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# PLANT VARIETY PROTECTION

Gazette and Newsletter  
of the International Union  
for the Protection of  
New Varieties of Plants  
(UPOV)



UPOV

No. 86  
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The International Union for the Protection of New Varieties of Plants (UPOV)—an international organization established by the International Convention for the Protection of New Varieties of Plants—is the international forum for States interested in plant variety protection. Its main objective is to promote the protection of the interests of plant breeders—for their benefit and for the benefit of agriculture and thus also of the community at large—in accordance with uniform and clearly defined principles.

*Plant Variety Protection* is a UPOV publication that reports on national and international events in its field of competence and in related areas. It is published in English only—although some items are quadrilingual (English, French, German and Spanish)—at irregular intervals, usually at a rate of four issues a year. Requests for addition to the mailing list may be placed with:

UPOV

**International Union for the Protection of New Varieties of Plants (UPOV)  
34, chemin des Colombettes, PO Box 18, CH-1211 Geneva 20, Switzerland**

**Telephone: +(41-22)-338 9111 - Telefax: +(41-22)-733 0336  
e-mail: [upov.mail@wipo.int](mailto:upov.mail@wipo.int)**

The picture on the front cover shows the species  
*Erythrina lysistemon*,  
painted by Mrs. Elise Buitendag (South Africa)

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# GAZETTE

## EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES

### AUSTRIA

By virtue of Decree No. 470 of December 30, 1998, of the Federal Minister for Agriculture and Forestry amending the Decrees Nos. 455/1994 and 426/1995, protection was extended to further genera and species with effect from February 1, 1999. The list of species and genera to which protection

is extended is reproduced below as it appears in the Decree (the Latin names and German common names appear in the Decree, whereas the English, French and Spanish common names have been added, without guarantee of concordance, by the Office of the Union)

Latin	English	Français	Deutsch	Español
<i>Agrostis canina</i> L.	Velvet Bent	Agrostis des chiens	Hundsstraußgras	Agróstide canina, Agróstide de perro, Agróstide perruna
<i>Agrostis capillaris</i> L.	Brown Top, Common Bent	Agrostide commune	Rotes Straußgras	Agróstide común
<i>Agrostis gigantea</i> Roth.	Red Top (Black Bent)	Agrostide blanche, Agrostide géante	Weißes Straußgras, Fioringras	Agróstide blanca, Pastoquilla
<i>Agrostis stolonifera</i> L.	Creeping Bent	Agrostide blanche, Agrostide stolonifère	Flechstraußgras	Agróstide estolonifera
<i>Allium cepa</i> L.	Onion	Oignon	Zwiebel	Cebolla
<i>Alopecurus pratensis</i> L.	Meadow Foxtail	Vulpin des prés	Wiesenfuchschwanz	Alopecuro, Cola de zorra, Vulpino
<i>Apium graveolens</i> L. v. <i>rapaceum</i>	Celeriac	Céler-rave	Knollensellerie	Apio nabo, Apirrábano
<i>Arrhenatherum elatius</i> L.	Tall Oatgrass, False Oatgrass	Fromental, Avoine élevée	Glatthafer	Avena alta, Avena elevada, Fromental
<i>Brassica oleracea</i> L. cv. <i>capitata</i> (L.) Alef. v. <i>alba</i> DC.	White Cabbage	Chou cabus	Weißkohl, Weißkraut	Repollo blanco
<i>Brassica oleracea</i> L. cv. <i>capitata</i> (L.) Alef. v. <i>rubra</i> DC.	Red Cabbage	Chou rouge	Rotkohl, Rotkraut	Lombarda
<i>Brassica oleracea</i> L. cv. <i>capitata</i> (L.) Alef. V. <i>sabauda</i> L.	Savoy Cabbage	Chou de Milan	Wirsing, Kohl	Col de Milán
<i>Cucumis sativus</i> L.	Cucumber, Gherkin	Concombre, Cornichon	Gurke	Pepino, Cohombro

Latin	English	Français	Deutsch	Español
<i>Cucurbita pepo</i> L.	Pumpkin, Marrow, Courgette, Vegetable Marrow	Courge, Courgette, Pâtisson, Citrouille	Kürbis einschließlich Ölkürbis	Calabacín
<i>Dactylis glomerata</i> L.	Cocksfoot, Orchard Grass	Dactyle	Knaulgras	Dactilo
<i>Daucus carota</i> L.	Carrot	Carotte	Möhre, Karotte	Zanahoria
<i>Fagopyrum esculentum</i> Moench.	Buckwheat	Sarrasin, Blé noir	Buchweizen	Alforfón
<i>Festuca arundinacea</i> Schreb.	Tall Fescue	Fétuque élevée	Rohrschwengel	Cañuela alta, Festuca alta
<i>Festuca ovina</i> L. <i>sensu lato</i>	Hard Fescue, Sheep's Fescue	Fétuque durette, Fétuque ovine, Fétuque des moutons, Poil de chien	Schafschwengel	Cañuela de oveja, Cañuela ovina, Festuca ovina
<i>Lactuca sativa</i> L.	Lettuce	Laitue	Salat	Lechuga
<i>Linum usitatissimum</i> L.	Flax, Linseed	Lin	Lein	Lino
<i>Lolium multiflorum</i> Lam. ssp. <i>alternativum</i>	Westerwold Ryegrass	Ray-grass de Westerwold	Italienisches Raygras, Welsches Weidelgras	Ballico de Westerworld, Raygrás de Westerwold
<i>Lolium multiflorum</i> Lam. ssp. <i>non alternativum</i>	Italian Ryegrass	Ray-grass d'Italie	Welsches Weidelgras, Italienisches Raygras	Ballico italiano, Raygrás italiano
<i>Lolium perenne</i> L.	Perennial Ryegrass	Ray-gras anglais	Englisches Raygras, Deutsches Weidelgras	Ballico perenne, Raygrás inglés
<i>Lolium x boucheanum</i> Kunth	Hybrid Ryegrass	Ray-grass hybride	Bastardweidel- gras, Bastard raygras	Ballico híbrido, Raygrás híbrido
<i>Lycopersicon lycopersicum</i> (L.) Karst. ex Farwell	Tomato	Tomate	Tomate	Tomate
<i>Medicago sativa</i> L.	Lucerne, Alfalfa	Luzerne (cultivée)	Luzerne	Alfalfa, Mielga
<i>Panicum miliaceum</i> L.	Common Millet	Millet commun, Panic millet, Panic faux millet	Rispenhirse	Mijo común
<i>Papaver somniferum</i> L.	Opium Poppy	Oeillette, Pavot	Mohn	Adormidera, Amapola
<i>Phaseolus coccineus</i> L.	Runner Bean, Kidney Bean	Haricot d'Espagne	Prunkbohne, Feuerbohne	Judía de España, Judía escarlata
<i>Phaseolus vulgaris</i> L.	French Bean	Haricot	Gartenbohne	Judía común, Alubia, Poroto
<i>Phleum pratense</i> L.	Timothy	Fléole des prés	Wiesensiesch- gras, Timothe	Fleo de los prados
<i>Poa alpina</i> L.	Alpine Meadow Grass	Pâturin aplin	Alpenrispengras	Poa alpina

Latin	English	Français	Deutsch	Español
<i>Poa annua</i> L.	Annual Meadow Grass	Pâturin annuel	Einjähriges Rispe	Poa annual
<i>Poa nemoralis</i> L.	Wood Meadow Grass	Pâturin des bois	Hainrispe	Poa de los bosques
<i>Poa palustris</i> L.	Swamp Meadow Grass	Pâturin des marais	Sumpfrispe	Poa de los pantanos
<i>Poa pratensis</i> L.	Kentucky Bluegrass, Smooth Stalked Meadow Grass	Pâturin des prés	Wiesenrispe	Poa de los prados
<i>Poa trivialis</i> L.	Rough Stalked Meadow Grass	Pâturin commun	Gemeines Rispe	Poa común
<i>Sinapis alba</i> L.	White Mustard	Moutarde blanche	Weißer Senf, Gelbsenf	Mostaza blanca
<i>Trifolium alexandrinum</i> L.	Berseem Clover	Trèfle d'Alexandrie, Bersin	Alexandrin- klee	Trébol de Alejandría, Bersim
<i>Trifolium hybridum</i> L.	Alsike Clover	Trèfle hybride	Schwedenklee	Trébol híbrido
<i>Trifolium incarnatum</i> L.	Crimson Clover	Trèfle incarnat	Inkarnatklee	Trébol encarnado
<i>Trifolium pratense</i> L.	Red Clover	Trèfle violet	Rotklee	Trébol violeta
<i>Trifolium repens</i> L.	White Clover	Trèfle blanc	Weißklee	Trébol blanco
<i>Trifolium resupinatum</i> L.	Persian Clover	Trèfle de Perse	Persischer Klee	Trébol de Persia
<i>Trisetum flavescens</i> (L.) P. Beauv.	Golden Oatgrass	Avoine jaunâtre	Goldhafer	Avena amarilla
<i>Triticum spelta</i> L.	Spelt	Épeautre	Spelz, Dinkel	Espelta
<i>Vicia sativa</i> L.	Common Vetch	Vesce commune	Saatwicke	Veza común

## UKRAINE

By virtue of Decree No. 2085 of December 28, 1998, of the Cabinet of Ministers of Ukraine, protection was extended to further genera and species. The list of species and genera to which protection is available is reproduced below (the

Latin names have been communicated by the Ukrainian Authorities, whereas the English, French, German and Spanish common names have been added, without guarantee of concordance, by the Office of the Union):

Latin	English	Français	Deutsch	Español
<i>Beta vulgaris</i> L. ssp. <i>vulgaris</i> var. <i>altissima</i> Doell.	Sugar Beet	Betterave sucrière	Zuckerrübe	Remolacha azucarera
<i>Beta vulgaris</i> L. ssp. <i>vulgaris</i> var. <i>conditiva</i> Alef.	Garden Beet, Beetroot	Betterave rouge, Betterave potagère	Rote Bete, Rote Rübe	Remolacha roja, Remolacha de mesa
<i>Brassica oleracea</i> L. var. <i>capitata</i> L. f. <i>alba</i> DC.	White Cabbage	Chou cabus	Weißkohl, Weißkraut	Repollo blanco
<i>Helianthus annuus</i> L.	Common Sunflower	Tournesol, Soleil	Sonnenblume	Girasol
<i>Hordeum vulgare</i> L. <i>sensu lato</i>	Barley	Orge	Gerste	Cebada
<i>Secale cereale</i> L.	Rye	Seigle	Roggen	Centeno
<i>Solanum tuberosum</i> L.	Potato	Pomme de terre	Kartoffel	Papas, Patatas
<i>Triticum durum</i> Desf.	Durum Wheat, Macaroni Wheat, Hard Wheat	Blé dur	Hartweizen	Trigo duro
<i>Triticum aestivum</i> L. emend. Fiori et Paol	Wheat, Soft Wheat, Bread Wheat	Blé tendre, Froment	Weichweizen	Trigo blando
<i>Zea mays</i>	Corn, Maize	Maïs	Mais	Maiz



## NEWSLETTER

### THE THIRTY-THIRD ORDINARY SESSION OF THE COUNCIL

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its thirty-third ordinary session in Geneva on October 20, 1999, under the chairmanship of Mr. Ryusuke Yoshimura (Japan).

2. The Council examined the conformity of the legislation of the States mentioned below which had submitted a request for such an examination under Article 34(3) of the 1991 Act of the UPOV Convention.

3. The Council decided

(a) to advise the Government of Lithuania that its Law, being based upon the principles of the 1978 Act of the Convention, did not incorporate some important provisions of the Convention;

(b) to request the Office of the Union to offer its assistance to the Government of Lithuania in drafting the necessary amendments to the Law;

(c) to further advise the Government of Lithuania that upon the adoption of the necessary amendments to the satisfaction of the Office of the Union and the making of implementing regulations, it may deposit an instrument of accession to the Convention.

4. The Council decided

(a) to advise the Government of Tajikistan that its Law, after the adoption of suitable regulations, provided the basis for an Act conforming with the Convention, and that it may deposit an instrument of accession to the Convention after making such regulations;

(b) to further advise the Government of Tajikistan that it may wish to correct the minor deviations and inconsistencies described in document C/33/14 at the earliest opportunity;

(c) to request the Office of the Union to offer its assistance to the Government of Tajikistan for the

drafting of any regulations and the correction of the Law.

5. The Council decided to

(a) advise the Government of the Republic of Korea that its Law in its main provisions incorporated the substance of the Convention, and that it may deposit an instrument of accession to the Convention;

(b) further advise the Government of the Republic of Korea that it may wish to correct the deviations and inconsistencies described in document C/33/15 at the earliest opportunity;

(c) request the Office of the Union to offer its assistance to the Government of the Republic of Korea in the preparation of a revised translation into one or more of the official languages.

6. The Council decided to

a) advise the Government of Egypt that its Draft Decree when supplemented by provisions designed to satisfy the matters referred to in paragraphs 12 and 22 of document C/33/16 provided a basis for a law conforming with the 1991 Act;

b) request the Office of the Union to offer its assistance to the Government of Egypt in respect of the minor additional provisions that were necessary to achieve conformity;

c) to further advise the Government of Egypt that after the making of a Decree based upon the Draft Decree and incorporating the suggestions set out in paragraphs 12 and 22 of document C/33/16, it may deposit an instrument of accession to the 1991 Act.

7. On the basis of a recommendation by the Consultative Committee, the Council unanimously decided

(a) to reconfirm its decision, taken on April 29, 1997, to allow certain States to deposit an instrument of accession to the 1978 Act at any time prior to the first anniversary of the coming into force of the 1991 Act, and

(b) to authorize the Secretary-General, after consultation with the President of the Council, to accept instruments of accession to the 1978 Act by India, Nicaragua and Zimbabwe provided that the depositing State had, in the opinion of the Secretary-General after consultation with the President of the Council, acted expeditiously to complete its legislation and any UPOV formalities and to effect the deposit.

8. The Council approved the report by the Secretary-General on the activities of the Union in 1998, given in document C/33/2, and noted the report on activities during the first nine months of 1999, given in document C/33/3.

9. The Council expressed appreciation to the Office of the Union for the work carried out.

10. The Council noted the work of the Administrative and Legal Committee as described in document C/33/9 and in the oral report given by its Chairman, Mr. John Carvill (Ireland).

11. The Council noted the work of the Technical Committee and the Technical Working Parties as given in document C/33/10 and its addendum, and approved the programs of work for the forthcoming sessions.

12. The Council unanimously adopted the program and budget for the 2000-2001 biennium, and the scale of contributions of member States, as proposed in documents C/33/4 and C/33/4 Add. with a correction.

13. The Council also decided that the contribution unit should remain at 53,641 Swiss francs for the years 2000 and 2001 even if additional contributions were received.

14. The Council unanimously decided to renew the designation of Switzerland as auditor of the accounts of UPOV up to and including the year 2003. It expressed its gratitude to the Swiss Authorities for their assistance.

15. The Council established the calendar of meetings in 2000 as reproduced in Annex III to this document.

16. The Council elected, in each case for a term of three years ending with the thirty-sixth ordinary session of the Council, in 2002:

(a) Mr. Wieslaw Pilarczyk (Poland) Chairman of the Technical Working Party on Automation and Computer Programs;

(b) Mr. Josef Harsanyi (Hungary) Chairman of the Technical Working Party for Fruit Crops;

(c) Ms. Elizabeth Scott (United Kingdom) Chairman of the Technical Working Party for Ornamental Plants and Forest Trees;

(d) Mrs. Julia Borys (Poland) Chairman of the Technical Working Party for Vegetables.

17. The Council expressed its appreciation to the outgoing Chairmen, Mr. Joost Barendrecht (Netherlands), Mr. Chris Barnaby (New Zealand), Mr. Baruch Bar-Tel (Israel) and Mr. John Law (United Kingdom) for the work carried out during their terms.

PLANT VARIETY PROTECTION STATISTICS FROM 1994 TO 1998

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in reference year	Titles in force at end of reference year
			Residents	Non-residents	Total	Residents	Non-residents	Total		
AR	Argentina	1994	109	232	341	93	101	194	94	620
		1995	124	57	181	52	28	80	9	691
		1996	69	76	145	55	28	83	19	755
		1997	97	128	225	81	90	171	73	853
		1998	98	141	239	69	90	159	21	991
AT	Austria	1994	11	4	15	2	-	2	9	164
		1995	18	4	22	21	3	24	6	182
		1996	4	12	16	11	11	22	15	189
		1997	9	10	19	15	1	16	13	176 *
		1998	17	-	17	17	-	17	25	168
AU	Australia	1994	-	-	-	-	-	-	-	-
		1995	142	170	312	51	63	114	24	480
		1996	137	154	291	119	72	191	23	648
		1997	189	158	347	114	150	264	106	803 *
		1998	107	115	222	95	123	218	74	947
BE	Belgium	1994	39	133	172	42	206	248	72	623
		1995	35	68	103	52	245	297	96	824
		1996	12	12	24	11	22	33	144	713
		1997	25	28	53	-	-	-	177	536
		1998	11	15	26	-	-	-	86	450

\* as amended in their notification



State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in reference year	Titles in force at end of reference year	
		Residents	Non-residents	Total	Residents	Non-residents	Total			
BG	Bulgaria	1998	42	2	44	67	-	67	-	67
BO	Bolivia	1996	3	1	4	-	-	-	-	-
		1997	1	9	10	3	1	4	-	4
		1998	-	7	7	-	-	-	-	4
BR	Brazil	1998	101	20	121	63	-	63	-	63
CA	Canada	1994	67	114	181	13	60	73	-	124
		1995	66	199	265	15	68	83	4	203
		1996	99	162	261	10	71	81	27	257
		1997	73	143	216	41	91	132	83	306
		1998	62	296	358	53	92	145	26	425
CH	Switzerland	1994	6	134	140	9	95	104	44	549
		1995	18	95	113	9	99	108	53	604
		1996	15	98	113	4	110	114	63	655
		1997	23	56	79	19	68	87	47	695
		1998	10	63	73	8	67	75	52	718
CL	Chile	1994	11	28	39	11	7	18	28	168
		1995	11	44	55	7	66	73	14	227
		1996	16	13	29	7	15	22	10	239
		1997	6	7	13	10	6	16	20	235
		1998	15	108	123	7	26	33	46	222

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in reference year	Titles in force at end of reference year
			Residents	Non-residents	Total	Residents	Non-residents	Total		
CO	Colombia	1995	1	-	1	-	-	-	-	-
		1996	7	285	292	-	-	-	-	-
		1997	5	26	31	3	156	159	2	157
		1998	-	95	95	2	48	50	1	206
CZ	Czech Republic	1994	71	49	120	59	33	92	-	92
		1995	64	48	112	125	68	193	2	283
		1996	47	38	85	53	19	72	-	355
		1997	40	71	111	57	23	80	16	419
		1998	31	65	96	53	33	86	39	466
DE	Germany	1994	708	383	1,091	430	311	741	493	4,393
		1995	413	183	596	555	325	880	654	4,619
		1996	419	115	534	320	215	535	799	4,355
		1997	364	70	434	299	111	410	737	4,028
		1998	354	66	420	260	49	309	607	3,730
DK	Denmark	1994	85	217	302	62	192	254	186	1,375
		1995	27	70	97	63	159	222	177	1,420
		1996	26	27	53	52	66	118	223	1,315
		1997	11	23	34	12	20	32	332	1,015
		1998	11	21	32	17	38	55	174	896
EC	Ecuador	1996	-	264	264	-	-	-	-	-
		1997	1	29	30	-	-	-	-	-
		1998	-	99	99	-	193	193	-	193

