)ii) de l'Acte de 1991. Il sied de noter que, conformément à l'article 36.1)ii) de l'Acte de 1991, lorsqu'il dépose son instrument d'adhésion, le Monténégro doit notifier dans une déclaration que la loi s'appliquera à tous les genres et espèces végétaux.

Article 4 de l'Acte de 1991 : Traitement national

7. L'article 3 de la loi stipule que “[en] ce qui concerne la protection des variétés en République du Monténégro (ci-après dénommée la République), les personnes physiques et morales étrangères auront les mêmes droits et les mêmes obligations que les nationaux”. Cette disposition est conforme aux obligations de l'article 4 de l'Acte de 1991.

Articles 5 à 9 de l'Acte de 1991 : Conditions de la protection, nouveauté, distinction, homogénéité et stabilité

8. Les articles 5 et 7 à 10 de la loi contiennent les conditions de la protection conformément aux dispositions des articles 5 à 9 de l'Acte de 1991.

9. L'article 7 de la loi prévoit la condition de nouveauté conformément à l'article 6.1) de l'Acte de 1991.

10. L'article 57 de la loi instaure un régime de nouveauté transitoire pour les “variétés de création récente” sur la base de l'article 6.2) de l'Acte de 1991.

11. L'article 8 de la loi prévoit la condition de distinction. Pour qu'il soit conforme à l'article 7 de l'Acte de 1991, il est recommandé de modifier l'article 8.2) de la loi comme suit :

“En particulier, le dépôt, dans tout pays, d'une demande d'octroi d'un droit d'obtenteur pour une autre variété ou d'inscription d'une autre variété sur un registre officiel de variétés ~~protégées~~ est réputé rendre cette autre variété notoirement connue à partir de la date de la demande, si celle-ci aboutit à l'octroi du droit d'obtenteur ou à l'inscription de cette autre variété sur le registre officiel de variétés ~~protégées~~, selon le cas”.

12. L'article 9 de la loi prévoit la condition d'homogénéité en conformité avec l'article 8 de l'Acte de 1991.

13. L'article 10 de la loi prévoit la condition de stabilité en conformité avec l'article 9 de l'Acte de 1991.

Article 10 de l'Acte de 1991 : Dépôt de demandes

14. Les articles 15 à 18 de la loi traitent du dépôt de demandes. La loi ne contient pas de dispositions incompatibles avec l'article 10 de l'Acte de 1991.

Article 11 de l'Acte de 1991 : Droit de priorité

15. L'article 19 de la loi contient des dispositions sur le droit de priorité qui sont conformes aux paragraphes 1 et 2 de l'article 11 de l'Acte de 1991. Il est recommandé d'introduire dans l'article 19 de la loi les dispositions manquantes de l'article 11.3) de l'Acte de 1991 :

“*[Documents et matériel]* L'obtenteur bénéficiera d'un délai de deux ans après l'expiration du délai de priorité ou, lorsque la première demande est rejetée ou retirée, d'un délai approprié à compter du rejet ou du retrait pour fournir au service de la Partie contractante auprès duquel il a déposé la demande subséquente, tout renseignement, document ou matériel requis par les lois de cette Partie contractante en vue de l'examen prévu à l'article 12”.

Article 12 de l'Acte de 1991 : Examen de la demande

16. Les articles 16 à 18 et 20 à 24 de la loi contiennent des dispositions relatives à l'examen de la demande en conformité avec les dispositions de l'article 12 de l'Acte de 1991.

Article 13 de l'Acte de 1991 : Protection provisoire

17. L'article 31 de la loi contient des dispositions sur la protection provisoire. Pour qu'il soit conforme à l'article 13 de l'Acte de 1991, il est recommandé de modifier comme suit l'article 31 de la loi :

“Pendant la période comprise entre le dépôt de la demande d’octroi de la protection et l’octroi du droit de cette protection, le titulaire du droit d’obteneur aura droit à une rémunération équitable perçue auprès de celui qui, dans l’intervalle précité, a accompli des actes qui, après l’octroi du droit, a utilisé la variété sans requièrent l’autorisation du titulaire du droit d’obteneur comme prévu dans l’article 28.”