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in reference year	Titles in force at end of reference year
			Residents	Non-residents	Total	Residents	Non-residents	Total		
ES	Spain	1994	83	130	213	96	210	306	218	980
		1995	50	66	116	-	-	-	6	974
		1996	46	42	88	59	175	234	97	1,111
		1997	62	52	114	-	-	-	5	1,106
		1998	48	28	76	-	-	-	76	1,030
FI	Finland	1994	14	43	57	6	14	20	-	20
		1995	9	42	51	12	15	27	1	46
		1996	13	7	20	6	57	63	21	45 *
		1997	6	9	15	6	9	15	-	60
		1998	10	2	12	-	3	3	-	63
FR	France	1994	601	265	866	910	643	1,553	398	4,558
		1995	513	163	676	542	277	819	537	4,840
		1996	483	121	604	426	160	586	723	4,703
		1997	553	60	613	594	154	748	792	4,659
		1998	558	68	626	495	125	620	563	4,716
GB	United Kingdom	1994	280	302	582	200	219	419	261	2,135 *
		1995	165	157	322	113	227	340	232	2,243
		1996	150	106	256	148	130	278	364	2,157
		1997	219	120	339	115	74	189	362	1,981 *
		1998	132	106	238	97	42	139	274	1,846
HU	Hungary	1994	35	38	73	15	36	51	47	273
		1995	76	93	169	20	37	57	28	302
		1996	36	40	76	14	1	15	36	281
		1997	26	78	104	36	22	58	25	314
		1998	29	135	164	31	36	67	31	350

\* as amended in their notification

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in reference year	Titles in force at end of reference year
			Residents	Non-residents	Total	Residents	Non-residents	Total		
IE	Ireland	1994	5	22	27	2	35	37	15	22
		1995	1	12	13	5	24	29	12	39
		1996	5	6	11	3	9	12	16	140 *
		1997	2	6	8	3	4	7	12	135
		1998	2	3	5	1	1	2	12	125
IL	Israel	1994	33	113	146	70	161	231	46	923
		1995	72	94	166	58	85	143	58	1,008
		1996	67	147	214	47	57	104	61	1,051
		1997	41	141	182	35	118	153	116	1,088
		1998	40	103	143	18	123	141	115	1,114
IT	Italy	1994	115	183	298	-	-	115	-	-
		1995	-	-	-	-	-	-	-	-
		1996	60	44	104	-	-	122	101	-
		1997	72	23	95	55	25	80	-	-
		1998	67	20	87	59	54	113	-	-
JP	Japan	1994	678	279	957	336	83	419	186	2,919 *
		1995	766	213	979	507	91	598	278	3,239 *
		1996	736	203	939	426	51	477	447	3,269
		1997	818	236	1,054	559	159	718	446	3,541
		1998	793	241	1,034	869	148	1,017	487	4,071
KE	Kenya	1998	42	33	75	-	-	-	-	-
MX	Mexico	1997	69	96	165	-	-	-	-	-
		1998	19	41	60	-	-	-	-	-

\* as amended in their notification

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in reference year	Titles in force at end of reference year
			Residents	Non-residents	Total	Residents	Non-residents	Total		
NL	Netherlands	1994	991	550	1,541	569	379	948	833	4,761
		1995	945	238	1,183	691	359	1,050	750	5,061
		1996	817	188	1,005	798	333	1,131	861	5,331
		1997	635	138	773	636	140	776	1,063	5,044
		1998	740	153	893	632	119	751	833	4,962
NO	Norway	1994	9	49	58	-	-	-	-	-
		1995	11	34	45	4	56	60	-	60
		1996	6	20	26	1	29	30	-	90
		1997	18	36	54	11	10	21	10	101
		1998	2	55	57	5	49	54	5	150
NZ	New Zealand	1994	79	102	181	29	88	117	30	650
		1995	79	78	157	38	103	141	35	756
		1996	94	93	187	68	64	132	29	859
		1997	84	111	195	60	72	132	60	931
		1998	69	75	144	62	88	150	84	997
PL	Poland	1994	112	166	278	64	89	153	44	530
		1995	99	177	276	83	115	198	53	675
		1996	96	176	272	53	46	99	142	632
		1997	105	211	316	39	96	135	94	673
		1998	78	305	383	81	222	303	33	943
PT	Portugal	1994	1	18	19	-	3	3	-	3
		1995	-	3	3	-	-	1	-	9
		1996	1	6	7	-	-	-	1	8 *
		1997	2	-	2	3	9	12	3	17
		1998	2	-	2	2	15	17	2	32
PY	Paraguay	1997	2	4	6	2	-	2	-	2
		1998	-	3	3	-	-	-	-	2

\* as amended in their notification



	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in reference year	Titles in force at end of reference year
			Residents	Non-residents	Total	Residents	Non-residents	Total		
RU	Russian Federation	1994	19	2	21	-	-	-	-	-
		1995	63	-	63	-	-	-	-	-
		1996	109	4	113	3	-	3	-	3
		1997	301	14	315	40	-	40	-	43
		1998	228	10	238	214	2	216	-	259
SE	Sweden	1994	55	99	154	20	34	54	39	386
		1995	53	28	81	14	66	80	34	432
		1996	34	10	44	17	40	57	54	435
		1997	61	7	68	25	14	39	119	355
		1998	37	6	43	19	3	22	55	322
SI	Slovenia	1995	10	2	12	-	-	-	-	-
		1996	12	23	35	-	-	-	-	-
		1997	1	30	31	2	-	2	-	2
		1998	6	9	15	6	42	48	-	50
SK	Slovakia	1994	14	14	28	31	16	47	4	43
		1995	-	-	-	-	-	-	-	-
		1996	41	24	65	89	91	180	18	162 *
		1997	15	51	66	-	-	-	-	162
		1998	14	55	69	5	-	5	8	159
UA	Ukraine	1997	10	6	16	-	-	-	-	-
		1998	5	-	5	-	-	-	-	-
US	United States of America	1994	276	19	295	201	7	208	121	87
		1995	-	-	352	-	-	215	70	2,995 *
		1996	346	40	386	179	13	192	87	3,100
		1997	345	55	400	167	20	187	141	3,146 *
		1998	406	53	459	66	2	68	7	3,207

\* as amended in their notification

	State	Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in reference year	Titles in force at end of reference year
			Residents	Non-residents	Total	Residents	Non-residents	Total		
US	<u>Plant Patent Act</u> B	1994	231	228	459	283	216	499	173	4,839
		1995	232	220	452	201	186	387	186	5,040
		1996	331	334	665	183	179	362	131	5,271
		1997	264	357	621	230	164	394	117	5,548
		1998	346	374	720	245	316	561	183	5,926
UY	Uruguay	1995	-	-	-	-	-	-	-	27
		1996	13	6	19	10	7	17	6	38
		1997	3	17	20	12	1	13	-	49 *
		1998	7	4	11	9	14	23	-	72
ZA	South Africa	1994	76	164	240	53	31	84	90	785
		1995	64	141	205	76	164	240	41	984
		1996	82	126	208	62	106	168	48	1,104
		1997	60	157	217	68	147	215	65	1,276 *
		1998	78	192	270	65	124	189	29	1,436
CPVO	Community Plant Variety	1995	2,809	366	3,175	-	-	-	-	-
		1996	1,209	169	1,378	1,317	135	1,452	-	1,459 *
		1997	1,291	237	1,528	-	-	1,012	81	2,240 *
		1998	1,549	286	1,835	1,365	126	1,491	179	3,552
<b>TOTAL</b>		1994	4,814	4,080	8,894	3,606	3,269	6,990	3,431	32,022
		1995	6,936	3,065	10,353	3,314	2,929	6,459	3,360	38,263
		1996	5,641	3,192	8,833	4,551	2,312	6,985	4,566	40,730
		1997	5,991	3,027	9,018	3,367	2,107	6,486	5,183	42,078
		1998	6,166	3,473	9,639	5,057	2,413	7,470	4,127	44,930

\* as amended in their notification

# LEGISLATION

## GERMANY

The Plant Variety Protection Law<sup>1,2,3</sup>

Consolidated Text of December 19, 1997

### CHAPTER ONE

#### CONDITIONS AND CONTENT OF PLANT VARIETY PROTECTION

##### Article 1

##### Conditions for Plant Variety Protection

(1) Protection shall be granted for a plant variety (hereinafter referred to as a "variety"), provided such variety is

1. distinct,
2. homogeneous,
3. stable,
4. new and
5. designated by means of a registrable variety denomination.

(2) Protection under this Law shall not be granted for a variety that is the subject matter of a Community plant variety right.

##### Article 2

##### Definitions

For the purposes of this Law:

1. "Species" shall mean species of plants, and also groupings and subdivisions of species of plants,

1a. "Variety" shall mean a grouping of plants or parts of plants, as far as such parts are capable of producing entire plants, within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety right are met, can be:

- (a) defined by the expression of the characteristics that results from a given genotype or combination of genotypes,
- (b) distinguished from any other plant grouping by the expression of at least one of those characteristics and
- (c) considered as a unit with regard to its suitability for being propagated unchanged.

2. "Propagating material" shall mean plants and parts of plants, including seeds, intended for the production of plants or for any other growing,

3. "Marketing" shall mean offering, keeping available for sale, placing on sale or any kind of disposing of to other parties,

4. "Filing date" shall mean the day on which the application for plant variety protection is received by the Federal Office of Plant Varieties,

5. "Member State" shall mean a member State of the European Economic Community,

6. "Union member" shall mean a State or intergovernmental

<sup>1</sup> Original title in German: "Sortenschutzgesetzes". Consolidated text of the Plant Variety Protection Law of December 11, 1985 as amended by:

1. Article 7 of the Law of March 7, 1990 (entered into force on July 1, 1990),
2. Article 1 of the Law of March 27, 1992 (entered into force on April 8, 1992),
3. Article 2 of the Law of July 23, 1992 (entered into force on July 31, 1992),
4. Article 72 of the Law of April 27, 1993 (entered into force on January 1, 1994),
5. Article 18 of the Law of September 2, 1994 (entering into force partly on January 1, 2000, and partly on January 1, 2005),
6. Article 40 of the Law of October 25, 1994 (entered into force on January 1, 1995),
7. Article 1 of the Law of July 17, 1997 (entered into force on July 25, 1997).

<sup>2</sup> Published in Bundesgesetzblatt Jahrgang 1997 Part I

<sup>3</sup> This consolidated text has been prepared by the Office of the Union

tal organization that is a member of the International Union for the Protection of New Varieties of Plants.

### Article 3

#### Distinctness

(1) A variety shall be deemed to be distinct if it is clearly distinguishable by reference to the expression of at least one significant characteristic from any other variety that is a matter of common knowledge on the filing date. The Federal Office of Plant Varieties shall communicate on request for every species those characteristics it deems significant for the distinctness of varieties of that species; the characteristics must be capable of precise recognition and description.

(2) A variety shall be deemed to be a matter of common knowledge if, in particular,

1. it has been entered in an official register of varieties,
2. its entry in an official register of varieties has been applied for and the application has been granted or
3. propagating material or harvested material of the variety has already been marketed for commercial purposes.

### Article 4

#### Uniformity

A variety shall be deemed to be uniform if, apart from variations due to the particular features of its propagation, it is sufficiently uniform in the expression of those characteristics that are significant for distinctness.

### Article 5

#### Stability

A variety shall be deemed to be stable if the expression of the characteristics significant for distinctness remain unchanged after each propagation or, in the case of a cycle of propagation, after each such cycle.

### Article 6

#### Novelty

(1) A variety shall be deemed to be new if plants or parts of plants have not been disposed of to others for commercial purposes with the consent of the person entitled or of his legal predecessor prior to the filing date, or only within the following periods of time:

1. Within the European Community, one year;
2. Outside the European Community, four years or, in the case of vines (*vitis* L.) and tree species, six years.

(2) Novelty shall not be effected by disposal

1. to an official body for statutory purposes,
2. to others on the basis of a contractual or other legal relationship solely for the production, reproduction, multiplication, conditioning or storage on behalf of the person entitled,
3. between companies or firms within the meaning of the second paragraph of Article 58 of the Treaty establishing the European Community if one of them belongs entirely to the other or if both belong entirely to a third such company or firm; this shall not apply in respect of cooperative societies,
4. to others if the plants or parts of plants have been produced for experimental purposes or for breeding new varieties and no reference has been made to the variety at the time of disposal,
5. for the purpose of display at an official or officially recognized exhibition within the meaning of the Convention on International Exhibitions of November 22, 1928 (Law of May 5, 1930, RGBI. 1930II p. 727) or at an exhibition in a Contracting State that was officially recognized as equivalent on its territory or any disposal that is related to such exhibitions.

(3) Propagating material of a variety that is repeatedly used for the production of another variety shall only be deemed as disposed of within the meaning of paragraph (1) if plants or parts of plants of the other variety have been disposed of.

### Article 7

#### Variety Denomination

(1) A variety denomination shall be registrable if no grounds for exclusion under paragraphs (2) or (3) exist.

(2) Grounds for exclusion shall exist when the variety denomination

1. is not suitable to identify the variety, particularly for linguistic reasons,
2. possesses no distinctive nature,
3. consists exclusively of figures insofar as it is not used for a variety that is exclusively intended for the repeated production of another variety.
4. is identical to or may be confused with a variety denomination under which a variety of the same or of a related species is entered in an official list of varieties in a member State or another Union Member, or was so entered, or where propagating material of such variety has been marketed, unless the variety is no longer entered and no longer cultivated and its denomination has acquired no special significance,

5. may mislead, particularly when it is likely to cause erroneous conceptions as to the origin, the properties or the value of the variety, or as to the original breeder, discoverer or other entitled person,
6. may cause offence.

The Federal Office of Plant Varieties shall communicate those species it deems to be related within the meaning of item 4.

(3) Where the variety has already been entered in an official list of varieties or entry in such list has been applied for

1. in another member State or another Union Member or
2. in another State which, according to a declaration in legal acts of the European Communities, to be notified by the Federal Office of Plant Varieties, evaluates varieties in accordance with rules that correspond to the Guidelines for the Common Catalogues of Varieties,

only the variety denomination so entered or declared shall be registrable. This shall not apply where grounds for exclusion under paragraph (2) are opposed thereto or the applicant reasonably establishes that an opposing third party right exists.

#### Article 8

##### Entitlement to Variety Protection

- (1) The original breeder or discoverer of the variety or his successor in title shall be entitled to variety protection. If more than one person has bred or discovered the variety jointly, the entitlement shall belong to such persons jointly.
- (2) The applicant shall be considered the entitled person in proceedings before the Federal Office of Plant Varieties unless it comes to the knowledge of the Federal Office of Plant Varieties that he is not entitled to variety protection.

#### Article 9

##### Persons not Entitled to Apply

- (1) If a person not entitled to protection has filed an application, the entitled person may require that the applicant transfer to him the claim to the grant of variety protection.
- (2) If variety protection has been granted to a person not entitled thereto, the entitled person may require that the owner of variety protection transfer variety protection to him. Such claim shall expire five years after notification of the entry in the Plant Variety Protection Register, except where the owner of variety protection was not acting in good faith in obtaining variety protection.

#### Article 10

##### Effect of Variety Protection

(1) Subject to Articles 10a and 10b, variety protection shall have the effect that the owner of variety protection alone shall be entitled:

1. (a) to produce, to condition for the purpose of propagation, to place on the market, to import or export propagating material of the protected variety or
- (b) to stock such material for any of the purposes mentioned in item (a),
2. To carry out any acts mentioned in item 1 with respect to other plants or parts of plants or directly obtained products thereof if propagating material was used in their production without the consent of the owner of variety protection and the owner of variety protection had had no opportunity to exercise his right in relation to such utilization.

(2) The effect of variety protection under paragraph (1) shall also extend to:

1. varieties which are essentially derived from the protected variety (initial variety), where this initial variety is not itself an essentially derived variety,
2. varieties which cannot be clearly distinguished from the protected variety or
3. varieties whose production requires the repeated use of the protected variety.

(3) A variety shall be deemed to be an essentially derived variety if:

1. the initial variety or another variety that is itself derived from the initial variety has been predominantly used for its breeding or discovery,
2. it is clearly distinguishable and,
3. except for the differences that result from the method of derivation used, it conforms essentially to the initial variety in the expression of the characteristics that result from the genotype or combination of genotypes of the initial variety.

#### Article 10a

##### Limitation of the Effect of Variety Protection

(1) The effect of variety protection shall not extend to the acts referred to in Article 10(1) where carried out:

1. privately and for non-commercial purposes,
2. for experimental purposes in relation to the protected variety,
3. for the breeding of new varieties and to acts referred to in Article 10(1) in respect of such other varieties excepting the varieties referred to in Article 10(2).

(2) The effect of variety protection shall also not extend to harvested material that a farmer has obtained on his own holding by sowing propagating material of a protected variety of the species contained in the list at annex, with the exception of hybrids and synthetic varieties, and has used it as propagating material (farm saved seed) on condition that the farmer complies with the obligations laid down in paragraphs (3) and (6). For the purpose of farm saved seed, the harvested material may be conditioned by the farmer or by an undertaking (conditioner) acting on his behalf.

(3) A farmer who avails himself of the possibility of using farm saved seed shall be required to pay the owner of the variety protection an equitable remuneration. Remuneration shall be deemed equitable where it lies notably lower than the amount agreed for the production of propagating material of the same variety in the same area on the basis of an exploitation right under Article 11.

(4) Agreements between owners of variety protection and farmers as to the equitable nature of remuneration may be based on corresponding agreements between the professional organizations. They may not exclude competition in the seed sector.

(5) The requirement to pay under paragraph (3) shall not apply to small farmers within the meaning of Article 14(3), third indent, of Council Regulation (EC) No. 2100/94 of 27 July, 1994 on Community Plant Variety Rights (OJ No. L227 page 1).

(6) Farmers availing themselves of farm saved seed and any conditioners acting for them shall be required to provide the owners of variety protection with information as to the volume of farm saved seed.

(7) The Federal Ministry of Food, Agriculture and Forestry shall be empowered to amend the list of species contained in the annex by statutory order where necessary to adapt it to the Community Plant Variety List.

#### Article 10b

##### Exhaustion of Variety Protection

Variety protection shall not extend to acts concerning plants, parts of plants or directly obtained products (material) of the protected variety or of a variety to which variety protection under Article 10(1)(1) also extends, that has been placed on the market by the owner of variety protection or with his consent, unless such acts

1. involve further production of propagating material where the aforementioned material was not intended for that purpose on disposal or

2. involve an export of material of the variety permitting propagation of the variety to a country that does not protect varieties of the species to which such variety belongs; this provision shall not apply if the exported material is intended for sowing.

#### Article 10c

##### Suspension of Variety Protection

If the owner of variety protection granted under this Law obtains a Community plant variety right for the same variety, the variety protection granted under this Law may not be asserted for the duration of the Community plant variety right.

#### Article 11

##### Legal Succession, Exploitation Rights

(1) The right to variety protection, the claim to granting of variety protection and the variety protection itself shall be transferable to natural and legal persons or to unincorporated trading companies that meet the requirements of Article 15.

(2) Variety protection may be the subject of exclusive or non-exclusive exploitation rights in part or in whole.

(3) Where a person entitled to exploit contravenes a limitation of the right of exploitation under paragraph (2), variety protection may be invoked against him.

#### Article 12

##### Compulsory Exploitation Rights

(1) The Federal Office of Plant Varieties may on request, insofar as it appears justified in the public interest, taking into account the economic acceptability for the owner of variety protection, grant a compulsory exploitation right in respect of variety protection as regards the rights under Article 10, under reasonable conditions where the owner of variety protection has granted no exploitation rights or insufficient exploitation rights. When granting the compulsory exploitation right, the Federal Office of Plant Varieties shall determine the conditions thereof, particularly the amount of the remuneration to be paid to the owner of variety protection.

(2) On expiry of one year after the grant of the compulsory exploitation right, any of the parties may request renewed determination of the conditions. The request may be repeated each time on expiry of one year; the sole grounds for such request may be that the circumstances that were decisive for the determination have in the meantime undergone considerable change.

(3) Before taking its decision on the grant of a compulsory exploitation right or on a new determination, the Federal Office of Plant Varieties shall hear the professional associations concerned.

(4) If a compulsory exploitation right has been granted for a variety belonging to a species subject to the Seed Trade Law, the owner of variety protection may require information from the responsible authorities:

1. on the identity of the person who has applied for seed recognition in respect of propagating material of the protected variety,
2. on the size of the propagating surfaces stated in the request for recognition,
3. on the weight or quantity that has been stated in respect of the lots.

#### Article 13

##### Duration of Variety Protection

Variety protection shall extend to the end of the twenty-fifth calendar year or, in the case of grapevine, hop, potato and tree species, the end of the thirtieth calendar year following the year of grant.

#### Article 14

##### Use of the Variety Denomination

- (1) Propagating material of a protected variety may only be marketed—except privately and for noncommercial purposes—if the variety denomination is stated in relation thereto; where it is stated in writing, it shall be readily distinguishable and clearly legible. This shall also apply after expiry of variety protection.
- (2) Rights in a designation that is identical with the variety denomination may not be used to prohibit the use of the variety denomination for the variety. Prior rights of third parties shall not be affected.
- (3) The variety denomination of a protected variety or of a variety for which breeders' rights have been granted in another Union Member or a designation which may be confused with it may not be used for another variety of the same or of a related species.

#### Article 15

##### Scope of Application in Respect of Persons

- (1) The rights afforded by this Law may only be acquired by:
  1. Germans within the meaning of Article 116(1) of the Basic Law and natural and legal persons and unincorporated trading companies having their place of residence or an establishment within the country,
  2. Nationals of another Contracting State or of a State that is a Union member and natural and legal persons and unincorporated trading companies having their place of residence or establishment in such State and
  3. Other natural and legal persons and unincorporated trading companies where the State to which they belong or in which they have their place of residence or establishment affords corresponding protection

to German nationals or persons having their place of residence or establishment in Germany according to a notification of the Federal Ministry of Food, Agriculture and Forestry in the *Bundesgesetzblatt*.

- (2) A person who has neither a place of residence nor an establishment in a Contracting State may only participate in procedures governed by this Law or assert rights under this Law if he appoints a representative (representative in procedures) having his place of residence or business premises in a Contracting State.

## CHAPTER TWO

### THE FEDERAL OFFICE OF PLANT VARIETIES

#### Article 16

##### Nature and Tasks

- (1) The Federal Office of Plant Varieties shall be an autonomous senior federal authority within the purview of the Federal Ministry for Food, Agriculture and Forestry.
- (2) The Federal Office of Plant Varieties shall be responsible for the granting of variety protection and for related affairs. It shall keep the Plant Variety Protection Register and shall verify the continuing existence of the protected varieties.

#### Article 17

##### Members

- (1) The Federal Office of Plant Varieties shall consist of a President and other members. They must have special competence in the field of plant varieties (technical members) or be qualified for judicial office under the German Law Relating to Judges (legal members). They shall be appointed by the Federal Ministry for Food, Agriculture and Forestry for the duration of their activity with the Federal Office of Plant Varieties.
- (2) As a rule, only such person shall be appointed as a technical member who has successfully undergone a State or academic examination following a scientific course in a subject relevant to his activity at the Federal Office of Plant Varieties at a university within the country or a final examination following equivalent studies abroad and has also worked for at least three years in the corresponding technical area and who possesses the necessary legal knowledge.
- (3) Where there exists a need that is expected to be limited in time, the President may appoint persons as assistant members to carry out the duties of members of the Federal Office of Plant Varieties. Such appointments may be for a specified period or for as long as needed and may not be terminated during such period. In other respects, the provisions regarding members shall also apply to assistant members.

Article 18Examining Sections and Opposition Boards

(1) There shall be set up within the Federal Office of Plant Varieties:

1. examining sections,
2. opposition boards for variety protection matters.

The President shall determine their number and shall decide on the allocation of duties.

(2) The examining sections shall be responsible for decisions on:

1. applications for variety protection,
2. objections under Article 25,
3. modification of the variety denomination in accordance with Article 30,
4. (repealed),
5. the grant of a compulsory exploitation right and the determination of the conditions,
6. withdrawal and annulment of the grant of variety protection.

(3) The opposition boards shall be responsible for decisions on opposition against decisions taken by the examining sections.

Article 19Composition of the Examining Sections

(1) The examining sections shall in each case comprise one technical member of the Federal Office of Plant Varieties designated by the President.

(2) Decisions in the cases under Article 18(2), items 2, 5 and 6, shall be taken by the examining sections composed of three members of the Federal Office of Plant Varieties designated by the President, one of whom shall be a legal member.

Article 20Composition of the Opposition Boards

(1) The opposition boards shall in each case comprise the President or another member of the Federal Office of Plant Varieties designated by the President as Chairman, two further members of the Federal Office of Plant Varieties designated by the President as assessors and two honorary assessors. The members of the Federal Office of Plant Varieties shall comprise two technical members and one legal member.

(2) The honorary assessors shall be appointed by the Federal Ministry for Food, Agriculture and Forestry for a term of

six years; they may be reappointed. Where an honorary assessor retires prematurely, his replacement shall be appointed for the remaining term of office. The honorary assessors should possess special technical knowledge in the field of plant varieties. Owners or employees of breeding establishments and employees of breeders' associations shall not be appointed. An alternate shall be appointed for each honorary assessor; the first to fourth sentences shall apply *mutatis mutandis*.

(3) The opposition boards shall be capable of taking decisions in the presence of the Chairman and of one assessor, one of whom must be legally qualified, and of an honorary assessor.

**CHAPTER THREE****PROCEEDINGS BEFORE THE FEDERAL OFFICE OF PLANT VARIETIES**Article 21Formal Administrative Procedure

The provisions of Articles 63 to 69 and 71 of the Law on Administrative Procedure concerning formal administrative procedures shall apply to proceedings before the examining sections and the opposition boards.

Article 22The Application for Variety Protection

(1) The applicant shall state the name of the original breeder or breeders or discoverer or discoverers of the variety in the application for variety protection and shall certify that, to the best of his knowledge, no further persons have been involved in the breeding or discovery of the variety. If the applicant is not the original breeder or discoverer or is not the only original breeder or discoverer, he shall be required to state how the variety came into his possession. The Federal Office of Plant Varieties shall not be obliged to verify such statements.

(2) The applicant shall state the variety denomination. For the purposes of the procedure for granting variety protection, he may state, with the consent of the Federal Office of Plant Varieties, a provisional designation.

Article 23Chronological Order of the Application for Variety Protection

(1) The chronological order of the application for variety protection shall be determined, in cases of doubt, by the order of the entries in the register of incoming mail at the Federal Office of Plant Varieties.

(2) If the applicant has already applied for breeders' rights for the variety in another Union State, he shall be entitled within one year of the correct filing of the initial application to claim the date of that application as priority for the application for variety protection. Priority may only be claimed in the appli-



cation for variety protection. It shall lapse if the applicant does not submit to the Federal Office of Plant Varieties within three months of the date of the application copies of the documents of the initial application that have been certified by the authorities responsible for such application.

(3) If the variety denomination has been entered on behalf of the applicant in the Trademark Register at the Patent Office as a trademark, or if entry has been applied for, for goods that comprise the propagating material of the variety, he may claim the date of the trademark application as priority for the variety denomination. Priority shall lapse if the applicant does not submit to the Federal Office of Plant Varieties within three months of notifying the variety denomination a certificate issued by the Patent Office concerning the entry or application in respect of the trademark. The first and second sentences shall apply *mutatis mutandis* to marks registered under the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, in its currently applicable version and which enjoy protection within the country.

#### Article 24

##### Publication of the Application for Variety Protection

(1) The Federal Office of Plant Varieties shall publish the application for variety protection together with a statement of the species, the proposed variety denomination or provisional designation, the application date and the name and address of the applicant, of the original breeder or discoverer and of a procedural representative.

(2) If the application is withdrawn following publication, it shall be deemed under Article 27(2) not to have been filed on grounds of failure to comply or if the grant of variety protection has been refused, these circumstances shall likewise be published by the Federal Office of Plant Varieties.

#### Article 25

##### Objections

(1) Any person may lodge an objection to the grant of variety protection in writing with the Federal Office of Plant Varieties.

(2) Objections may only be based on the allegation that:

1. the variety is not distinct, not homogeneous, not stable or not new,
2. the applicant is not entitled or
3. the variety denomination is not registrable.

(3) The time limit for objections shall be:

1. the granting of variety protection, in the case of objections under paragraph (2), item 1,

2. three months after publication of the application for variety protection, in the case of objections under paragraph (2), item 2,

3. three months after publication of the proposed variety denomination in the case of objections under paragraph (2), item 3.

(4) The grounds for the objection shall be stated. The facts and elements of proof supporting the allegation under paragraph (2) shall be furnished in detail. Except where already set forth in the declaration of objection, they shall be furnished before the expiry of the time limit for objections.

(5) Where an objection under paragraph (2), item 2, leads to withdrawal of the application for variety protection or to refusal of grant of variety protection and if the objecting party files an application for variety protection within one month following withdrawal or within one month of the date on which the refusal becomes final in respect of the same variety, he may require that the date of the prior application shall apply to his application as the filing date.

#### Article 26

##### Examination

(1) For the purposes of examining whether a variety fulfills the requirements for the grant of variety protection, the Federal Office of Plant Varieties shall grow the variety or shall undertake any other necessary investigations. It may waive examination if it already has earlier examination findings of its own in its possession.

(2) The Federal Office of Plant Varieties may entrust growing or the other necessary investigations to other technically qualified services, even abroad, and take into account the results of growing trials and other investigations carried out by such services.

(3) The Federal Office of Plant Varieties shall require the applicant to submit to the Office or to the service it designates, within a specified time limit, the necessary propagating and other material and the necessary further documents, to provide the necessary information and to permit its verification.

(4) Where the applicant claims priority under Article 23(2), he must submit the necessary propagating and other material and the necessary further documents within four years of the expiry of the priority period. He may not submit further propagating or further other material after such submission. If the first application is withdrawn or if the grant of breeders' rights is refused before the expiry of four years, the Federal Office of Plant Varieties may require the applicant to submit the propagating and other material in time for the following growing period and the other documents within a specified time limit.

(5) The Federal Office of Plant Varieties may supply authorities and services abroad with information on examination results where necessary for mutual information.

(6) The Federal Office of Plant Varieties shall require the applicant to submit in writing within a specified time limit:

1. a variety denomination, if he has stated a provisional designation,
2. another variety denomination, if the proposed denomination is not registrable.

Articles 24 and 25 shall apply *mutatis mutandis*.

#### Article 27

##### Failure to Comply

(1) If the applicant fails to comply, within the time limit notified to him, with a request of the Federal Office of Plant Varieties:

1. to submit the necessary propagating or other material or the necessary further documents,
2. to propose a variety denomination or
3. to pay the due examination fees,

the Federal Office of Plant Varieties may reject the application for variety protection if it has pointed out the consequences of failure to comply when notifying the time limit.

(2) If the applicant or the appellant does not pay the due fee for a decision on an application for variety protection or on an appeal, the application shall be deemed not to have been filed or the appeal not to have been lodged if the fee is not paid within one month of the Federal Office of Plant Varieties having notified the fee decision and thereby having pointed out the consequences of failure to comply.

#### Article 28

##### The Plant Variety Protection Register

(1) There shall be entered in the Plant Variety Protection Register, once the grant of variety protection has become final:

1. the species and the variety denomination,
2. the specified expressions of the characteristics significant for distinctness; in the case of varieties whose plants are produced by crossing specific hereditary components, also reference thereto,
3. the name and address
  - (a) of the original breeder or discoverer,
  - (b) of the owner of variety protection,
  - (c) of the procedural representative,
4. the time at which variety protection begins and ends, together with the reasons for the end of protection,

5. any exclusive exploitation right, including the name and address of its owner,

6. any compulsory exploitation right and the conditions laid down.

(2) The entry of the specified expressions of characteristics significant for distinctness and the entry of the conditions attaching to a compulsory exploitation right may be replaced by a reference to documents of the Federal Office of Plant Varieties. The entry may be amended *ex officio* in respect of the number and type of characteristics or of the specified expressions of those characteristics, where necessary, in order to render the description of the variety comparable with the descriptions of other varieties.

(3) Amendments to the identity of the owner of variety protection or of a procedural representative shall only be entered if supporting evidence is provided. The registered owner of variety protection or procedural representative remains entitled and committed under this Law until any amendment is entered.

(4) The Federal Office of Plant Varieties shall publish the entries.

#### Article 29

##### Access

(1) All persons shall have access to:

1. the Plant Variety Protection Register,
2. the documents
  - (a) under Article 28(2), first sentence,
  - (b) of a published application for variety protection and granted variety protection,
3. the growing
  - (a) of a variety for the purpose of its examination,
  - (b) of a variety for the purpose of verifying its continued existence.

(2) In the case of varieties whose plants are produced by crossing certain hereditary components, details of the hereditary components shall be excluded from access at the request of the person who has filed the application for variety protection. Such request may not be filed once the decision on the application for variety protection has been taken.

#### Article 30

##### Amendment of the Variety Denomination

(1) A variety denomination recorded on grant of variety protection shall be amended if:

1. grounds for exclusion under Article 7(2) or (3) existed at the time of entry and continue to exist,
2. grounds for exclusion under Article 7(2), items 5 or 6, have subsequently occurred,
3. a conflicting right can be proved and the owner of variety protection agrees to the entry of another variety denomination,
4. the owner of variety protection has been prohibited by a final legal decision from using the variety denomination or
5. any other person required to use the variety denomination under Article 14(1) has been prohibited from using the variety denomination by a final legal decision and the owner of variety protection is a subsidiary party to the litigation or was informed of the proceedings, insofar as he was not prevented from asserting his rights by circumstances referred to in the second half sentence of Article 68 of the Code of Civil Procedure.

Where a variety denomination is amended in accordance with item 1 in the first sentence there shall be no claim to compensation for financial disadvantage under Article 48(3) of the Law on Administrative Procedure.

(2) The Federal Office of Plant Varieties shall require the owner of variety protection to propose another variety denomination within a specified period of time if it ascertains the existence of grounds for amendment in accordance with paragraph (1). If that period of time expires without result, the Office may lay down a variety denomination *ex officio*. At the request of the owner of variety protection or of another person, the Federal Office of Plant Varieties shall lay down a variety denomination if the petitioner can prove a justified interest. Articles 24, 25 and 28 (1), item 1, and (4) shall apply *mutatis mutandis* to the laying down of the other variety denomination and its notification.

#### Article 31

##### Ending of Variety Protection

- (1) Variety protection shall expire if the owner of variety protection makes a written denunciation to the Federal Office of Plant Varieties.
- (2) The grant of variety protection shall be withdrawn if it transpires that on grant of variety protection the variety was not distinct or was not new. There shall be no claim to compensation for economic disadvantage under Article 48(3) of the Law on Administrative Procedure. Withdrawal on other grounds shall not be permissible.
- (3) The grant of variety protection shall be cancelled if it transpires that the variety is not homogeneous or is not stable.
- (4) In other cases, the grant of variety protection may only be cancelled if the owner of variety protection:

1. has not complied with a request under Article 30(2) to propose another variety denomination,
2. has not fulfilled, despite a reminder, an obligation in respect of verification of the continued existence of the variety in accordance with a statutory order under Article 32(1) or
3. has not paid due annual fees within the additional time limits.

#### Article 32

##### Powers to Issue Procedural Regulations

The Federal Ministry for Food, Agriculture and Forestry shall be empowered:

1. to regulate details of the procedure before the Federal Office of Plant Varieties, including the selection of the characteristics significant for distinctness, the determination of the scope of examination and the subsequent verification of the continued existence of the protected variety,
2. to determine the gazette for notification of the Federal Office of Plant Varieties,

by way of statutory order.

#### Article 33

##### Costs

- (1) The Federal Office of Plant Varieties shall charge costs for its official acts under this Law and for the examination of plant varieties at the request of foreign or supranational entities (fees and expenses) and an annual fee for each commenced year of the duration of variety protection (protection year).
- (2) The Federal Ministry for Food, Agriculture and Forestry shall be empowered, in agreement with the Federal Ministry for Finance and Economy, to determine by statutory order the acts for which fees are due and the rates of such fees, whereby it may provide for fixed rates or basic rates and may determine the time for the generation and payment of fees. The importance, the economic value and any other utility of the official act, including for breeding and for the general public, shall be taken into appropriate account. The expenses to be recovered may be determined at variance with the Law on Administrative Costs.
- (3) (Repealed).
- (4) In the case of fees for the examination of a variety and for a negative decision on an application for variety protection, no reduction under Article 15(2) of the Law on Administrative Costs shall be granted.
- (5) In the case of a successful appeal, the appeals fee shall be refunded. In the case of a successful appeal to the Patent Court or a successful legal appeal, the appeals fee shall be refunded on request. In the case of a partial success, the cor-

responding part of the appeals fee shall be refunded. However, the refund can be fully or partly refused if the decision is based on facts that could have been asserted or proved at an earlier date. Sentences 1 to 4 shall apply *mutatis mutandis* for expenditure in appeals procedures. There shall be no claim to refund of costs under Article 80 of the Law on Administrative Procedure.

#### CHAPTER FOUR COURT PROCEEDINGS

##### Article 34

##### Appeals

- (1) Appeals shall lie to the Patent Court from the decisions of the opposition boards.
- (2) Within the time limit prescribed for filing appeals, a fee shall be payable in accordance with the Law on the Fees of the Patent Office and the Patent Court; if the fee is not paid, the appeal shall be deemed not to have been lodged.
- (3) An appeal against the laying-down of a variety denomination under Article 30(2) or against a decision for which immediate enforcement has been ordered shall have no staying effect.
- (4) The President of the Federal Office of Plant Varieties may be a party in appeal proceedings.
- (5) A Chamber of Appeal shall rule on appeals. In the cases referred to in Article 18(2), items 3 and 4, it shall take its decisions with three legal members and in other cases with one legal member as chairman, a further legal member and two technical members.

##### Article 35

##### Appeals on Points of Law

- (1) Appeals on points of law from decisions of the Chamber of Appeal shall lie to the Federal Court if the Chamber of Appeal so allows in its decision.
- (2) Article 34(3) shall apply *mutatis mutandis*.

##### Article 36

##### Application of the Patent Law

Unless otherwise stipulated by Articles 34 and 35, the provisions of the Patent Law concerning appeals proceedings before the Patent Court and proceedings for appeals on points of law before the Federal Court and concerning assistance with the costs of proceedings shall apply *mutatis mutandis* to such proceedings.

#### CHAPTER FIVE INFRINGEMENTS

##### Article 37

##### Right to Seek Injunctions, Damages and Compensation

- (1) Whosoever without the consent of the owner of variety protection:
  1. Commits with material enjoying variety protection any of the acts referred to in Article 10(1) or,
  2. uses the variety denomination of a protected variety or a designation that may be confused with it for a different variety of the same or a related species

may be sued by the injured party to enjoin such infringement.

- (2) Whosoever acts intentionally or negligently shall be liable for compensation to the injured party for the damage resulting from the act in question. In the event of slight negligence, the court may fix, in lieu of compensation, an indemnity within the limits of the damage to the injured party and the profit which has accrued to the infringer.
- (3) The owner of variety protection may require equitable remuneration from any person who has performed with material enjoying variety protection one of the acts referred to in Article 10(1) in the time between publication of the application and grant of variety protection.
- (4) Claims deriving from other statutory provisions shall remain unaffected.

##### Article 37a

##### Right to Seek Destruction

- (1) In the cases referred to in Article 37(1), the injured party may request that material which is the subject of the infringing act and which is in the possession or ownership of the infringer be destroyed, unless the situation resulting from the infringement can be removed in some other manner and destruction would be out of proportion for the infringer or owner in the individual case.
- (2) The provisions of paragraph (1) shall be applied, *mutatis mutandis*, to any equipment belonging to the infringer and which has been used or is intended exclusively or almost exclusively for the unlawful production of the material.