Article 14 de l’Acte de 1991 : Étendue du droit d’obteneur

18. L’article 28 de la loi contient des dispositions sur l’étendue du droit d’obteneur. Pour qu’il soit conforme à l’article 14 de l’Acte de 1991, il est recommandé d’apporter les modifications suivantes aux paragraphes 3, 4, 5, 6 et 7 de l’article 28 de la loi :

“Sous réserve des articles 29 et 30, l’autorisation de l’obteneur est requise pour l’utilisation des actes suivants à l’égard du matériel de reproduction ou de multiplication d’une variété protégée :

- 1) Production ou reproduction (multiplication) de la variété protégée;
- 2) Conditionnement aux fins de la reproduction ou de la multiplication de la variété protégée;
- 3) Offre à la vente de la variété protégée;
- 4) Vente ou toute autre forme de commercialisation de la variété protégée;
- 5) Exportation ou importation de la variété protégée;
- 6) Détention à l’une des fins mentionnées aux points 1 à 5 du paragraphe 3 de cet article.

“Sous réserve des articles 29 et 30, l’autorisation de l’obteneur est requise pour les actes mentionnés aux points 1) à 6) du paragraphe 3) accomplis à l’égard du produit de la récolte, y compris des plantes entières et des parties de plantes, obtenu par utilisation non autorisée de matériel de reproduction ou de multiplication de la variété protégée, à moins que l’obteneur ait raisonnablement pu exercer son droit en relation avec ledit matériel de reproduction ou de multiplication.

“L’autorisation du titulaire du droit d’obteneur est également requise pour l’utilisation des actes mentionnés dans les paragraphes 3 et 4 du présent article accomplis à l’égard d’une variété :

- 1) qui est essentiellement dérivée de la variété protégée, lorsque celle-ci n’est pas elle-même une variété essentiellement dérivée;
- 2) qui ne se distingue pas nettement de la variété protégée; et
- 3) dont la production nécessite l’emploi répété de la variété protégée.

“Une variété est réputée essentiellement dérivée de la variété initiale lorsque :

- 1) elle est principalement dérivée de la variété initiale, ou d’une variété qui est elle-même principalement dérivée de la variété initiale, tout en conservant les expressions des caractères essentiels qui résultent du génotype ou de la combinaison de génotypes de la variété initiale;
- 2) elle se distingue nettement de la variété initiale; et
- 3) sauf en ce qui concerne les différences résultant de la dérivation, elle est conforme à la variété initiale dans l’expression des caractères essentiels qui résultent du génotype ou de la combinaison de génotypes de la variété initiale.

“Aux fins des paragraphes 5.1) et 6 de cet article :

- 1) ~~Une variété initiale est la variété à partir de laquelle la nouvelle variété a été élaborée;~~
- 2) Une variété essentiellement dérivée ~~est une variété~~ peut être obtenue, par exemple, par sélection d'un mutant naturel ou induit ou d'un variant somaclonal, sélection d'un individu variant parmi les plantes de la variété initiale, rétrocroisements ou transformation par génie génétique”.

Article 15 de l'Acte de 1991 : Exceptions au droit d'obtenteur

19. L'article 29 de la loi contient des dispositions portant sur les exceptions au droit d'obtenteur.

20. Les deux premiers alinéas du paragraphe 1 de l'article 29 de la loi contiennent des dispositions qui sont conformes aux alinéas i) et ii) du paragraphe 1 de l'article 15 de l'Acte de 1991.

21. Pour se conformer à l'alinéa iii) du paragraphe 1 de l'article 15 de l'Acte de 1991, il est recommandé de modifier comme suit le troisième alinéa du paragraphe 1 de l'article 29 de la loi :

“- Aux fins de la création d'autres variétés, et, à moins que les dispositions du paragraphe 5 de l'article 28 s'appliquent, à l'exception des actes mentionnés dans les paragraphes 3, 4 et 5 4 de la présente loi accomplis avec de telles variétés”.

22. Pour se conformer au paragraphe 2 de l'article 15 de l'Acte de 1991, il est recommandé de modifier comme suit le paragraphe 2 de l'article 29 de la loi :

“L'administration peut, sous réserve de la sauvegarde des droits d'obtenteur, restreindre dans des limites raisonnables le droit d'obtenteur, en versant une rémunération qui ne sera pas inférieure à celle du marché, à l'égard de toute variété afin de permettre aux agriculteurs d'utiliser à des fins de reproduction ou de multiplication, sur leur propre exploitation, le produit de la récolte qu'ils ont obtenu par la mise en culture, sur leur propre exploitation, de la variété protégée”.

Article 16 de l'Acte de 1991 : Épuisement du droit d'obtenteur

23. L'article 30 de la loi contient des dispositions concernant l'épuisement du droit d'obtenteur qui sont conformes à l'article 16 de l'Acte de 1991.