##### Article 37b

##### Right to Seek Information with Regard to Third Parties

- (1) Whosoever without the consent of the owner of variety protection commits any of the acts referred to in Article 10 and which are reserved to the owner of variety protection or

uses the variety denomination of a protected variety or a denomination that may be confused with such denomination for a different variety of the same or a related species, may be required by the injured party to give information, without delay, on the origin and distribution channels of the material that is the subject of such act, except where disproportionate in the individual case.

(2) The person required to give information under paragraph (1) shall give particulars of the name and address of the producer, the supplier and any other prior owners of the material, of the trade customer or client as also in respect of the quantity of material that has been produced, delivered, received or ordered.

(3) In those cases where infringement is obvious, the obligation to provide information may be imposed by an interim injunction in compliance with the Code of Civil Procedure.

(4) Such information may only be used in criminal proceedings or in proceedings under the Law on Offenses against the person required to give information, or against a dependent person under Article 52(1) of the Code of Criminal Procedure, in respect of an act committed before the information was given, with the consent of the person required to give information.

(5) Further claims to information shall remain unaffected.

#### Article 37c

##### Prescription

Claims arising from infringement of a right protected by this Law shall become invalid by prescription three years after the time at which the entitled person gains knowledge of the infringement and of the identity of the infringer or 30 years after the infringement irrespective of such knowledge. Article 852(2) of the Civil Code shall apply *mutatis mutandis*. Where the infringer has made gains at the cost of the entitled person by reason of the infringement, he shall be obliged, even after the claim has expired by prescription, to surrender such gain in accordance with the provisions on the surrender of unjustified gain.

#### Article 38

##### Litigation with Respect to Plant Variety Protection

(1) All actions whereby a claim is asserted under a legal relationship governed by this Law (plant variety protection litigation) shall be heard by the *Landgerichte* (provincial courts) irrespective of the value in dispute.

(2) The provincial governments shall have power to allot by statutory order variety protection litigation for the areas of a number of provincial courts to one such court where this serves the technical furtherance or more expeditious settlement of the proceedings. The provincial governments may transfer such powers to the provincial administrations of justice.

(3) The parties may also be represented by attorneys at law admitted to practice in the courts before which the or the appeal would have been heard in the absence of an arrangement under paragraph (2). Any additional costs incurred by a party by reason of the fact that it is represented by an attorney at law not admitted to practice in the court hearing the case shall not be refunded.

(4) Of the costs arising from the collaboration of a patent attorney, fees up to the amount of a full fee according to Article 11 of the Federal Regulations on Lawyers' Fees, together with the necessary expenses of the patent attorney, shall be allowed.

(5) Paragraphs (1) to (4) shall also apply to all actions to assert a claim under the legal relationships regulated in Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community Plant Variety Rights (OJ No. L227 page 1) in its applicable version.

#### Article 39

##### Penal Provisions

(1) Any person who:

1. in contravention of Article 10(1), and in conjunction with paragraph (2), produces, conditions for the purposes of propagation, places on the market, imports, exports or stores propagating material of a variety protected under this Law, a plant, a part of a plant or a product or who,
2. in contravention of Article 13(1), and in conjunction with paragraph (2), first sentence, also in conjunction with paragraph (4), first sentence, or paragraph (5), of Council Regulation (EC) No. 200/94 of 27 July 1994 on Community Plant Variety Rights (OJ No. L227 page 1) propagates, conditions for the purposes of propagation, offers for sale, places on the market, imports, exports or stores material of a variety protected by a Community plant variety right,

shall be liable to imprisonment of up to three years or to a fine.

(2) Where the person committing the acts does so on a commercial basis the penalty shall be imprisonment not exceeding five years or a fine.

(3) The attempt to commit such an offense shall be punishable.

(4) In the cases referred to in paragraph (1), such acts shall only be prosecuted on request, except where the criminal prosecuting authorities hold *ex officio* intervention to be required due to the special public interest in criminal prosecution.

(5) Objects implicated in an offense may be confiscated. Article 74a of the Penal Code shall apply. Where the claims referred to in Article 37a are upheld in proceedings under the provisions of the Code of Criminal Procedure with regard to

the compensation of the injured party (Articles 403 to 406c), the provisions on confiscation shall not be applied.

(6) In the event of a conviction, the sentence shall be published if the injured party so requests and has a justified interest therein. The nature of the publication shall be laid down in the judgment.

#### Article 40

##### Fines

(1) Any person who intentionally or by negligence:

1. in contravention of Article 14(1), markets propagating material of a variety protected under this Law without stating the variety denomination or without stating it in the prescribed manner,
2. in contravention of Article 14(3), uses a variety denomination of a variety protected under this Law or a designation that may be confused with it for another variety of the same or of a related species or,
3. in contravention of Article 17(1), also in conjunction with paragraph (3), of Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community Plant Variety Rights (OJ No. L227 page 1), fails to use the denomination of a variety protected by a Community plant variety right, does not use it correctly, completely or in the prescribed manner,

shall be deemed to have committed an offense.

(2) Such offence may be liable to a fine not exceeding 10,000 Deutschmarks.

(3) Objects implicated in offenses may be confiscated. Article 23 of the Law on Offences shall be applied.

(4) The Federal Office of Plant Varieties shall constitute the administrative authority within the meaning of Article 36(1), item 1, of the Law on Offences.

#### Article 40a

##### Measures by the Customs Authorities

(1) Material that is the subject of the infringement of variety protection granted within the country shall be subject, at the petition of the owner of variety protection and against his security, to seizure by the customs authorities, on import or export, in those cases where the infringement is obvious. This provision shall apply in trade with other member States only insofar as controls are carried out by the customs authorities.

(2) Where the customs authorities order a seizure, they shall advise the person entitled to dispose and also the petitioner without delay. The origin, quantity and place of storage of the

material, together with the name and address of the person entitled to dispose, shall be communicated to the petitioner; the secrecy of correspondence and mail (Article 10 of the Basic Law) shall be restricted to that extent. The petitioner shall be given the opportunity to inspect the material where such inspection does not constitute a breach of commercial or trade secrecy.

(3) Where no opposition to seizure is made, at the latest, within two weeks of service of the notification under the first sentence of paragraph (2), the customs authorities shall order confiscation of the seized material.

(4) If the person entitled to dispose opposes seizure, the customs authorities shall inform the petitioner thereof without delay. The petitioner shall be required to declare to the customs authorities without delay whether he maintains his request under paragraph (1) in respect of the seized material:

1. If the petitioner withdraws his request, the customs authorities shall lift the seizure without delay.
2. If the petitioner maintains his request and submits an executable court decision ordering the impounding of the seized material or limitation of the right to dispose, the customs authorities shall take the necessary measures.

Where neither of the cases referred to in items 1 and 2 are applicable, the customs authorities shall lift the seizure on the expiry of two weeks after service of the notification to the petitioner under the first sentence; where the petitioner can show that a court decision according to item 2 has been requested, but has not yet been received, the seizure shall be maintained for a further two weeks at the most.

(5) Where the seizure proves to have been unjustified from the beginning and if the petitioner has maintained his request under paragraph (1) in respect of the seized material or has not made a declaration without delay (second sentence of paragraph (4)), he shall be required to compensate the damages that seizure has occasioned to the person entitled to dispose.

(6) The petition under paragraph (1) is to be submitted to the Regional Finance Office and shall be effective for two years unless a shorter period of validity has been requested; it may be repeated. The cost of official acts related to the petition shall be charged to the petitioner in accordance with Article 178 of the Fiscal Code.

(7) Seizure and confiscation may be challenged by the legal remedies allowed for the fixed penalty procedure under the Law on Offences in respect of seizure and confiscation. The petitioner shall be heard in the review proceedings. An immediate appeal shall lie from the decision of the local court; it shall be heard by the *Oberlandesgericht* (higher provincial court).

## CHAPTER SIX

## FINAL PROVISIONS

Article 41Transitional Provisions

(1) The provisions of this Law shall apply in respect of varieties for which, on entry into force of this Law, variety protection:

1. still exists under the Seed Law as published in a consolidated version in the *Bundesgesetzblatt*, Part III, Section No. 7822-1, and last amended by the Law of December 23, 1966 (*BGBI. I*, page 686), in conjunction with Article 52(1) of the Plant Variety Protection Law of May 20, 1968 (*BGBI. I*, page 429), in the version notified on January 4, 1977 (*BGBI. I*, pages 105, 286), or
2. has been granted or applied for under the Plant Variety Protection Law of May 20, 1968, in the applicable version,

with the provision that, in the case under item 1, a grant of variety protection can only be withdrawn under Article 31(2) if it transpires that the requirements of Article 2(2) of the Seed Law were not fulfilled at the time variety protection was granted.

(2) Where a patent has been granted or applied for in respect of a variety or a process for its breeding prior to the date on which this Law has become applicable to the species concerned, the applicant, or his successor in title, may maintain his application or may apply for grant of variety protection for the variety and the owner of the patent may maintain his patent or may apply for grant of variety protection for the variety. If he applies for the grant of variety protection, he shall be entitled to claim the date of the patent application as priority for the application for variety protection; the third sentence of Article 23(2) shall apply *mutatis mutandis*. The duration of the variety protection granted shall be reduced by the number of full calendar years that have elapsed between the filing of the patent application and the date of the application for variety protection. Once the grant of variety protection has become final, rights deriving from the patent or the patent application may no longer be asserted in respect of the variety; pending patent grant procedures shall not be pursued.

(3) If a Community plant variety right has been granted for a variety and has been terminated by relinquishment without the existence of grounds for a declaration of nullity or cancel-

lation, an application for grant of variety protection under this Law may be filed within three months of the relinquishment taking effect. The holder of the Community plant variety right or his successor in title shall enjoy the date of the application for grant of the Community plant variety right as priority for the variety protection application under this Law. The priority shall lapse if the applicant does not file within the aforementioned period the documents concerning the application for grant of the Community plant variety right, its grant and the relinquishment. If variety protection under this Law is granted for the variety, the duration of the granted protection shall be reduced by the number of complete calendar years that have elapsed between the grant of the Community plant variety right and the grant of variety protection under this Law.

(4) Varieties for which the application for protection has been filed up to one year after the date on which this Law has become applicable to the species concerned shall be deemed to be new if propagating material or harvested material of the variety has not been marketed for commercial purposes with the consent of the entitled person or of his predecessor in title more than four years or, in the case of vine and tree species, more than six years prior to the said date. Where variety protection is granted under the first sentence, the duration of protection shall be reduced by the number of full calendar years that have elapsed between the beginning of marketing and the date of filing.

(5) By derogation from Article 6(1), a variety shall also be deemed new if plants or parts of plants of the variety have not been marketed for commercial purposes with the consent of the entitled person or of his legal predecessor prior to the filing date or has only been marketed for commercial purposes within the following periods of time:

1. one year within the country,
2. four years or, for vine (*vitis* L.) and tree species, six years outside the country,

if the filing date is not later than one year after the entry into force of Article 1 of the Law of July 17, 1997 (*BGBI. I* p. 1854).

(6) The prescription in Article 10(1) shall not apply to essentially derived varieties for which variety protection has been sought or granted prior to the entry into force of Article 1 of the Law of July 17, 1997 (*BGBI. I* p. 1854).

Article 42Entry into Force

This Law shall enter into force on the day following its promulgation.

## ANNEX

Species for which propagating material may be saved

## 1. Cereals

1.1 <i>Avena sativa</i> L.	Oats
1.2 <i>Hordeu vulgare</i> L. sensu lato	Barley
1.3 <i>Secale cereale</i> L.	Rye
1.4 x <i>Triticosecale</i> Wittm.	Triticale
1.5 <i>Triticum aestivum</i> L. emend. Fiori et Paol.	Tender Wheat
1.6 <i>Triticum durum</i> Desf.	Durum Wheat
1.7 <i>Triticum spelta</i> L.	Spelt

## 2. Fodder plants

2.1 <i>Lupinus luteus</i> L.	Yellow Lupin
2.2 <i>Medicago sativa</i> L.	Lucerne
2.3 <i>Pisum sativum</i> L.	Field Pea
2.4 <i>Trifolium alexandrinum</i> L.	Berseem Clover
2.5 <i>Trifolium resupinatum</i> L.	Persian Clover
2.6 <i>Vicia faba</i> L. (partim)	Field Bean
2.7 <i>Vicia sativa</i> L.	Common Vetch

## 3. Oil and fiber plants

3.1 <i>Brassica napus</i> L. (partim)	Rape
3.2 <i>Brassica rapa</i> L. var. <i>silvestris</i> (Lam.) Briggs	Turnip Rape
3.3 <i>Linum usitatissimum</i> L.	Flax, except Fiber Flax

## 4. Potatoes

4.1 <i>Solanum tuberosum</i> L.	Potato
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## ISRAEL

**The Plant Breeders' Rights Law 5733-1973<sup>1,2</sup>  
as amended by Amendments No. 1 and No. 2**

Consolidated Text of the Plant Breeders' Rights Law, 5733-1973

## CHAPTER ONE:

## INTERPRETATION AND APPLICATION

## Section 1

## Definitions

*(as amended in December 1983  
and February 1996)*

In this Law -

“examiner” - a person or institution appointed by the Minister as an examiner of and a advisor on applications and oppositions filed under some or all of the provisions of this Law;

“foreign application” - an application filed by a breeder or by the previous holder in one of the Union states;

“Convention” - the International Convention for the Protection of New Varieties of Plants, 1961, as revised in Geneva in 1972, in 1978 and in 1991;

“variety” - a group of plants within a single botanical taxon of the lowest known rank which, irrespective of the extent to which conditions for the grant of a breeder's right have been met, can be -

- (1) defined by the expression of the characteristics that result from a given genotype or combination of genotypes;
- (2) distinguished from any other group of plants by the expression of at least one of the characteristics said in paragraph (1);
- (3) deemed an independent unit in all respects of its suitability for being propagated without change;

“essentially derived variety” - within its meaning in section 36;

“harvested material” - a plant and any part of it, including its fruit, which is not intended for cultivation or propagation;

1. Consolidated text provided by the Government of Israel
2. Plant Breeders' Rights Law (Amend No. 2) 5756-1996

Sections 1 -32 amendments of the Main Law.

**Commencement**

33.(a) This Law, except for sections 2, 9, 10, 11, and 12, shall come into force sixty days from the date of its publication.

(b) The provisions of section 36(a) to (d) of the Main Law, as formulated in section 17 of this Law, shall apply to a breeders' right registered in the Register of Rights after this Law went into effect; the provisions of section 36, as they were immediately before this Law went into effect, shall apply to breeders' right registered in the Register of Rights before this Law went into effect.

(c) The provisions of section 36(e) of the Main Law, as formulated in section 17 of this Law, shall also apply to breeders' right registered before this Law went into effect, but shall not apply to an essentially derived variety, which was registered in the Register of Rights immediately before this Law went into effect or for the registration of which an application was filed before it went into effect, provided that it ended with the registration of a right.

(d) The provisions of section 38(a) of the Main Law, as formulated under sections 20(2) and (3) of this Law, shall apply to rights that existed when this Law went into effect according to section 38 of the Main Law.

**Transitional provisions**

34.(a) The provisions of sections 22(a) and 26(b) of the Main Law, as formulated according to sections 9 and 11 of this Law, as the case may be, shall also apply to application filed before the publication of this Law.

(b) The provisions of sections 23(a) and 27 of the Main Law, as formulated according to sections 10 and 12 of this Law, as the case may be, shall also apply to the filing of opposition to an application published before this Law was published, if the time for the filing of opposition under the Main Law - as it was immediately before this Law came into effect - had not elapsed.

“propagating material” - a plant and any part of it, which is intended for cultivation or propagation, including seeds and tissue cultures;

“registered variety” - a variety in respect of which breeders' rights have been registered;

“this Law” - including regulations under it;

“Union State” - a foreign state, in respect of which the Registrar announced in Reshumot that, by virtue of the Convention, it is a member of the Union for the Protection of New Varieties of Plants;

“breeder” - a person who bred a new variety within its meaning in section 7, including his successors by process of Law, by transfer or by agreement;

“utilisation” - for purposes of a variety -

- (1) its cultivation or propagation;
- (2) its preparation for propagation;
- (3) an offer for its sale;
- (4) its sale, export, import or marketing in any other manner;
- (5) its maintenance for purposes of one of the acts enumerated in this definition;
- (6) other acts, determined by the Minister with approval by the Knesset Economics Committee;

“development”, of a variety - development thereof by means of artificial narrowing or the artificial broadening of genetic variation, the isolation of spontaneous genetic variation through self fertilization, crossing, back crossing or, vegetative isolation or any other method;

“basic characteristics” - one or a combination of characteristics, which are recognizable and can be described, and which differentiate the variety from all varieties of its taxon;

“the Minister” - the Minister of Agriculture;

“Breeders' Rights Committee” - the committee appointed under section 18.

#### Section 2

##### Effect

*(as amended in February 1996)*

The provisions of this Law shall apply to all botanical species and varieties.

## CHAPTER TWO:

### RIGHTS AND QUALIFICATIONS FOR THEIR REGISTRATION

#### Section 3

##### Breeders' right

*(as amended in February 1996)*

(a) Breeders' right in a variety bred in Israel can be registered in the Register of Rights in the breeder's name, on his application.

(b) An Israel citizen, an Israel resident or a resident of a Union state - including a body corporate established by Law or registered in Israel or in a Union state - may apply for the registration of breeders' right in the Register of Rights also in respect of a variety bred outside of Israel.

#### Section 4

##### Protection of right

Breeders' right in a variety shall be held by the person, in whose name they are registered in the Register of Rights and they shall remain valid - subject to the provisions of this Law - as long as the registration exists.

#### Section 5

##### Register of Breeders' Rights

(a) A Breeders' Rights Register shall be kept for the registration of breeders' rights (in this Law: Register of Rights), and in it the following shall be recorded for each variety:

- (1) the name and address of the holder of the right;
- (2) the denomination of the variety;
- (3) concise description and specification of the variety's basic characteristics;
- (4) in respect of a hybrid variety - the denomination of the variety's parents, if the Council so decides or at the breeder's request;
- (5) the claims said in section 20(a)(5) accepted for purposes of registration;
- (6) any other prescribed particular.

(b) The Registrar may record in the Register of Rights additional particulars, which in his opinion, deserve registration.

(c) The Register of Rights shall be kept in a place designated by the Minister, and shall be open to inspection by the public.

(d) The Minister may prescribe, by regulations, ways of keeping and managing the Register of Rights.

#### Section 6

##### Eligibility for registration (as amended in February 1996)

A variety is eligible for registration of a breeder's right in the Register of Rights if all the following hold true for it:

- (1) it is new;
- (2) it is sufficiently uniform in its basic characteristics, as stated in the application and taking the propagating method of the variety into consideration;
- (3) its basic characteristics are stable, its description and characteristics are maintained even after repeated propagation, and - if the breeding constitutes a complete cycle - its characteristics are maintained at the end of each cycle.

#### Section 7

##### What constitutes a new variety (as amended in February 1996)

(a) A new variety is a variety that is clearly different from any other variety known when the application for the registration of breeders' rights is filed (hereafter: determining day).

(b) Without derogating from the generality of the provisions of subsection (a), a variety shall be deemed to be known if an application for the registration of breeders' rights to the variety was filed to the official registers of any state whatsoever, on condition that the application resulted in the grant of the right or in its registration in the Register, as the case may be.

(c) A variety shall be deemed new even if - before the application for the registration of breeders' rights was filed - harvested material or propagating material of the variety was sold or otherwise transferred by the breeder of the variety or with his consent, during a period no longer than -

- (1) in Israel - one year from the determining day;
- (2) outside Israel - in respect of grape vines, forest trees, fruit trees and ornamental trees - six years from the determining day, and in respect of other plants - four years from the determining day.

#### Section 8

Repealed (Amendment of February 1996)

#### Section 9

##### Priority

Where several breeders applied for the registration of breeders' rights to a single variety, the right shall be registered in the name of the person who first lawfully applied for its registration.