Article 17 de l'Acte de 1991 : Limitation de l'exercice du droit d'obtenteur

24. Les articles 37 à 41 de la loi contiennent des dispositions sur l'octroi de licences obligatoires.

25. L'article 37 de la loi prévoit l'octroi de licences obligatoires pour des raisons d'intérêt public conformément au paragraphe 1 de l'article 17 de l'Acte de 1991.

26. Le paragraphe 2 de l'article 17 de l'Acte de 1991 requiert que l'"obteneur reçoive une rémunération équitable". À cet égard, l'article 39 de la loi se réfère à la rémunération pour des licences obligatoires et stipule que "[le] titulaire de la licence obligatoire versera au titulaire du droit d'obteneur le montant arrêté par consentement mutuel. En l'absence d'un accord sur le montant à verser et sur la méthode de paiement, le montant de la rémunération sera fixé par le tribunal compétent, compte tenu des circonstances de chaque cas pris individuellement et de la valeur économique de la licence obligatoire". L'article 39 de la loi est en conformité avec l'article 17.2) de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

27. Le chapitre IX de la loi contient des dispositions sur l'inspection et la surveillance qui s'appliquent à la protection des droits d'obteneur de même que des dispositions qui concernent des mesures de réglementation économique. Il sied de noter que l'article 18 de l'Acte de 1991 stipule que :

“Le droit d'obteneur est indépendant des mesures adoptées par une Partie contractante en vue de réglementer sur son territoire la production, le contrôle et la commercialisation du matériel des variétés, ou l'importation et l'exportation de ce matériel. En tout état de cause, ces mesures ne devront pas porter atteinte à l'application des dispositions de la présente Convention”.

28. En ce qui concerne le chapitre IX de la loi, il est recommandé de clarifier dans la loi que les activités des inspecteurs concernant les droits d'obteneur doivent être indépendantes des activités des inspecteurs concernant les mesures de réglementation économique (article 53.3, 4) et 5) et article 54 de la loi).

29. Sous réserve de la recommandation expliquée dans le paragraphe 28 du présent document, la loi ne semble pas contenir de dispositions qui contredisent l'article 18 de l'Acte de 1991.

Article 19 de l'Acte de 1991 : Durée du droit d'obteneur

30. L'article 6 de la loi contient des dispositions sur la durée du droit d'obteneur conformément à l'article 19 de l'Acte de 1991.

Article 20 de l'Acte de 1991 : Dénomination de la variété

31. Les articles 11 à 14 de la loi contiennent des dispositions sur les dénominations des variétés.

32. Pour se conformer aux paragraphes 2 et 7 de l'article 20 de l'Acte de 1991, il est recommandé de modifier comme suit les paragraphes 4 et 6 de l'article 11 de la loi :

“La dénomination d'une variété ne peut se composer uniquement de chiffres sauf lorsque c'est une pratique établie pour désigner des variétés. Elle ne doit pas être susceptible d'induire en erreur ou de prêter à confusion sur les caractéristiques, la valeur ou l'identité de la variété ou sur l'identité de l'obteneur. Elle doit être différente de

toute dénomination qui désigne, sur le territoire des États membres de l'UPOV, une variété existante de la même espèce végétale ou d'une espèce étroitement voisine".

"L'obligation d'utiliser la dénomination de la variété enregistrée n'arrive pas à expiration même après l'expiration de la durée de protection de cette variété dont il est fait mention dans l'article 6 de cette loi, sauf lorsque, conformément aux dispositions du paragraphe 8, des droits antérieurs s'opposent à cette utilisation".

33. Pour se conformer à l'article 30.1)iii) de l'Acte de 1991 concernant l'obligation de publier des renseignements sur les dénominations proposées et de faciliter les observations des membres de l'Union (article 20.6) de l'Acte de 1991), il est recommandé de modifier comme suit le paragraphe 3 de l'article 12 de la loi :

"Une personne intéressée peut, dans les 30 jours qui suivent la date de publication de la dénomination proposée ~~insérer au registre des demandes~~, s'opposer à la dénomination proposée".