### **CHAPTER THREE:**

#### **COUNCIL, REGISTRAR AND BREEDERS' RIGHTS COMMITTEE**

#### Section 10

##### Appointment of the Council and of its committees

(a) The Minister shall appoint a Breeders' Rights Council (in this Law: the Council) with nine members, three of them Government representatives and six scientists, researchers, seed growers and variety breeders.

(b) The Minister shall appoint the Council's chairman from among its members.

(c) The Minister may, with approval of the Knesset Economics Committee, increase the number of Council members up to thirteen.

(d) The Council may appoint committees of its own members and of persons who are not members, to make recommendations to it on matters or categories of matters to be prescribed by it.

(e) The Council's term of office shall be three years from the day of its appointment.

(f) If a Council member passes away or resigns or if his service was terminated, then the Minister shall appoint another person in his place, to serve until the end of the Council's term of office.

(g) The Council shall determine its procedures and the procedures of committees appointed by it, to the extent that they are not prescribed by this Law.

#### Section 11

##### Council's functions

These are the Council's functions:

- (1) to consider and decide upon applications;
- (2) to guide the Registrar on any matter relating to the exercise of his powers and the performance of his functions;
- (3) to make recommendations to the Minister about regulations to be made for the purposes of this Law;
- (4) to perform any other function and to exercise any

other power prescribed by the Minister under this Law.

### Section 12

#### Validity of acts

(a) Half of the number of the Council's members shall constitute a quorum at its meetings, and it shall suffice that the quorum is present at the opening of the meeting.

(b) The Council's existence, its powers and the validity of its decisions shall not be affected by the fact that a Council member's place is vacated, or by any defect in his appointment or in the continuation of his tenure.

### Section 13

#### Discussion and voting

(a) Voting in the Council shall be secret, but at the request of a majority of Council members a vote in respect of the subject requested shall be by show of hands.

(b) A person who has submitted an application to the Council may be present when the Council discusses his application; however, the Council may order that he not be present in part or all of the discussion, even if he is a Council member.

(c) A Council member who has - directly or indirectly, in person or through a relative, agent or partner or through one of their relatives - any share or interest in any matter to be considered before the Council, shall so inform the chairman, in writing or orally, immediately after learning that the matter is to be considered, and he shall not participate in any voting on any question connected to it; where notice is delivered orally, it shall be recorded in the minutes of the next Council meeting.

(d) For purposes of subsection (c), the "relative" of any person - within its meaning in the Land Appreciation Tax Law 5723-1963.

### Section 14

#### The Registrar and his functions

(a) The Minister shall appoint a Registrar of Breeders' Rights from among the staff members of the Ministry of Agriculture (in this Law: the Registrar).

(b) The following are the Registrar's functions:

- (1) to keep the Register of Rights and to deal with any matter relating to entries therein;
- (2) to issue certificates and other documents on the registration of breeders' rights in the Register of Rights or on their cancellation;
- (3) to perform any other function and to exercise any other power prescribed by the Minister under this Law.

(c) The Registrar shall deliver reports on his activities to the Council, at times prescribed by it.

(d) The Registrar shall participate in Council meetings, to which it invites him, and he may participate in all Council meetings.

### Section 15

#### Filing of application

(a) In this Chapter, "application" - any application or opposition under Chapters Four or Ten.

(b) Every application shall be filed with the Registrar.

(c) When the Registrar finds that an application includes all the particulars which it must include under this Law, he shall bring it before the Council for consideration and decision.

(d) When the Registrar finds that an application does not include all the particulars which it must include under this Law, he shall inform the applicant of the defects in it; if the applicant does not correct the defects indicated by the Registrar within the prescribed time, the Registrar shall reject the application.

### Section 16

#### Examination of application (as amended in December 1983 and February 1996)

(a) The Council shall take any measures it deems necessary in order to examine an application, and it may -

- (1) invite examiners or other experts to give their opinion on professional questions;
- (2) perform - by itself or through examiners chosen by it - research projects, examinations and tests needed in order to reach a decision; the applicant may follow the conduct of field trials at times, in a manner and on conditions prescribed;
- (3) transmit particulars of the application to an international institution, in order to search for material enabling an examination.

(b) The applicant must pay the expenses involved in the examination of his application under this section, as the Registrar shall decide, and the Registrar may require him to make advance payments on account of the said expenses; the Registrar may withhold the examination of an application until expenses or advances have been paid, at their rates on the date of payment, and he may cancel an application, thirty days after he gave warning to the applicant.

Section 17Hearing

Before reaching a decision on an application, the Council shall allow the applicant to testify before it.

Section 18Plant Breeders' Rights Committee

(a) The Minister of Justice shall appoint a Plant Breeders' Rights Committee; the Committee shall have three members, including a District Court Judge, who shall be the committee chairman, the Registrar and a person with professional training in the field of plant variety breeding, who shall be appointed on the recommendation of the Minister of Agriculture.

(b) The Minister of Justice may make regulations on procedure and fees in proceedings before the Plant Breeders' Rights Committee, as far as they have not been prescribed in this Law.

Section 19Secrecy

No person shall reveal any information that came to his knowledge in proceedings under this Law, except for purposes of its implementation; a person who argues that something came to his knowledge otherwise than in proceedings under this Law, shall bear the burden of proof.

#### CHAPTER FOUR: REGISTRATION PROCEDURES

Section 20

Application for registration of breeders' right  
(as amended in December 1983)

(a) An application for the registration of breeders' right in the Register of Rights shall be filed in the manner and on the conditions prescribed in regulations, and it shall include the following:

- (1) name of applicant;
- (2) an address for the delivery of documents in Israel, and if the applicant is not resident of Israel - the name of his representative, who is a resident of Israel and is authorized to represent him in any matter relating to the application;
- (3) the description of the variety and particulars of the variety bred, including particulars on its characteristics;
- (4) the denomination proposed for the variety;
- (5) a claim or claims that specify the distinctness of the

variety, each claim reasonably arising from the particulars described under paragraph (3);

(6) any other particular related to the implementation of this Law, as prescribed.

(b) Where the applicant represents a breeder, he shall indicate in his application the basis for his right .

Section 21Additional particulars

(as amended in December 1983 and  
February 1996)

(a) For the examination of an application in accordance with section 20, the Registrar may demand from the applicant propagating material or any other material or additional particulars related to the subject of the application.

(b) Where the applicant did not deliver the propagating material or other material or additional particulars demanded by the Registrar - on the conditions, in the manner and at the time prescribed - the Registrar shall reject the application, on condition that the applicant is given thirty days' advance notice and has not delivered the required material and particulars to the Registrar until the end of that period.

Section 22Publication of application

(as amended in December 1983 and  
February 1996)

(a) Where an application for the registration of breeders' right has been filed and the Registrar has decided to bring it before the Council, the Registrar shall, within sixty days after he made his decision, publish a notice in Reshumot and in a professional journal in the field of agriculture, specifying the following:

- (1) the name of the applicant;
- (2) the denomination proposed by the applicant for the variety, in respect of which the application has been filed;
- (3) a description of the variety and the specification of its characteristics, as provided by the applicant.

(b) The Registrar may - subject to the provisions of this Law - include in the notice any other particular which in his opinion should be included in it.

Section 23Opposition to registration

(as amended in February 1996)

(a) When a notice according to section 22 has been published, any person may - within ninety days after the notice is published in Reshumot - file a reasoned written opposition of

the registration of the right.

(b) The following are grounds for opposition under this section:

- (1) the opponent's right to be registered as the holder of the said variety outweighs the applicant's right;
- (2) the variety does not meet the requirements enumerated in section 6.

(c) Any opposition not based on one of the grounds enumerated in subsection (b) the Registrar shall reject, notwithstanding the provisions of section 15.

#### Section 24

##### Registration

Where it appears to the Council that a variety has been tested and examined, that the characteristics specified in section 6 apply to it, that all the material and literature relating to the variety, which was duly delivered to the Council, has been examined, and that no opposition that has been filed should be accepted, the Council shall order the Registrar to register breeders' right to the variety in the Register of Rights in the name of the applicant, and when the Registrar has registered the right then he shall publish notice thereof in Reshumot, all subject to the provisions of section 25.

#### Section 25

##### Referral to Court

(a) Where an opponent alleges, under section 23(b)(1), that his right outweighs the right of the applicant for registration, the Council shall suspend its deliberations and shall refer the opponent to the Court; when it has done so, and when the opponent has brought his action before the Court within the time prescribed to him by the Council, the Council shall make a final decision on the application for registration before it only after proceedings in the said action have been concluded and only in accordance with the judgment given therein.

(b) If the Council found reasonable grounds for the assumption that an application brought before it is tainted with fraud, the Council shall communicate its reasons thereof to the Attorney General and it shall suspend deliberations of the application; in the light of the material brought before him by the Council, and in the light of any other material he deems it proper to collect, the Attorney General shall do one of the following:

- (1) file an action with the Court for declaratory judgment that the application is tainted with fraud, the Council shall make a decision on the application only after proceedings in the said action have been concluded and only in accordance with the judgment given therein;
- (2) notify the Council that, in his opinion, the said material does not include evidence sufficient to prove fraud; such a notice shall bind the Council and it

shall continue to consider the application.

(c) The provisions of this section shall only apply when the Council has concluded that, a priori, the variety is eligible for registration in the Register of Rights.

#### Section 26

##### Application for amendment in the Register of Rights (as amended in February 1996)

(a) The holder of breeders' right of a certain variety may apply for the amendment of any particular or description of the variety in the Register of Rights, if that is necessary in order to clarify claims by the holder of a breeders' right, or to eliminate error - other than a mere clerical error - in the registration in the Register of Rights, on condition that that does not broaden the scope of the claims in the application under section 20, and does not add anything to it that was not essentially mentioned in it originally.

(b) Within thirty days of the date of filing of an application under subsection (a) the Registrar shall publish a summary thereof in Reshumot and shall forward the application to the Council for consideration.

(c) Where an application for an amendment under this section is filed while a proceeding for an infringement or revocation of breeders' right is pending in a Court, the Council shall not consider it only with the permission of the Court.

(d) Where permission has been given, the Council shall decide on the application after it has given all parties to that proceeding an opportunity to present their arguments before it.

(e) Where proceedings for an infringement of breeders' right are initiated before a Court after an application for the amendment of a particular was filed under this section, the considerations of that application shall continue to be considered, unless the Court directs otherwise.

#### Section 27

##### Opposition to registration of amendment (as amended in February 1996)

Any person may file opposition under section 26 within sixty days from the date of publication in Reshumot on the ground that the amendment does not achieve the purpose for which it was requested.

#### Section 28

##### Decision on amendment in the Register of Rights

When the Council has decided on an application under section 26, the Registrar shall record the decision in the Register of Rights and shall inform the applicant accordingly, and if the decision is not a refusal, notice thereof shall be published in Reshumot.

Section 29Revocation of breeders' right  
(as amended in February 1996)

(a) The Council may on its own initiative or on application by a person with an interest in a registered variety - revoke breeders' right to the variety, if it concluded one of the following:

- (1) the variety does not, any longer, meet the requirements enumerated in section 6;
- (2) the breeder did not provide the Council - upon its request and within the time it prescribed thereof not shorter than one growing season - propagating material of the variety, and in a hybrid variety – propagating material of its parents, the basic characteristics of which are equal to the basic characteristics specified in the Register of Rights, in a quantity prescribed for it as well as documents and information, all as required for re-examination of the variety;
- (3) the breeder has not permitted an examination of the measures taken by him for the preservation of the variety;
- (4) a Court decided that the right of another to be registered as the holder of breeders' rights outweighs the rights of the registered holder, the validity of a said prior right and the procedure of its registration shall be as prescribed by regulations.

(b) Notice that the Council is about to hear an initiative to revoke breeders' right or an application filed to that end shall be delivered to the holder of the right and shall be published in Reshumot.

(c) The Council shall not decide to revoke breeders' right before it has given the holder of the right and the applicant for its revocation an opportunity to present their arguments before it.

(d) Repealed.

(e) An application for revocation is filed while a proceeding for an infringement or for the revocation of breeders' right is pending before a Court, the Council shall not consider it unless with the Court's permission.

(f) Where proceedings for an infringement of breeders' right are initiated before a Court after an application for its revocation has been filed, the Council shall continue to consider the application, unless the Court ordered differently.

(g) For purposes of this section, the Council shall have all the powers said in section 16, even if it acted on its own initiative only.

Section 29ABreeders' right declared null and void  
(Amendment of February 1996)

(a) The Council may - at its own initiative or on application by a person with an interest in a registered variety - declare breeders' right to a variety to be null and void, if it concluded one of the following:

- (1) the variety did not meet the requirements enumerated in section 6;
- (2) the right was granted to a person not entitled to it unless it was transferred to a person who is entitled to it.

(b) Notice that the Council is about to consider an initiative to declare breeders' right null and void or an application filed to that end under subsection (a)(1) shall be delivered to the holder of the right and shall be published in Reshumot.

(c) The Council shall not declare breeders' right to be null and void under subsection (a)(1), before it has given the holder of the right and the applicant for the declaration an opportunity to present their arguments before it.

(d) Where an application to declare breeders' right null and void has been filed while a proceeding for an infringement of the breeders' rights is pending before a Court, the Council shall consider it only with the Court's permission.

(e) Where proceedings for an infringement of breeders' right were initiated before a Court after an application was filed with the Council to declare them null and void, the Council shall continue to consider the application, if the Court did not make a different order on this matter.

(f) For purposes of this section, the Council shall have all the powers said in section 16, even if it acted on its sole initiative only.

Section 30Results of a decision to revoke breeders' right  
or to declare it null and void  
(as amended in February 1996)

(a) A decision to revoke breeders' right in a variety or to declare breeders' right to a variety null and void shall go into effect fifteen days from the date of filing of an appeal against it under section 86; however, where an appeal has been filed, the Court may stay the coming into force of the revocation or attach conditions as it may think fit to the coming into force or the stay.

(b) Where breeders' right to a variety have been declared null and void, as said in section 29A(a), the Registrar shall record the revocation in the Register of Rights and the right is deemed never to have existed.

(c) Where breeders' right in a variety has been revoked, the Registrar shall record the revocation in the Register of Rights and the right is deemed to have been revoked as of the day of the decision on revocation, as said in section 29.

(d) A notice that a breeders' right has been revoked and a notice that a breeders' right has been declared null and void shall be published in Reshumot.

#### CHAPTER FIVE:

### DENOMINATIONS OF REGISTERED VARIETIES

#### Section 31

##### Restrictions on the registration of variety denominations

(a) A denomination of a variety shall not be registered in the Register of Rights if - in respect of agricultural crops of the same species - an identical denomination or an identical or similar description under the Merchandise Marks Ordinance (New Version) 5732-1972 is still registered, and no denomination shall be registered under the said Ordinance in respect of aforesaid crops, if - at any time - an identical or similar denomination of a variety was registered in the Register of Rights.

(b) A denomination of a variety shall not be registered under this Law, if one of the following applies to it:

- (1) it is identical with the denomination of a registered variety of the same species, or it is similar enough to an aforesaid denomination of a variety to be misleading;
- (2) it is identical with the denomination of another variety of the same species which is mentioned in an enactment within the scope of the Minister's authority;
- (3) it is identical with a denomination accepted by the public as the denomination of another variety of the same species, even if the other variety is not mentioned in an aforesaid enactment;
- (4) it is identical with the denomination of a variety of the same species registered in a Union state, or it is similar enough to an aforesaid denomination of a variety to be misleading;
- (5) it is liable to violate public order or morality;
- (6) it is liable to mislead the public in respect of the variety or its characteristics, or in respect of its differentiation from other varieties of the same species;
- (7) it does not comply with accepted international rules on variety denominations.

#### Section 32

##### Approval of variety denomination

Where the Registrar sees no reason under section 31 for not registering the denomination of the variety proposed by the applicant in his application for the registration of breeders' rights, the Registrar shall approve the proposed denomination and it shall be included in the notice under section 24; where a reason as aforesaid exists, the applicant shall be asked to propose another denomination within the time set prescribed by the Registrar; if the applicant does not propose a denomination for the variety within the said period, the Registrar shall determine the denomination of the variety.

#### Section 33

##### Contestation of determination of denomination of variety

A person who deems himself aggrieved by a decision on the determination of the denomination of a variety, may - within one year after the notice under section 24 was published - file with the Registrar a reasoned opposition in writing; the Registrar shall decide the matter and he shall notify the opponent of his decision in writing.

#### Section 34

##### Protection of denomination of a variety *(as amended in February 1996)*

- (a) When a variety has been given a denomination, such denomination must be used in respect of that variety, whether or not a trade mark was attached to the denomination of the variety.
- (b) When the denomination of a variety has been registered, then it - or a denomination sufficiently similar to it to deceive - shall not be used for any variety other than the registered variety.
- (c) For the purpose of the provisions of this section, it shall not matter whether or not at the time of the use of the denomination - the breeders' right is still registered.
- (d) On application made to him in writing, the Registrar may recommend to a person appointed for this purpose by the Minister, that the applicant be authorized to use - on conditions prescribed in the authorization - a secret mark instead of the denomination of the variety; the Registrar shall in every case forward the application to that person whose decision shall be final.

#### Section 35

##### Uniqueness of denomination of variety

When the denomination of a variety has been registered, it can be changed only by proceedings under section 33.



## CHAPTER SIX:

## PROTECTION OF BREEDERS' RIGHT

Section 36Scope of breeders' right  
(as amended in February 1996)

(a) Subject to the provisions of this Chapter and of Chapter Seven, utilisation of a registered variety requires authorization obtained from the holder of a breeders' right to that variety.

(b) The holder of a breeders' right may prevent any other person from utilising - without his authorization or unlawfully - the variety in respect of which the right is registered (hereafter: protected variety); an aforesaid utilisation constitutes infringement.

(c) The right of a holder of breeders' right shall also extend to harvested material, including entire plants and parts of plants, which were obtained by the unauthorized use of propagating material of the protected variety, unless the holder of a breeders' right was given a fair opportunity to realize his rights in respect of the propagating material.

(d) The Minister may - with approval of the Knesset Economics Committee - prescribe that the right of a holder of a breeders' right also applies to products produced directly out of harvested material of the protected variety, including such as are produced out of whole plants or parts of plants, unless the holder of breeders' right has been given a fair opportunity to realize his right in respect of the harvested material.

(e) The right of a holder of breeders' right, as said in subsections (a) to (d), shall also apply to -

(1) a variety essentially derived from the protected variety, provided the protected variety itself is not an essentially derived variety; for this purpose, a variety shall be deemed essentially derived from another variety (hereafter: initial variety), if all the following hold true for it:

(a) it is predominantly derived from the initial variety or from a variety which itself was predominantly derived from the initial variety, while retaining the expression of essential characteristics that result from the genotype or combination of genotypes of the initial variety; an essentially derived variety may have been obtained by the selection of a natural or induced mutant or of a somaclonal variant, by the selection of a variant individual from plants of the initial variety, by backcrossing, by a transformation by genetic engineering, or by any other similar method;

(b) it is clearly distinguishable from the initial variety;

(c) except for differences which result from the act of derivation, it conforms to the initial variety in the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

(2) varieties which, in accordance with section 7, do not clearly differ from the initial variety;

(3) varieties the production of which requires the repeated use of the protected variety.

(f) A breeders' right shall be in effect vis-a-vis the State.

Section 36AExhaustion of breeders' right  
(Amendment of February 1996)

The right of a holder of a breeders' right shall not apply to the utilisation of a protected variety and of a variety essentially derived from it, if the variety was sold or otherwise marketed - by the holder of the breeders' right or with his consent - in the territory of the State of Israel, unless the utilisation involves one of the following:

(1) repeated propagation of the variety;

(2) export of propagating material or of harvested material of the variety, which makes it possible to propagate it in a country that does not protect varieties of the genus or species to which the protected variety belongs, except aforesaid export for purposes of consumption.