34. Pour éviter les répétitions et les incohérences entre l'article 11 et l'article 13 de la loi, il est recommandé d'apporter les modifications suivantes :

"Raisons du rejet de la dénomination proposée"

Article 13

"Le service compétent rejette la proposition de dénomination d'une variété qui :

- 1) ne se prête pas à l'identification d'une variété;
- 2) se compose uniquement de signes ou d'indications qui peuvent servir pour l'indication du type, la qualité, la quantité, l'objectif visé, la valeur, l'origine géographique ou la durée de production d'une variété;
- 3) va à l'encontre de l'article 11 ~~paragraphe 3 et 7~~ de cette loi.
- 4) ~~est identique ou très similaire à une dénomination qui désigne déjà une variété existante de la même espèce ou d'une espèce étroitement voisine;~~
- 5) ~~a des caractéristiques en commun avec d'autres variétés de la même espèce;~~
- 6) ~~montre que la variété est dérivée d'une espèce connue ou voisine.~~

"C'est le Ministère qui définit les espèces végétales voisines".

Article 21 de l'Acte de 1991 : Nullité du droit d'obtenteur

35. L'article 43 de la loi contient des dispositions sur la nullité du droit d'obtenteur en conformité avec l'article 21 de l'Acte de 1991.

Article 22 de l'Acte de 1991 : Déchéance de l'obtenteur

36. L'article 44 de la loi contient des dispositions sur la déchéance du droit d'obtenteur en conformité avec l'article 22 de l'Acte de 1991.

Article 30 de l'Acte de 1991 : Application de la Convention

37. En ce qui concerne l'obligation de "prendre toutes les mesures nécessaires pour l'application de la présente Convention, et notamment" de "prévoir les recours légaux appropriés permettant de défendre efficacement les droits d'obtenteur" (alinéa i) de l'article 30.1) de l'Acte de 1991), la loi prévoit ce qui suit :

a) Les articles 46 à 51 de la loi se réfèrent aux actions et recours civils disponibles pour appliquer les droits d'obtenteur; et

b) Les articles 55 et 56 de la loi prévoient des sanctions administratives et des amendes en cas de non-respect de certaines obligations requises par la loi : obligation d'utiliser la dénomination, fourniture de matériel de reproduction ou de multiplication et maintien de la variété protégée.

38. Le paragraphe 1 de l'article 23 de la loi stipule que "[sur la] base des résultats de l'examen, le service compétent prend une décision sur la protection de la variété ou le rejet de la demande de protection de la variété, selon qu'il convient"; la loi est donc conforme à l'obligation requise par l'article 30.1)ii) de l'Acte de 1991. Le service compétent relève du Ministère de l'agriculture (voir le paragraphe 3 de l'article 8 de la loi).

39. Le paragraphe 9 de l'article 23 de la loi stipule que "[les] données sur la protection d'une variété, y compris la dénomination de la variété et les données sur l'obtenteur, le titulaire du droit et son principal établissement ou domicile, selon qu'il convient, sont publiées dans le 'Journal officiel de la République du Monténégro', dans les 30 jours qui suivent la date d'inscription au registre des variétés protégées". Cette disposition est conforme à l'obligation de publier des renseignements sur la délivrance des droits d'obtenteur et sur les dénominations approuvées comme le requiert l'article 30.1)iii) de l'Acte de 1991.

40. L'article 25 de la loi stipule que "[toute] personne intéressée qui juge que le demandeur n'est pas habilité à recevoir le droit d'obtenteur, qu'il n'a pas le droit de priorité ou que les conditions de la protection d'une variété en vertu de cette loi n'ont pas été respectées, peut déposer plainte auprès du Ministère concernant l'inscription de la demande au registre des demandes ou l'inscription de la variété au registre des variétés protégées dans les 30 jours qui suivent la date de publication des données sur l'inscription". Cette disposition est conforme à l'obligation de publier des renseignements sur les demandes et les délivrances de droits d'obtenteur comme le requiert l'article 30.1)iii) de l'Acte de 1991.

41. Comme recommandé dans la modification apportée à l'article 12 de la loi (voir paragraphe 33 du présent document), la publication de dénominations proposées comme le requiert l'article 30.1)iii) de l'Acte de 1991, permet aux parties intéressées de faire opposition et aux membres de l'Union de faire des observations (article 20.6) de l'Acte de 1991).

Conclusion générale

42. De l'avis du Bureau de l'Union, la loi incorpore la plupart des dispositions de l'Acte de 1991. Dès que les modifications recommandées et les dispositions manquantes y auront été incorporées (voir paragraphes 11, 15, 17, 18, 21, 22, 28, 32, 33 et 34 du présent document), le Monténégro sera en mesure de "donner effet" aux dispositions de l'Acte de 1991 comme le requiert son article 30.2).

43. *Le Conseil est invité à :*

a) *prendre note des renseignements donnés ci-dessus;*

b) *sous réserve de l'incorporation des dispositions additionnelles et des modifications à la loi, telles qu'elles figurent dans le présent document, se prononcer en faveur de la conformité de la loi sur la protection des obtentions végétales de la République du Monténégro avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales; dès que ces dispositions additionnelles et les modifications auront été incorporées dans la loi, à la satisfaction du Bureau de l'Union, en consultation avec le Président du Conseil, la République du Monténégro pourra déposer son instrument d'adhésion à l'Acte de 1991;*

c) *demander au Bureau de l'Union qu'il offre au Gouvernement de la République du Monténégro son assistance pour rédiger les dispositions additionnelles nécessaires et les modifications qu'il convient d'apporter à la loi; et*

d) *autoriser le Secrétaire général à informer le Gouvernement de la République du Monténégro de cette décision.*

[Les annexes suivent]

ANNEXE I

Lettre du Ministre de l'agriculture, de la sylviculture et de l'hydrologie
de la République du Monténégro au Secrétaire général de l'UPOV

Traduction d'une lettre datée du 11 septembre 2007 (référence n° 320/07-0202-6399)

adressée par : Le Ministre de l'agriculture, de la sylviculture et de
l'hydrologie de la République du Monténégro

à : M. le Secrétaire général de l'UPOV

Monsieur le Secrétaire général,

J'ai l'honneur de vous informer que le 24 juillet 2007 le Parlement du Monténégro a adopté la loi sur la protection des obtentions végétales.

Le Monténégro envisage d'adhérer à la Convention internationale pour la protection des obtentions végétales du 2 décembre 1961, révisée à Genève le 10 novembre 1972, le 23 octobre 1978 et le 19 mars 1991 (Convention UPOV). Conformément aux dispositions de l'article 34.3) de la Convention UPOV, je vous saurais gré de faire en sorte que le Conseil de l'UPOV puisse examiner la conformité de la loi du Monténégro avec les dispositions de la Convention UPOV.

Veillez agréer,...

(Signé :)
Milutin Simovic, MSc

Pièce jointe : Traduction officielle de la loi sur la protection des obtentions végétales dans une des langues de l'UPOV (anglais).

[L'annexe II suit]

ANNEXE II

Traduction d'une lettre datée du 12 octobre 2007 (référence n° 320/07-0202-6399/3)

adressée par : Le Ministre de l'agriculture, de la sylviculture et de l'hydrologie de la République du Monténégro

à : M. le Secrétaire général de l'UPOV

Monsieur le Secrétaire général,

Me référant à la lettre datée du 1^{er} octobre 2007 de Monsieur Rolf Jördens, secrétaire général adjoint de l'Union internationale pour la protection des obtentions végétales (UPOV), veuillez trouver en pièce jointe à la présente la vérification de la traduction en anglais de certaines dispositions de la "loi sur la protection des obtentions végétales" (ci-après appelée la loi) que le Parlement de la République du Monténégro a adoptée le 24 juillet 2007.

Veuillez agréer,...

(Signé :)
Milutin Simovic, MSc

Pièce jointe : Vérification de la traduction en anglais de certaines dispositions de la "loi sur la protection des obtentions végétales"

[En anglais uniquement]

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

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

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

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

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

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

LAW ON PROTECTION OF PLANT VARIETIES

I GENERAL PROVISIONS

Scope of the Law

Article 1

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

This Law shall apply to all plant genera and species.

Article 2

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

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

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

Foreign Persons' Rights

Article 3

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

Article 4

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

II VARIETY PROTECTION

1. CONDITIONS AND PERIOD

Conditions

Article 5

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

Period of protection

Article 6

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

2. NEW VARIETY

Article 7

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

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

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

3. DISTINCTNESS

Article 8

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

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

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

4. UNIFORMITY

Article 9

The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

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

5. STABILITY

Article 10

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

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

6. VARIETY DENOMINATION

Variety

Article 11

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

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

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

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

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

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

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

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

Denomination Proposal

Article 12

The applicant shall propose a variety denomination in his application.

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

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

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

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

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

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

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

Reasons for rejection of the denomination proposed

Article 13

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

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

Closely related plant species are laid down by the Ministry.