Section 37Permitted use of registered variety  
(as amended in February 1996)

Notwithstanding the provisions of section 36, a person may without the consent of the holder of a breeders' right -

(1) utilise propagating material of a registered variety only for experiments toward the development of a new variety; however, no person shall utilise the propagating material of a registered variety repeatedly - without permission from the holder of a breeders' right - for the commercial production of another variety;

(2) utilise a registered variety for research, science or laboratory tests, and also for any act performed privately and not for commercial purposes.

Section 38Period of breeders' right  
(as amended in February 1996)

(a) Subject to the provisions of section 4 -

- (1) the period of a breeders' right is twenty years from the date of its registration;
  - (2) the period of a breeders' right in varieties of vines, fruit trees, forest trees and any other perennial plant is twenty-five years from the date of its registration.
- (b) The Minister may prescribe a longer period than that prescribed in this section in respect of a certain plant or a certain plant species.

#### Section 39

##### Weight of registration (as amended in February 1996)

Notwithstanding the registration of a breeder's rights in a variety, and the specifications of its characteristics have in the Register of Rights, it is permissible to prove that the variety does not meet the requirements enumerated in section 6, that the right of another person to be registered as holder of the breeders' rights outweighs the right of the registered holder, or that the specification does not actually conform to the characteristics of the variety.

#### Section 40

##### Compulsory pharmaceutical license

(a) Where the Council finds it necessary to do so, in order to supply means of therapy in reasonable quantities and at reasonable prices to the public, it may - in consultation with the Breeders' Rights Committee - permit utilisation of the variety only for the production of a remedy without the consent of the holder of breeders' rights.

(b) A license under this section shall be granted only to a person who has the ability and know how to utilise the registered variety under conditions set by the Council.

#### Section 41

##### Compulsory agricultural license or revocation of right (as amended in February 1996)

(a) Where the Council concluded that the holder of a breeder's right did not utilise the registered variety, or that he utilised it under circumstances and under conditions not in the public interest, or that he prevented the holder of an essentially derived variety from utilising the derived variety, or that he set conditions for the utilisation of a variety that are not in the public interest, may - in consultation with the Breeders' Rights Committee - permit such variety to be utilised under conditions prescribed by it and without the consent of the holder of the right.

(b) The Council may revoke a breeder's right in a variety if it demanded that the holder of the right deliver and provide propagating material of the variety, and in respect of a hybrid variety - propagating material of its parents, and if the holder of the right has not proved that he has done so. The Council may prescribe to whom the propagating material is to be de-

livered and provided, and on what conditions - including its quantity -, and the time during which it is to be delivered and provided, provided it is not shorter than one growing season; the Council may extend the period prescribed as aforesaid.

(c) The Council shall not exercise its power under this section within two years from the date of registration of the breeder's right, unless - in its opinion - there are special reasons for doing so.

#### Section 42

##### Supplementary provisions

A license under sections 40 or 41 -

- (1) shall be granted on application by a person qualified to receive it, after the holder of the right has been given an opportunity to present his arguments in the matter;
- (2) shall specify its period and conditions including payment to the holder of the right;
- (3) shall with its conditions constitute an agreement between the holder of the right and the licensee, in addition to or in the absence of any agreement between them;
- (4) the Council may revoke it, if it concludes that an infringement of any of its conditions justifies doing so.

#### Section 43

##### Transfer of a breeder's right

A breeders' right and the right to apply for its registration are transferrable in writing and pass by virtue of Law, but the transfer of breeder's right otherwise than by virtue of Law shall not be in effect for anyone other than the transferor and the transferee, unless it has been registered in the Register of Rights.

#### Section 44

##### Utilisation permitted in consequence of a bona fide

(a) A person who proves to the satisfaction of the Registrar that - for at least three years before the determining date and in good faith - he utilised in Israel the variety to which the application for the registration of a breeders right refers, shall be entitled to utilise the variety personally, and in the course of his business only; where the Registrar certified that the aforesaid proof was brought to him, the Breeders' Rights Committee shall - on request of the holder of a breeder's right - prescribe the consideration to be paid by that person for utilisation of the variety; the Committee's decision shall be enforceable in like manner as a final judgement of a court.

(b) For the purpose of this section, "determining date" - the date on which the application for the registration of a breeders' right is filed in Israel, and where priority under Chapter

Ten is claimed for that application - the date on which that application was submitted, in respect of which priority is claimed.

(c) The right to utilise a variety under this section is not transferrable, it cannot be disposed of and it is not inheritable, except together with the business in which that variety was used.

#### CHAPTER SEVEN:

#### VARIETY BRED DURING OR IN CONSEQUENCE OF SERVICE

##### Section 45

##### Notice of breeding of variety

An employee must notify his employer - in writing –

- (1) of every variety bred by him during or in consequence of his service, and that as soon as possible after he has concluded breeding the variety and before an application under section 20 is filed;
- (2) of the filing of every application by him under section 20.

##### Section 46

##### Variety bred in consequence of service

(a) Where an employee has bred a variety in consequence of his service, the right to register a breeders' right in the said variety shall be the employer's property, unless otherwise agreed between them, or unless the employer made a written waiver of the said right within six months from the date on which the employee's notification under section 45 is delivered to him.

(b) Where the employee said in his notification under section 45 that - in the absence of a contradictory reply from the employer within six months from the date of such notification - the breeder's right shall be the employee's property, and the employer does not give a contradictory reply as aforesaid - the right shall not be the employer's property.

##### Section 47

##### Dispute in connection with a breeding of a variety

Where a dispute arises as to whether a variety, in respect of which notification has been made under section 45, was bred in consequence of service, the employer or the employee may - three months from the date the notification was made - request the Registrar to decide the question.

##### Section 48

##### Presumption of breeding in service

Where an employee has bred a variety in the period of his service, he shall, pending proof to the contrary, be presumed to have bred it in consequence of his service.

##### Section 49

##### Decision of Breeders' Rights Committee

(a) In the absence of agreement between an employer and an employee, as to the consideration to which the employee is entitled for a variety which he bred in consequence of his service, the Breeders' Rights Committee shall determine to what extent and on what conditions the employee is entitled to a consideration.

(b) The Breeders' Rights Committee is authorized to reconsider a decision under subsection (a), if - in its opinion - the circumstances that prevailed when it made its decision have changed, and if it was requested to do so; however, the Committee may order the applicant, to pay costs if it concludes that there was no occasion for the application.

(c) The Breeders' Rights Committee shall take into consideration inter alia –

- (1) the position which the employee held;
- (2) the nature of the connection between the breeding of the variety and the employee's work;
- (3) the employee's initiative in breeding the variety;
- (4) the possibilities for utilising the variety and its actual utilisation;
- (5) expenses which under the circumstances, were reasonably incurred by the employee to secure protection of the variety in Israel.

(d) The Breeders' Rights Committee shall hear matters under this section in camera, unless the Committee ordered otherwise.

(e) Decisions of the Committee under this section may be enforceable in like manner as a final judgment of a court.

##### Section 50

##### Duties of State employee

(a) A State employee, or an employee of a State institution or of a State enterprise designated by the Minister, or any other person who receives payment for services from one of these bodies who bred a variety during or in consequence of his service, shall inform his superior and also the State Service Commissioner or another designated public servant, as prescribed.

(b) Notification under this section shall be delivered as soon as possible after the breeding of the variety but not later than the time the employee is about to submit an application under section 20 in respect of the variety, and it shall be delivered in a manner prescribed in consultation with the Minister of Finance.

(c) A person bound to make notification under this section, shall not file an application for the registration of breeders' rights abroad or any other application for the protection of the variety bred unless –

- (1) he has received advance permission from the State Service Commissioner or from another designated public servant; or
- (2) within six months from the date he notified the breeding of the variety - it has not been decided that his rights in the variety have accrued, wholly or in part, under section 46 or by agreement, to the State or to the State enterprise or institution at which he worked.

#### Section 51

##### Duty to make notification remains in effect

The obligation to make notification under this Chapter shall remain in effect until it is complied with, even if the time prescribed for it may have elapsed.

#### Section 52

##### Duty to disclose particulars

A person who has made notification under this Chapter, and a person who has been obliged to make such notification, shall be under obligation to disclose to his employer, at any time, all particulars of the variety which he bred, as well as every additional particular of importance for the purposes of sections 46 and 53.

#### Section 53

##### Duty to assist employer

Where a person has bred a variety during service and if all or part of the right to register a breeder's right passed to his employer in accordance with section 46 or by agreement, shall do whatever his employer requires of him in order to obtain protection for the variety in any place to the employer's benefit, and he must sign any document required for that purpose; if he fails to do so, the Registrar may permit the employer to do so after giving the employee an opportunity to present his arguments.

#### Section 54

##### Duty of secrecy

So long as application for the registration of breeders' right to a variety bred under service has not been filed, neither the

employee, nor the employer or any other person shall reveal particulars of the variety, which has been communicated to him in confidence.

### **CHAPTER EIGHT:**

#### **INDICATION OF BREEDER**

#### Section 55

##### Definition

In this Chapter, "person who has bred a variety" - a person who has developed a new variety, within its meaning in section 7, exclusive of persons who have taken title from him by process of Law, by transfer or agreement.

#### Section 56

##### Indication of name of breeder

Where a person has bred a variety and an application for the registration of a breeder's right in its respect has been filed, he or his survivors may demand that his name be indicated in the Register of Rights and the Registrar shall comply with the request, subject to sections 57 and 58, provided that the request has been filed at the time and in the manner prescribed; notwithstanding the provisions of sections 98 to 100, when the name of the person who has bred the variety has been registered in the Register of Rights, it shall not be deleted except by a decision of the Court.

#### Section 57

##### Hearing the breeder and the holder of right

Where an application under section 56 has been filed, while the applicant making it is not entitled to apply for registration of breeders' right in his name, the Registrar shall give notice thereof to the holder of breeders' right or to the person who has the right to apply for aforesaid registration, and if opposition proceedings under section 23 are pending at that time - to every person who is a party to those proceedings; the Registrar shall give his decision after hearing the arguments of all parties concerned, if they so requested that during the prescribed time.

#### Section 58

##### Refrain from dealing with request

The Registrar may refrain from dealing with a request under section 56, if he believes that it is proper to deal with it like an application, on the grounds stated in section 23(b)(1) or in section 29(a)(4).

#### Section 59

##### Indication of name cannot be waived

A stipulation by which a person who has bred a variety waives the right to request that his name be indicated, shall be of no effect.

Section 60Indicating of name not to confer rights

A person, whose name is stated as that of the person who has bred a variety, shall not for that reason alone - have any right in the variety and to the breeders' right therein.

**CHAPTER NINE:****INFRINGEMENT OF BREEDERS' RIGHT**Section 61Actions for infringement

Only the holder of a breeders' right or his agents shall be entitled to file an action for infringement.

Section 62Time for filing actions for infringement

An action for infringement shall not be filed before the breeders' right has been registered; however, when an action for infringement has been filed, the Court may grant relief for an infringement committed after the date of publication under section 22.

Section 62ATransfer of burden of proof  
(As amended in February 1996)

Where an action is brought by the holder of an original protected variety (hereafter: plaintiff) against the holder of a variety, in respect of which it is argued that it is an essentially derived variety (hereafter: defendant), the defendant shall bear the burden of proof that the variety is not essentially derived, if the plaintiff has proven one of the following:

- (1) genetic conformity between the original variety protected and the variety, in respect of which it is claimed to be essentially derived variety;
- (2) the variety, claimed to be essentially derived variety maintains, except for minor differences, the expression of the essential characteristics that arise out of the genotype or out of a combination of genotypes of the original protected variety.

Section 63Utilisation of forfeited product

Where a product of a registered variety is lawfully forfeited, its utilisation shall not constitute infringement, unless it is the product of repeated cultivation.

Section 64Invalid registration as defense of infringement  
(as amended in February 1996)

Any grounds for the opposition of registration of a breeders' right, or any grounds specified in section 29(a)(1) and 29A(a)(1) shall be a good defense in an action for infringement; if the Court allows the defense, it shall order the particulars of the registration in the Register of Rights to be amended or the breeders' right to be revoked, as the case may be.

Section 65Relief for infringement

(a) In an action for infringement, the plaintiff is entitled to relief by way of injunction and by way of compensation.

(b) When a Court is about to award compensation, it shall take the defendant's act of infringement into account, as well as the plaintiff's position in consequence of that act, and it may also take into account *inter alia* –

- (1) the direct damage caused to the plaintiff;
- (2) the extent of the infringement;
- (3) the profits derived by the infringer from the act of infringement;
- (4) reasonable royalties, which the infringer would have had to pay, had he been given a license to utilise the breeders' right to the extent of the infringement.

(c) Where an infringement is committed after the plaintiff has warned the infringer, the Court may order the infringer to pay punitive damages in addition to the compensation set under subsection (b), but the amount shall not exceed that of the compensation.

(d) Where compensation is claimed, the Court may order the defendant to deliver a report as to the extent of the infringement; however, in fixing the amount of compensation, the Court shall not be bound by the report, but may set the amount in accordance with all the circumstances of the case; this provision shall not derogate from the rules of procedure concerning the rendering of accounts.

Section 66Compensation where specifications  
has been amended

Where a breeders' right was infringed before permission was given to amend any of the claims in the specification, and compensation for the infringement is claimed after permission to amend was granted, the Court may refrain from taking the permission to amend into account, if the claims in the original specifications were not formulated in good faith or were not formulated clearly.

Section 67Restriction on the award of compensation  
for breeders' right partially revoked

Where part of a breeders' right, for the infringement of which an action was brought is revoked, that alone shall not deny the plaintiff compensation for the infringement; however, the Court may refrain from awarding compensation if the claims in the original specifications were not formulated in good faith or were not formulated clearly.

Section 68Compensation in the case of a  
renewed breeder's right

Where the Court is satisfied that there was no justified cause for failure to pay the fee under section 74, it may refrain from awarding compensation for an infringement of breeders' rights perpetrated during the period between the date for the payment of the fee under section 74, and its actual payment under section 75; a person who argues that there was a justified cause for failure to pay the fee, shall bear the burden of proof.

Section 69Declaration of non -infringement

- (a) A person who intends to perform any act in respect of a variety, may apply to the Court for a declaration that the act does not constitute an infringement of any breeders' right specified in the application.
- (b) The holder of the breeders' right shall be the respondent to the application.
- (c) The Court shall make the declaration only if the applicant delivered to the holder of the breeders' right full particulars of the act or of the variety in respect of which he applied, if he requested from him the declaration for which he now applies to the Court, and if the holder of the breeders' right refused to make it within a reasonable time; however, the Court shall not reject an application only because it was filed before the expiration of such time, as in the opinion of the Court; is reasonable for the making of the declaration by the holder of the right.
- (d) The costs of the parties shall be borne by the applicant for the declaration, unless the Court directs otherwise.
- (e) In proceedings under this section, the plea that the breeders' right is invalid shall not be heard, and the grant or refusal of the declaration shall not be deemed to decide the question of validity of breeders' right.

Section 70Powers of Court on referral to Council  
(as amended in February 1996)

Where the Court has permitted the Council to consider an application for amendment under section 26(c), or an application for revocation under section 29(e), or an application to declare null and void under section 29A(d), it may - for a time and on conditions set by it - stay the proceedings of a case pending before it in respect of the same breeders' right, but each party may at any time apply to the Court for the change or revocation of the stay order.

**CHAPTER TEN:****FOREIGN APPLICATIONS**Section 71Application by non- resident  
(as amended in February 1996)

The Minister may direct that also a person not included among those enumerated in section 3(b) may apply for the registration of breeders' right in the Register of Rights in respect of a variety bred outside Israel, if one of the following applies:

- (1) it is necessary to do so in order to comply with undertakings that relate to international agreements between Israel and another state, and the Minister is satisfied that the other state reciprocates in this matter;
- (2) the Minister believes that the matter is of public interest.

Section 72Priority right  
(as amended in February 1996)

- (a) Where a breeder files an application for the registration of a breeders' right in a variety after he - or whoever preceded him in the right - has already filed a foreign application, may apply for a priority right under which - for purposes of sections 7 and 9 - the date of the foreign application shall be deemed the date of the application in Israel, provided that the application in Israel is filed within twelve months after the filing of the foreign application or after this section went into effect, whichever was later, and provided that other conditions prescribed by regulations are fulfilled.

Section 73Extension of application  
(as amended in February 1996)

Notwithstanding the provisions of sections 72 and 102, the Minister may - by order - make the provisions of section 72 applicable to a state that is not a Union State, if he finds that such state accords reciprocity in this matter.

**CHAPTER ELEVEN:****FEES**Section 74Fees

A breeders' right shall be valid if its holder has paid the prescribed fee at the prescribed times; where the fee is not paid, the right shall lapse at the time prescribed for payment of the fee.

Section 75Extension for payment of fees

Notwithstanding the provisions of section 74, a fee may be paid within six months from the time prescribed for its payment, with the addition of a fee in a prescribed amount; when that is done, the fee is deemed to have been paid at the time prescribed for its payment, and the breeders' right shall be deemed not to have lapsed.

Section 76Publication of lapse of right

Where the period said in section 75 has passed and the fee is not paid as provided therein, the Registrar shall publish a notice in Reshumot that the breeders' right has lapsed.

Section 77Application for restoration of breeders' right

The holder of a breeders' right which has lapsed for non-payment of the fee, as said in section 75, may apply to the Registrar - in the manner and form prescribed - that the right be restored, provided that on filing the application he pays the restoration fee prescribed for this matter.

Section 78Publication of application for restoration

Where the Registrar is satisfied that the fee has not been paid for reasonable cause, that the holder of the breeders' right was not aware of and did not desire the lapse of the right, and that the application for restoration of the right under section 77 was filed as soon as possible after the holder of the right - or

the person responsible on his behalf for its payment - became aware that the fee had not been paid, he shall order the application to be published in Reshumot after the holder of the right paid the outstanding fee.

Section 79Opposition to restoration

Any person may, within three months from the date of publication under section 78, file with the Registrar reasoned opposition in writing to the application for restoration of the right.

Section 80Order for restoration

(a) Where no opposition has been filed under section 79, or where opposition has been filed and rejected, the Registrar shall make an order to restore the breeders' right (in this section: the order); the Registrar may make the restoration conditional, including, *inter alia*:

- (1) payment of compensation to any person adversely affected by the order;
- (2) permission for a person who utilised the registered variety, in respect of which the order is made, to continue to utilise it only in the course of his business, with or without consideration and for a period prescribed by the Registrar.

(b) A person who deems himself aggrieved in respect of the compensation set as said in subsection (a)(1) or in respect of the consideration for permission to continue utilising the variety as said in subsection (a)(2), may - instead of appealing against it under section 86 - lodge objection with the Breeders' Rights Committee.

Section 81Transfer of right

The right to utilise breeders' right under section 80 cannot be transferred, endorsed to another or transmitted by way of inheritance, except together with the business in which the registered variety was used as aforesaid.

**CHAPTER TWELVE:****PENALTIES**Section 82Infringement committed knowingly

A person who knowingly infringes a breeders' right registered under this Law, is liable to one year imprisonment or to a fine of IL25,000; if previously he had already been convicted of an offense under this section, he shall be liable to two years imprisonment or to a fine of 11,30,000.

Section 83Act in respect of variety prior to registration

A person who knowingly commits an act in respect of a variety during the period between the publication under section 22 and the registration of the breeders' right, and if that act would have constituted an infringement of breeders' right if the variety had been registered at that time, he shall be liable to six months imprisonment or to a fine of IL15,000; if previously he had already been found convicted of an offense under this section, he shall be liable to one year imprisonment or to a fine of IL15,000.

Section 84Failure to comply with obligation

A person who failed to comply with an obligation imposed on him by sections 13(c), 19, 34, 45, 50, 52, 53 or 54, or a person has revealed anything from sessions of the Breeders' Rights Committee under section 49, held *in camera*, shall be liable to six months imprisonment or to a fine of IL2,000.

Section 85Competent Court

The Court competent to try offences under this Chapter is the District Court of Jerusalem.