Denomination cancellation

Article 14

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

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

III VARIETY PROTECTION PROCEDURE

1. APPLICATION

Article 15

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

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

Additional information

Article 16

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

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

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

Examination of the application

Article 17

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

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

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

Entry into the Register of Applications

Article 18

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

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

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

2. RIGHT OF PRIORITY

Article 19

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

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

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

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

3. VARIETY EXAMINATION

Examination

Article 20

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

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

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

Examiner

Article 21

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

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

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

Processing examination results

Article 22

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

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

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

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

Article 23

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

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

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

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

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

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

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

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

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

Data availability and confidentiality

Article 24

Any interested person may peruse the following:

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

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

5. APPEAL

Right of appeal

Article 25

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

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

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

Decision on complaint to the entry into the Register of Applications

Article 26

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

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

Opposition to registration in the Register of Protected Varieties

Article 27

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

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

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

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

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

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

IV THE RIGHTS AND OBLIGATIONS OF THE BREEDER

1. RIGHTS

Scope of the breeder's right

Article 28

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

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

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

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

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

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

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

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

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

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

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

Exceptions to the breeder's right

Article 29

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

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

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

Exhaustion of the breeder's right

Article 30

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

Provisional protection

Article 31

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

Several breeders, breeder and employer

Article 32

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

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

2. OBLIGATIONS

Maintenance of the protected variety

Article 33

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

Monitoring of variety maintenance

Article 34

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

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

Providing variety samples

Article 35

At the request of the competent authority, the holder of a breeder's right shall be under an obligation to make available appropriate quantity of samples of the propagating material or hereditary components of the protected variety for the purpose of establishing or renewing the variety sample or comparative examination for the purpose of protection of other varieties.

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

V LICENCES

Transfer of the breeder's right

Article 36

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

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

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

Compulsory licence

Article 37

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

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

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

Deadline for requesting the compulsory licence

Article 38

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

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

The fee for compulsory licence

Article 39

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

Scope and duration of the compulsory licence

Article 40

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

The compulsory licence may not be preclusive.

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

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

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

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

Obligation of supply of propagating material

Article 41

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

VI TERMINATION OF BREEDER'S RIGHT

Reasons for termination of breeder's right

Article 42

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

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

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

Nullity

Article 43

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

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

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

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

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

Cancellation of the decision

Article 44

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

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

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

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

VII COSTS

Article 45

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

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

VIII CIVIL LAW PROTECTION

Article 46

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

- 1) Ascertaining of infringement of the breeder's right;
- 2) Prohibition of actions infringing the breeder's right;
- 3) Damages for the damage done through infringement of the breeder's right, including the actual damage, lost profit and just expenditures incurred by legal representation in legal proceedings;
- 4) Publicising of the court decision at the expense of the respondent;
- 5) Forfeiture or destruction, without compensation, the items and equipment prevalingly used for infringement of the breeder's right;
- 6) Forfeiture or destruction, without compensation, the products produced in the course of infringement of the breeder's right.

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

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

Statute of limitations

Article 47

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

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

Relief

Article 48

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

Securing evidence

Article 49

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

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

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

Proposal for relief

Article 50

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

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

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

Respondent's obligation to present information

Article 51

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

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

IX INSPECTION AND SURVEILLANCE

Article 52

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

1. Authority of a phytosanitary inspector

Article 53

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

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

2. Administrative measures and actions

Article 54

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

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

X PENAL PROVISIONS

Article 55

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

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

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

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

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

Article 56

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

- 1) At the request of the competent authority it fails to supply the adequate quantity of propagating material or hereditary components of the protected variety for the purpose of establishing or renewing the variety sample or for the purpose of comparative examination for the purpose of protection of other varieties or when it fails to maintain or keep the sample for the needs of the competent authority (Article 35);
- 2) Failing to present to the competent authority the contract on licence for the purpose of entry in the Register of Protected Varieties (Article 36 paragraph 3);
- 3) At the request of the competent authority fails to supply to the person to whom the compulsory licence was granted the appropriate quantity of propagating material necessary for use of the compulsory licence (Article 41).

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

XI TRANSITIONAL AND FINAL PROVISIONS

Protection of renowned varieties

Article 57

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

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

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

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

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

When the breeder's right is granted in line with the provision of the paragraph 1 of this Article, the holder of the right is under obligation to yield the licence under reasonable terms in order to provide for conscientious use of the variety that the third person began in good faith prior to filing the application for the grant of the right in line with the provision of the paragraph 1 of this Article.

Article 58

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

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

Article 59

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

Entering into force

Article 60

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

[Fin de l'annexe II et du document]