**CHAPTER THIRTEEN:****JURISDICTION, PROCEDURE AND PRACTICE**Section 86Appeal

A person who deems himself aggrieved by a decision of the Council or the Registrar, and if no objection or opposition against that decision is provided under this Law, may appeal against it before the District Court of Jerusalem within thirty days from the day on which the decision came to his knowledge, and a person who deems himself aggrieved by a decision of the Breeders' Rights Committee, may appeal against it before the Supreme Court within the prescribed time.

Section 87Proceedings in camera

An appeal against a decision of the Registrar rejecting an application under section 15(d) shall be heard *in camera*, unless the Court ordered otherwise on application by the appellant.

Section 88Evidence on appeal

A Court which hears an appeal may accept evidence - either evidence already accepted by the Registrar or the Council or

other evidence - and may demand that that evidence be presented by affidavit or in any other manner it deems appropriate; where evidence is presented by affidavit, the Court shall upon request permit the person who made the affidavit to be cross examined, unless it sees reasonable cause not to permit it.

Section 89Scientific adviser

(a) In proceedings under this Law, the Court may appoint a scientific adviser, who shall assist it in taking evidence and advise it, but shall not take part in giving judgment.

(b) The Court shall set the remuneration of the scientific adviser who shall be paid by the State Treasury.

Section 90Power to direct amendment of specifications

In any civil proceeding under this Law the Court may - on the application of the holder of breeders' right - direct an amendment of the specifications for one of the reasons stated in sections 26(a) or 99, and the provisions of sections 26(a) and (b) and 27 shall apply thereto, *mutatis mutandis*.

Section 91Extension of times

(as amended in February 1996)

(a) The Registrar may, if he sees reasonable cause for doing so, extend any time prescribed in this Law or in regulations under it for the performance of any act that is not an act before a Court, except for the times prescribed under sections 72, 74 and 75; however, the Registrar may extend the time prescribed under section 72, if he is satisfied that the application in Israel was not filed on time because of circumstances over which the applicant or his representative had no control and which they could not have prevented.

(b) The Registrar may set any conditions he deems appropriate for an extension.

(c) An application for extension may be filed either during the set time or after it.

Section 92Collection of evidence

The Council, its committees, the Breeders' Rights Committee and the Registrar may collect evidence to the extent they deem necessary for the performance of their functions and the exercise of their powers.

Section 93Proceedings in contested case

(a) In any contested case -brought under this Law before



the Council or its committees, before the Breeders' Rights Committee or before the Registrar, the parties shall be given an opportunity to submit their evidence and to present their written or oral arguments in the prescribed manner and form and at the prescribed times.

(b) The payment of reasonable expenses may be ordered by:

- (1) the Registrar - in proceedings before him or before the Council or its committees;
- (2) the Breeders' Rights Committee - in proceedings before it; and they may also prescribe, by order, which party shall pay the costs and how they shall be paid.

(c) An order under subsection (b) may be executed, as if it were a court.

(d) The Minister of Justice may prescribe by regulations - subject to the provisions of subsection (a) - the Law procedure for any contested case under this Law.

#### Section 94

##### Special representation

(a) The Minister of Justice and the Minister of Agriculture may grant a permit to represent a person for purposes of all proceedings under this Law, other than proceedings before a Court.

(b) The Minister of Justice and the Minister of Agriculture shall - with approval of the Knesset Economics Committee - present conditions of eligibility for holding a permit under this section.

(c) The provisions of this section shall not derogate from the right of representation, granted to an advocate by the Chamber of Advocates Law 5721-1961.

#### Section 95

##### Preservation of documents (as amended in February 1996)

(a) All documents held by the Registrar, the Council and the Breeders' Rights Committee and which relate to the examination of application for the registration of breeders' rights, to the validity of a breeders' right, or rights to it or of rights related to it, or to any other matter that is likely to affect the validity of a breeders' right, or rights in it or of rights related to it, shall be kept for at least seven years from the day on which the validity of the breeders' right has expired.

(b) The provisions of subsection (a) shall not apply to internal correspondence between Council members, Council employees and the Registrar and to other documents, otherwise provided for by regulations.

#### Section 96

##### Public inspection and receipt of certified extracts

(a) The documents to be preserved under section 95 shall be open to public inspection, except for -

- (1) documents relating to any application for the registration of a breeders' right, which has not yet been published under section 22, or documents relating to Breeders' Rights Committee hearings under section 49;
- (2) documents that specify the denominations of the parents of a hybrid variety, which are not indicated in the Register of Rights, except when the Council so decides or the breeder otherwise requests.

(b) Every person may obtain an extract certified by the Registrar's seal of anything in the Register of Rights or of documents open to public inspection under this section, provided he applied in the prescribed manner and paid the prescribed fee.

#### Section 96A

##### Delivery of propagating material (as amended in February 1996)

Propagating material held by the Council shall not be delivered to a third party, except when the breeder who delivered it to the Council so requested, and except when a Court so ordered, if it concluded that it would be just to do so.

#### Section 97

##### Registration of transfer of rights (as amended in February 1996)

(a) When a person receives a transfer of rights in a variety - whether it is a registered variety or a variety in respect of which an application for the registration of breeders' right was filed - may apply to the Registrar for registration as the holder of those rights, and if the transfer has been proved to be to the Registrar's satisfaction and the prescribed fee has been paid, the transfer of the right shall be registered in the Register of Rights or in the application file, as the case may be.

(b) The Minister of Justice may prescribe procedure for the delivery of Court judgments that prescribe a transfer of rights said in this section; when he has so prescribed and when a judgment has been delivered to the Registrar in the prescribed manner, the Registrar shall enter the fact of the transfer prescribed by the judgment, notwithstanding the provisions of subsection (a).

Section 98Amendment of records and documents

(a) The Registrar may - on application by an interested party, which was filed in the prescribed form and manner - amend entries in the Register of Rights and in any document issued by him or filed with him or with the Council, if - in his opinion - the Register of Rights or document does not reflect the facts, and if no other procedure for making the amendment is prescribed by this Law.

(b) The Registrar shall publish a notice in Reshumot of any application under this section, and shall also give notice thereof to every person whom he believes liable to be adversely affected by the amendment including an invitation to file his arguments on the requested amendment to the Registrar within the prescribed time; the Registrar shall not decide on the application before the said time has elapsed.

Section 99Correction of clerical errors

The Registrar may correct any clerical error that occurred in a specification, in the Register of Rights or in a document issued by him, if he was requested to do so in the prescribed manner and form.

Section 100Corrections on the Registrar's initiative

The Registrar may also make amendments under sections 98 or 99 on his initiative, as prescribed for the purposes of those sections.

Section 101Restriction on acceptance of documents  
in support of breeders' rights

(a) Any document or deed, by which rights to a variety were transferred - whether it is a registered variety or a variety in respect of which an application for the registration of breeders' right or interest was filed, shall not be admitted in Court as evidence to property rights in a variety, or to a breeders' right or to the transfer of any benefit, unless the transfer has been registered under section 97, or unless the Court has concluded that there is a reason to admit it.

(b) Notwithstanding the provisions of subsection (a), aforesaid documents shall be accepted as evidence in any proceedings for an amendment of the Register of Rights under section 98.

## CHAPTER FOURTEEN:

## MISCELLANEOUS

Section 102Effect

(a) This Law, except for section 72, shall come into force six months from the date of its publication in Reshumot.

(b) Section 72 shall come into force on the day announced by the Minister, by notice in Reshumot, at least thirty days in advance.

Section 103Transitional provisions

(a) Where a breeder files an application for the registration of a breeders' right in a variety after he - or his predecessor in title - already received certification from an Israel institution before this Law went into effect, that the variety is a recommended variety under the Seeds Law 5716-1956, he may claim priority, according to which - for purposes of sections 7 and 9 - the date of the said certification shall be deemed the date on which application was filed for registration under this Law, on condition that the application for registration under this Law is filed within six months after this Law went into effect and that other requirements prescribed by regulations have been complied with; if his application is accepted with priority, then the period of breeders' rights shall be reckoned from the date of the said confirmation.

(b) Where a breeder files an application for the registration of a breeders' right in a variety after breeders' rights in that variety has been registered in his name or in that of his predecessor in title before this Law went into effect, then he may claim priority, according to which - for purposes of sections 7 and 9 - the date of the application for the right in the Union State shall be deemed the date on which the application is filed for registration under this Law, provided that the application for registration under this Law is filed within twelve months after section 72 went into effect and that other requirements prescribed by regulations have been complied with; if his application is accepted with priority, then the period of breeders' rights shall be reckoned from the date on which the breeders' rights has been registered in the Union State.

(c) Notwithstanding the provisions of subsection (b) and of section 102, the Minister may - by regulations - make the provisions of subsection (b) applicable to any state, whether or not it is a Union State, if it appears to him that that state accords reciprocity to Israel in this matter.

(d) Nothing in this Law shall be interpreted as providing relief for an infringement of breeders' rights during the period before the coming into force of this Law.

Section 104Implementation and regulations

The Minister is charged with the implementation of this Law and he may make regulations on any matter related to such implementation, including:

- (1) registration procedures;
- (2) procedure in proceedings before the Council and before the Registrar under this Law;
- (3) forms for applications under this Law, the manner of specifying and ways of demonstrating the specified variety;
- (4) the fees payable for applications filed under this Law, for acts by the Registrar and Council, for the registration and renewal of breeders' rights and for other services under this Law;
- (5) payments for opinions or for the performance of research;
- (6) the preparation, preparation for printing, printing, publication and sale of digests of specifications, of

specifications of breeders' rights and of other publications, by the Council or Registrar, or on their behalf;

- (7) issuing certificates under this Law, in witness of the registration of a breeders' right in the Register of Rights;
- (8) payment of expenses incurred by Council members for their participation in Council activities;
- (9) payment of expenses of witnesses or experts, who testified or gave opinions before the Council or the Registrar;
- (10) designation of experimental plots and laboratories for the testing of new varieties, within the farms of the Ministry of Agriculture or in other frameworks;
- (11) the circumstances under which a member's participation in the Council shall be terminated.

Section 105Publication

This Law shall be published in Reshumot within thirty days from the date of its adoption in the Knesset.

## REPUBLIC OF SLOVENIA

### *LAW ON PLANT VARIETY PROTECTION*

#### I. GENERAL PROVISIONS

##### Article 1

This law regulates the procedure for the protection of new varieties of plants and granting and protection of plant breeder's rights.

The varieties of all genera and species can be protected including the cross-breeds between genera and species.

##### Article 2

The meaning of the terms used in this law:

1. 'Breeder' means the natural person who has created, bred, discovered and developed, a variety on his own or together with other natural persons.

2. 'Person entitled' means the natural or legal person who has the right to file the application for the protection of the variety (hereinafter: application).

3. 'Applicant' means the natural or legal person who has filed an application.

4. 'The holder of plant breeder's right' is a natural or legal person who has been granted plant breeder's right.

5. 'The plant breeder's right' is a term for all the rights from Article 14 of this law.

6. '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 plant breeder's right are fully met, can be:

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

7. 'Protected variety' means the variety for which the decision on the protection was issued, it is defined by the official variety description and by the official sample and is identified by the denomination stipulated by this law.

8. 'The material of the protected variety' means any kind of propagating material or harvested material of the protected variety which could be used for further multiplication of this variety.

9. 'Official sample' means the official sample of the propagating material of the protected variety.

##### Article 3

The procedure for the protection of a new variety, the register of applications for the protection of new varieties (hereinafter: register of applications) and the register of protected varieties are managed by Plant Variety Protection and Registration Office (hereinafter: Office) as a legal body within the Ministry, responsible for agriculture and forestry (hereinafter: Ministry).

#### II. CONDITIONS FOR VARIETY PROTECTION

##### Article 4

The variety shall be protected by granting the plant breeder's right.

The plant breeder's right shall be granted where it is:

- new,
- distinct,
- uniform,
- stable and
- identified by the denomination defined by this law.

##### Article 5

The variety is new at the date of filing of the application (hereinafter: filing date), if it has been sold or economically exploited with the consent of the person entitled in the Republic of Slovenia for no more than one year before the filing date and outside the Republic of Slovenia for no more than four years before the filing date and in case of trees and vine no more than six years before the said date.

The sales or economic exploitation of the variety in the sense of the first paragraph of this Article does not include:

- exploiting and trading the variety without consent or knowing of the person entitled,
- contract transfer of the rights in the variety,
- contract growing, propagating, processing and storing propagating material or harvested material of the variety for the person entitled provided that the person entitled keeps exclusive ownership right to reproduced propagating material, harvested material or their products,

1. As published in the Official Gazette of the Republic of Slovenia, No. 86/98, Ljubljana, December 18, 1998

2. Translation as provided by the Ministry of Agriculture of Slovenia

- field trials and laboratory tests or small- scale processing trials with the purpose of evaluating the value for cultivation and use of the variety provided it is done by the person entitled or a person authorised by him,
- official testing of the variety in order to enter the variety register and preparing the risk assessment for genetically modified varieties,
- selling the harvested material being a by-product or a surplus product of the creation of a new variety provided that this harvested material is intended for final use and that the name of the variety is not identified.

Propagating material of the variety being repeatedly used for production of another variety or a hybrid, is considered exploited for profit purposes when the plants or parts of plants of another variety were exploited.

#### Article 6

The variety is distinct if it is clearly distinguishable on the basis of at least one important characteristics from any other variety whose existence is a matter of common knowledge at the time of the filling of the application.

The variety is of common knowledge, especially if:

- it has been protected and listed in the variety register in any other country up to that day;
- an application for variety protection or listing the variety in a variety register was filled in any other country and the procedure is completed by the variety protection or entry of the variety in the register of varieties, and
- propagating material of the variety or the harvested material has been marketed or used for profit purposes.

#### Article 7

The variety is uniform if its characteristics which are basic for the distinction from other varieties, are sufficiently uniform in expression, in spite of the variations which may be expected from particular features of its propagation.

#### Article 8

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

#### Article 9

The denomination of a protected variety shall be its generic designation.

#### Article 10

Every denomination, which provides the distinguishing of the variety can be registered as the name of the protected variety and it may consist of any word, combination of words, combination of words and figures or a combination of letters and figures unless this law stipulates it otherwise.

Denomination should not be registered as the name of the protected variety if it:

- is inappropriate for linguistic reasons;
- prevents the identification of the variety;
- consists only of figures, only where this is already a common practise;
- is identical with or similar to the denomination that designates an existing variety of the same or a closely related species, unless the existing variety is no longer exploited and its denomination has not acquired any particular significance;
- misleads or causes confusion as to the origin, characteristics, value, usage, recognising or geographical origin;
- consists of botanical or general name of the genera or species, or includes such a name that can create confusion;
- includes words such as “variety, cultivated variety, form, hybrid, cross-breed” or a translation of these terms;
- misleads or creates confusion about the breeder or entitled person;
- is contrary to public order and morality;
- is in opposition with the regulations of industrial property rights law.

If a certain variety has already been protected or listed in the variety register or an application for protection or entry in the register has been filed in any other state that has signed international contracts or conventions also signed or acceded to by the Republic of Slovenia, only the denomination of the variety which was registered, listed in the variety register or proposed in the application in another country, can be registered.

Exceptionally, the variety defined in the Republic of Slovenia, can be registered under a different nomination, but only if the usage of the previous name is not be suitable for linguistic reasons or in case of it being contrary to public order and morality.

Closely related species from the third item of the second paragraph of this article as well as more detailed conditions for the registration of the name of the variety shall be regulated by the Minister, competent for agriculture and forestry (hereinafter: Minister).

#### Article 11

The usage of the denomination of the protected variety is obligatory. The propagating material of the protected variety can only enter the market if the name of the protected variety is listed. This provision stands also after the expiry of the protection of the variety.

Provisions from the first paragraph of this article do not stand if the propagating material of the protected variety is used in non-commercial purposes in private sector.

The denomination used for the protected variety must be the same in all countries, except in case of exceptions from the fourth paragraph of the Article 10 in this law.

When a variety is marketed, the use of the registered variety denomination in association with a trademark or other indication shall be permitted, subject to the denomination remaining easily recognisable.

A designation that is identical or confusingly similar to the denomination of the protected variety can not be used for another variety of the same or closely related species.

### **III. PERSON ENTITLED TO THE VARIETY PROTECTION AND TO PLANT BREEDER'S RIGHT**

#### Article 12

Person entitled to the variety protection and to the plant breeder's right is a breeder of the variety or his legal successor.

Where more persons have created, bred, discovered and developed a variety jointly, the entitlement to variety protection and plant breeder's right shall vest in them or their legal successors jointly.

Where more persons have created, bred, discovered and developed a variety separately, the one who first submitted the application is entitled to the plant breeder's right.

Where the breeder is an employee of a legal person and mutual rights and obligations are settled by a contract, the entitlement to the acquisition is defined by this contract. If not, the provisions of the regulations on industry property rights from the working contract considering the patents, are sensibly applied.

#### Article 13

The plant breeder's right can be applied for by the entitled person from Article 12 of this law, who is a citizen of the Republic of Slovenia, other natural person with residence in

the Republic of Slovenia and legal person with a registered office in the Republic of Slovenia.

Legal or natural person, a citizen of a foreign country, is granted the same plant variety protection rights in the Republic of Slovenia as domestic legal and natural person, if stipulated so in international contracts and conventions signed by the Republic of Slovenia or under the condition of reciprocity. The reciprocity is proven by whoever refers to it.

In the procedure of the Office, a foreign legal and natural person uses the rights of this law through a procedural representative on who is a natural person with residence in the Republic of Slovenia or legal person with a registered office in the Republic of Slovenia.

### **IV. PLANT BREEDER'S RIGHT**

#### Article 14

The plant breeder's right is granted by protecting the variety.

The plant breeder's right includes only the right for economic exploitation and using the protected variety.

#### Article 15

The authorisation of the holder of the plant breeder's right is required for the use of the protected variety for:

- production and reproduction of propagating material,
- conditioning for the purpose of propagation,
- marketing of propagating material, including exporting and importing and
- stocking the material of the protected variety for any of the purposes mentioned above.

The holder's authorisation is also required for using harvested material of the protected variety but only if:

- the harvested material is obtained through the unauthorised use of propagating material of the protected variety and
- the holder did not have a suitable opportunity to apply for plant breeder's right for propagating material of this variety.

The holder's authorisation for the acts in the first four items of this Article is also required for:

- varieties which are essentially derived from the protected variety, unless the protected variety is itself a derived variety;
- varieties which are not clearly distinguishable from the protected variety;

- varieties or hybrids whose production requires the repeated use of the protected variety.

A certain variety is an essentially derived variety if:

- the initial variety or another variety which was itself derived from the initial one, was used as the basic material for its breeding or discovery;
- it is distinguishable subject to Article 6 of this law and
- except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

#### Article 16

The plant breeder's right is not infringed if:

- the protected variety is exploited or used for:
  - private non-commercial purposes;
  - experimental purposes;
  - breeding of new varieties;
- the new variety from the third item of a) of this Article is economically exploited unless this new variety is an essentially derived one;
- if the harvested material of the protected variety of certain plant species, produced by the farmers on their own holdings, is used for further sowing on this farm and the farmer, using this opportunity, pays a suitable remuneration to the holder of plant breeder's right. The remuneration is suitable if it is considerably lower than the amount charged for the licensed production of propagating material of this variety in the same area.

The producers who use the possibility of further sowing in accordance with item c) of the first paragraph of this Article, must present all the data on the extent of the further sowing to the holder of plant breeder's right on his request.

Small farmers are exempt from the remuneration in accordance with item c) of the first paragraph of this article.

The plant species from item c) of the first paragraph of this Article as well as the criteria for small farmers shall be regulated by the Minister.

#### Article 17

The plant breeder's right is also infringed if the propagating material of the protected or essentially derived variety is marketed by the holder himself or someone in agreement with him, if the person obtaining the propagating material of the protected or derived variety:

- uses entire plant, a part of the plant or the harvest of the protected or derived variety for further reproduction;

- exports the material of the protected or essentially derived variety which can be used for further reproduction, into a state where the plant genera or species of this plant can not be protected.

This provision does not stand if the exported material is intended for final use.

#### Article 18

The plant breeder's right shall expire at the end of the twentieth calendar year following the date of the granting, for hops, grapevine and trees, it shall expire at the end of the twenty-fifth year after the year of the granting if this law does not stipulate otherwise.

Regardless the provisions of the previous paragraph, the person entitled from the Article 12 of this law who has already filed a complete application, shall be entitled to equitable remuneration, if during the procedure for the variety protection any person economically exploited or used the variety for which the application had been filed, contrary to the Article 15 of this law. The entitled person shall be entitled to remuneration only for the period between the date of the publication of the application in the Gazette and the date of being granted plant breeder's right.

The plant breeder's right shall terminate:

- when the holder surrenders it;
- when the term provided in the first paragraph of this Article expires;
- by abolition or cancellation of decision with which it was granted.

## **V. THE PROCEDURE FOR VARIETY PROTECTION**

### 1. Bodies

#### Article 19

The Office shall have the following competencies and tasks:

- to manage the administrative procedure for protection of new variety and the registration of the denomination according to this law and the law on general administrative procedure;
- to maintain the register of applications and the register of protected varieties;
- to publish in the Gazette: applications for the grant of plant breeder's right including the variety denomination, rejections of applications, registrations and possible changes in the register of applications, withdrawals of applications, regulations on variety protection

tection and possible changes and other official announcements;

- to co-operate with international organisations and associations as well as state bodies and non-government organisations in the field of protection of new varieties;
- to co-operate technically and professionally with competent offices of other countries in the field of testing varieties and checking the maintenance of the varieties;
- to exchange the results of the testing of the varieties and other information in their competence with competent bodies in other countries;
- to monitor the fulfilling of obligations of the holder of plant breeder's right and
- to perform other tasks in the field of variety protection.

The Gazette for the publications of the Office and more detailed content of the publications shall be regulated by the Minister.

#### Article 20

The Minister shall appoint the expert commission for variety protection (hereinafter: commission). The commission shall consist of 5 members who choose their president amongst themselves and his deputy. The commission shall operate according to the business plan, confirmed by the Office.

The commission holds the position of an expert in the procedure of variety protection and on the basis of studying the application and presented documentation, proposes to the Office their decision about the protection of the variety.

## 2. Registers

#### Article 21

The Office shall maintain a register of applications and a register of protected varieties according to the regulations.

The registers include the data from the documents on the basis of which the entry in both registers is performed. The documents are put into the document files which are the basis for both registers.

The register of applications shall contain mostly the following:

- the data on the applicant, breeder and procedural representative;
- date of complete application;
- the identification of the plant species;

- the proposed denomination for the variety or a provisional designation;
- where the priority of an earlier application is claimed, the country in which the application was filed and the filing date in this country;
- proposal for withdrawal of the application;
- notifications on the courts' decisions on the right to file an application.

The register of the protected varieties shall contain mostly the following:

- the plant species and registered denomination of the variety, including all synonyms;
- official description of the variety or reference documents from the document file which include the official description of the variety;
- in case of the varieties the production of which requires repeated use of other varieties (components), these components must be listed;
- the name and surname of the holder of plant breeder's right, breeder and procedural representative;
- the date of the granting and of the termination of the variety protection with the reasons for termination;
- the name and address of the person onto whom the right for economic exploitation of the variety was transferred by the licence contract;
- the name and address of the person to whom a compulsory licence was given, with the conditions of this act and the date of expiry of this right;
- the official announcement of the courts' decisions on the plant breeder's right.

The Office shall keep the document files in original form or copies at least for five years after the withdrawal or rejection of application and five years after the expiry of the plant breeder's right.

The content and the way of maintaining the registers in detail shall be specified by the Minister.

#### Article 22

The register of applications and the register of the protected varieties are public.

The Office is obliged to provide it for every person who expresses legal interest, the insight into the following documents from the document files:



- the documents of applications
- the documents of the granted plant breeder's rights
- the documentation on official testing of varieties.
- technical description of a variety which can be enclosed to the application and
- in case of the genetically modified variety previous approval for variety testing in accordance with the regulations on genetically changed organisms, shall be enclosed to the application.

Regardless the provisions from the previous paragraph, the applicant can demand with regard to a hybrid, that the documentation about the component of the variety, shall not be subject to public insight.

### 3. Procedure fees

#### Article 23

In the procedure for the protection of new variety and maintenance of plant breeder's right, the fees and the costs of the technical examination of the application, the costs of variety testing and the costs of publication and other services, shall be borne by the applicants or holders of plant breeder's right.

The type and amount of the fees and costs from the first paragraph of this Article as well as the amount of the fee from article 39 of this law is regulated by the Government of the Republic of Slovenia.

### 4. The procedure for variety protection

#### Article 24

The procedure for variety protection shall begin on the basis of an application submitted to the Office by the applicant.

The office shall make decisions about the application in the legal procedure.

A legal claim sent to the Ministry is allowed against administrative acts of the Office.

#### Article 25

The application shall be filed on a regulated form filled out and shall include mostly the following data:

- about the applicant or his representative or authorised person;
- about the breeder unless he is the applicant himself;
- Latin and Slovene name of the species of the variety;
- proposal of the denomination of the variety or temporary designation of the variety;
- the state in which the application has already been filed, the date of the application in that state if the application procedure demands the priority right;

A detailed form and content of the application and the documents which need to be enclosed, shall be regulated by the Minister.

#### Article 26

The Office shall check whether the application is complete and correctly filled out and if the evidence of a paid fee is enclosed.

If the application is not complete or is not filled out correctly the fee has not been paid, the Office applies to the applicant to add to it or pay a fee within 30 days after receiving the notification. If an applicant does not fulfil the obligations to the Office in the defined term, his application shall be treated as non existing subject to the decision of the Office.

The certificate of a complete application is issued for the applicant. A complete application is entered into the Register of applications and published in the Gazette. As the date of the complete application, the date of the receipt of the application or the date of the additions with which it became complete, is written.

An extract from a complete application is published in the Gazette three months after its submission.

#### Article 27

An applicant who filed an application for the protection of a new variety in the Republic of Slovenia may after submitting a complete application for the same variety in another state claim for the right of priority in conditions of actual reciprocity. In this case, the date of a complete application in a foreign state is taken as the filing date in the Republic of Slovenia. The applicant is entitled to all the rights under an application on the day of the submission of complete application in a foreign state.

The right of priority from the previous paragraph must be explicitly demanded by the applicant in his application.

The applicant can use the right of priority in the Republic of Slovenia no later than 12 months after the filing of complete application abroad.

#### Article 28

As for the applications published in the official gazette on the basis of the fourth paragraph of Article 26 of this law, any person who has legal interest, may file objections during the procedure for the protection of the variety.

The objection shall only refer to fulfilment of the conditions from Articles 5, 6, 7, 8 and 10 of this law or the entitlement to the protection according to Article 12 of this law.

The objection shall be made in writing and substantiated. The documentary evidence shall be attached and the defined fee shall be paid.

The Office shall instantly send the received objection to the applicant and appeals for his response at least within 30 days after receiving the objection.

The Office shall respond to the persons who have filed the objections at least 3 months after the filing of the objection.

#### Article 29

The Office shall examine whether the application satisfies the formal requirements in such a way that the data in the application are checked, whether the variety is new and whether the applicant is entitled to the plant breeder's right. If it is established that the conditions from Articles 5 and 12 are not met, this application shall be rejected.

#### Article 30

The Office shall also examine the suitability of the proposed denomination of the variety. Where the denomination is in opposition to the provisions of Article 10 of this law, the Office shall notify the applicant to propose a new denomination for the variety. The proposal must be presented no later than three months after receiving notification.

In the procedure for the protection of a new variety, the Office is obliged to use exclusively the denomination of the variety which is listed in the register of applications for the protection of a new variety.

#### Article 31

If the conditions from Articles 26 and 29 of this law are met, the technical examination shall be undertaken for each variety the purpose of which shall be:

- to check whether a variety belongs to the botanical unit, that is a plant genera or species, notified in the application;
- to define whether a variety is distinct, uniform and stable (Articles 6,7 and 8 of this law) and
- to prepare official variety description provided that the conditions from the previous two lines are met.

Technical examination shall be undertaken on the basis of the results of the examination of the variety in the field or in the laboratory.

The examination can be undertaken by:

- the Office or a professional institution on its behalf in the Republic of Slovenia or abroad where the

examination is undertaken in comparable agroclimatical conditions according to regular procedures and methods;

- the applicant if demanded by the Office.

Where the Office does not undertake the examination itself official supervision of the variety examination shall be ensured by the Office.

For the technical examination of a variety, the Office can use the examination results obtained in another state which has comparable agroclimatical conditions provided the examination was undertaken within the international systems of examination and the results are issued on the basis of international agreements signed or acceded to by the Republic of Slovenia.

Detailed conditions, procedures and methods of variety examination shall be regulated by the Minister.

#### Article 32

The applicant shall submit all necessary data, documents or propagating material requested for technical examination of the variety for the purposes specified in the first paragraph of Article 31 of this law.

Failure to submit the requested information under the conditions from the first paragraph of this Article for no justified reason shall cause an application to be rejected.

#### Article 33

Where the results of the examination prove that the variety fulfils the requirements of Article 31 of this law and the applicant has fulfilled all required conditions, the Office shall issue a decision on the protection of the variety and it shall be recorded in the Gazette.

The data from the legal decision on the protection of the variety or on the rejection of the application shall be included in the Register of Applications.

With the legal decision on the protection of the variety, the plant breeder's right certificate valid from the date of the legal approval, shall be issued to the holder of plant breeder's right.

On the basis of legal approval of the decision of the variety protection, the corresponding data shall enter the Register of the protected varieties.

The form and the content of the plant breeder's right certificate shall be specified by the Minister.

### 5. Lapse of the Plant Breeder's Right

#### Article 34

At the request of the holder of plant breeder's right from the first line of the third paragraph of Article 18 of this law, the Office in a legal procedure issues a decision recognising that

the plant breeder's right shall be terminated at the request of the holder. The plant breeder's right shall be terminated on the following day after receiving of a written declaration of the holder.

On the basis of a legal decision from the first paragraph of this law, the termination of the plant breeder's right shall be recorded in the Gazette.

#### Article 35

In a legal procedure, the Office declares a decision on the variety protection null and void when it is established:

- that the variety was not new (Article 5) or distinct (Article 6) at the date of receiving complete application;
- where the variety was not uniform (Article 7) and stable (Article 8) at the date of receiving complete application, and the grant of the plant breeder's right had been essentially based upon information and documents submitted by the applicant;
- where the plant breeder's right had been granted to a person who is not entitled to it and the entitled person has not brought an action for judicial assignment under Article 37 of this law.

#### Article 36

The Office shall cancel a decision on the protection of a variety in a legal procedure without a consent or request of the holder when:

- it is established that the holder failed to meet his obligations under Article 44 of this law or that the variety is no longer uniform (Article 7) or stable (Article 8);
- the holder within the prescribed period does not meet the written request made by the Office to provide the propagating material or the documentation for the purpose of verifying the maintenance of the variety under Article 44 of this law;
- the holder does not meet the written request of the Office to provide a new proposal for the variety denomination under the first paragraph of Article 38 of this law within the prescribed period;
- the holder does not pay the annual fee for the plant breeder's right to remain in force under Article 43 of this law in the prescribed time.

#### Article 37

Where a person who is not entitled to the plant breeder's right filed an application for protection or was granted the plant

breeder's right, the entitled person may bring an action for the assignment of the plant breeder's right to him.

The demand from the previous paragraph can be filed after the date of the publication of the application for protection of new variety in the Gazette, but no later than 5 years after the publication of the application in the Gazette.

When the unjustified rights were transferred to the third party in case of a situation under the first paragraph of this article, the transfer shall become null and void.

However, regardless the provisions under the third paragraph of this Article, the holder of any exploitation rights acquired in good faith who had exercised his rights before the beginning of the procedure under the first paragraph of this Article, may continue to perform the exploitation of the variety subject to paying appropriate remuneration to the entitled person.

### 6. Cancellation of a Denomination of the Variety

#### Article 38

The denomination registered in the Register of the applications or in the Register of the protected varieties shall be cancelled only under the following conditions:

- when the applicant or the holder of the plant breeder's right requests so and proves having the legitimate right for this action; the reasons for the cancellation and a suggested new denomination need to be presented;
- when it is additionally defined that the variety denomination was registered in spite of the reasons for refusal according to Article 10 of this law;
- where the holder or any other party is officially prohibited to use this denomination.

The applicant of the holder of plant breeder's right shall be instantly notified in writing of the proposal or claim for the cancellation of the denomination by the Office which shall demand that a new denomination be suggested no later than three months after receiving the claim. After the performed procedure under Article 30 of this law, the suggested denomination shall enter the appropriate Register and shall be published in the Gazette provided it fulfils the conditions regulated by this law. Simultaneously, the previous denomination is cancelled from the Register.

### 7. Restitution (*Restitutio in integrum*)

#### Article 39

In the procedure for the protection of the variety, the holder of the plant breeder's right, the applicant or any other party in the procedure, who for justified reasons failed to pay the fee or to fulfil other obligations to the Office and would therefore

lose the plant breeder's right under Article 36 of this law, can request the restitution of his right.

The request shall be submitted no later than two months after expiry of the reason for not fulfilling the obligation, but no later than one year after the expiry of the term for the obligation to be fulfilled. The request should also include the explanation and evidence of paid fee.

When the request is granted, the Office specifies new term in which the applicant must perform the unfulfilled obligations. The term for fulfilment should not exceed the term that was delayed, and it begins from the date of receiving the notification of granting the request.

The person to file the request for restitution of his right has no right to demand the remuneration if during the time between the loss and the return of the right, any person exploited or entered into a contract for exploitation of the protected variety in a good will.

## **VI. TRANSFER OF THE PLANT BREEDER'S RIGHT AND ASSIGN- MENT OF THE USE OF PLANT BREEDER'S RIGHT**

### Article 40

The holder of plant breeder's right may contract to transfer his rights wholly or partially to another person.

The person entitled or the applicant may transfer the right to file an application for the protection of a new variety or the rights from the application.

The contract of the transfer of the rights from the first and the second paragraph of this Article must be composed in writing, otherwise it is null.

The transfer of the rights from the first and the second paragraph of this article must not influence the previous rights of the third persons.

The transfer of the plant breeder's rights has no legal force for the third persons until the contract has not entered into the relevant register. The request for the entry of the contract of the transfer of the rights into the register can be submitted by any contracting party.

### Article 41

The holder of the plant breeder's right may contract to transfer the right to economic exploitation of the protected variety partially or wholly to the third person.

The licence contract shall enter the relevant register at the request of one of the contracting parties.

The licence contract which has not entered the relevant register from the previous paragraph, has no legal force.

The regulations on obligatory relations shall be used to define the form, the way of entering into a contract and the content of the licence contract as well as the legal protection.

### Article 42

In case of a public interest and if the protected variety is not economically exploited or not exploited to a sufficient extent by the holder of plant breeder's right himself or some other person having his authorisation, and he does not want to assign the right for exploitation to another person or sets unjustified conditions for the assignment of the right, the other person can be granted a compulsory licence.

The compulsory licence can only be granted to the person who presents the evidence of possessing technological and production possibilities needed for effective exploitation of the protected variety as well as all needed material resources.

The compulsory licence can not be granted if the holder of the plant breeder's right presents the evidence of justified reasons for lack of exploitation or insufficient exploitation of the protected variety.

The compulsory licence can not be granted if less than three years have elapsed between the date of the grant of the plant breeder's right and the date of the application for the grant of a compulsory licence.

The compulsory licence gives the holder of the licence a non-exclusive right to perform the actions referred to in Article 15 of this law partially or wholly with the purpose of supply of the domestic market.

The compulsory licence shall be granted for a period of at least two and no more than four years. The term of the licence may be extended where it is defined on the basis of a new examination, that the conditions for the grant of the licence continue to exist on the expiry of the first term.

The decision upon the request for grant or extension of the compulsory licence is made by the Office in a legal procedure. Before granting a compulsory licence, the Office may hear the opinions of the organisations concerned.

In case of granting the compulsory licence, the holder of the plant breeder's right is entitled to a reasonable payment.

The amount of the payment from the previous paragraph is fixed by the holder of the plant breeder's right and the licensee. If the agreement is not made, the Office shall fix the amount.

The Office may require the holder of the plant breeder's right to provide the licensee with the propagating material for use of the variety on the basis of the compulsory licence. The licensee shall give the holder adequate payment for the propagating material.

If a compulsory license is granted, the holder of the plant breeder's right may claim the data of the production of the propagating material of the protected variety, from a professional institution, authorised for performing field control of the production of the propagating material.

#### VII. OBLIGATIONS OF THE USER OF THE PLANT BREEDER'S RIGHT AND OF THE THIRD PERSONS

##### Article 43

In order to maintain the plant breeder's right, the holder must pay an annual fee for the breeder's right to remain in force.

The annual fee shall be paid in the beginning of the calendar year for the current year of the protection, no later than on January 31.

If the annual fee is not paid in the additional term set by the Office which shall not exceed 6 months after receiving the notification, this right is cancelled.

##### Article 44

While the protection is in existence, the holder shall be under an obligation to maintain the protected variety or its hereditary components unchanged.

At the request of the Office, the holder shall provide it or an authorised authority with the data, documents or propagating material that is needed for verifying the maintenance of the variety.

Where the evaluation shall suggest that the holder has failed to maintain the variety, the Office shall start the procedure for cancellation of the plant breeder's right.

##### Article 45

At the request of the Office, the holder must provide an appropriate sample of the propagating material or its hereditary components in a prescribed period:

- for an official sample or for the renewing of the official sample;
- to perform comparable examination of other varieties subject to the protection procedure.

The Office can authorise the holder of the plant breeder's right to keep and renew the official sample of the propagating material himself.

##### Article 46

When a person is economically exploiting or using the propagating material of the protected variety without an agreement or against the agreement with the holder of the plant breeder's right, must present the holder with all the relevant data at his request.

In case the data is not provided at free will, the holder of the plant breeder's right can request that the Office shall issue a temporary decision demanding from the perpetrator to present the data. A complaint against the temporary decision shall not hold its execution. The temporary decision shall be executed in a legal procedure.

#### VIII. JUDICIAL PROTECTION

##### Article 47

The person who infringes the rights under the application or the plant breeder's right, shall be held responsible for the damage according to general provisions on the damage repayment.

The person whose right has been infringed, shall have the right to demand damage repayment as well as the cessation of continued performance of infringement.

Infringement of the plant breeder's right shall be any unauthorised economic exploitation of the protected variety.

##### Article 48

Legal action claims regarding the infringement of the plant breeder's right, may be submitted within three years from the date on which the holder learnt about the infringement. Five years after the date of occurrence of the infringement, no claim can be submitted.

Legal action is submitted to the court and the procedures of dealing with the issue shall be speedy.

#### IX. CONTROL

##### Article 49

The control over the acts from provisions of Articles 11, 15, 16 and 46 of this law shall be performed by agricultural and forestry inspectors.

When there is a reasonable doubt that the infringement has taken place, the agricultural or forestry inspector shall temporarily seize the objects which were used or were intended for act of infringement or were a consequence of the infringement.

The temporarily seized objects as well as the request for legal procedure as to the infringement shall be instantly submitted by the agricultural or forestry inspector to the responsible authority.

##### Article 50

If the holder of the plant breeder's right suspects that his right could be infringed by export of material of the protected variety from Slovenia or import into Slovenia, the phytosanitary inspectors shall, according to his request, demand that:

- the holder or his representative examine this material;

- this material is seized, excluded from traffic and kept.

As to the proposal from the first paragraph of this Article, the holder shall provide the fitosanitary inspector with a detailed description of the protected variety, satisfactory evidence of the plant breeder's right and the suspected infringement. At the demand of the fitosanitary inspection, the holder shall pay caution money for the possible damage caused by these measures.

Fitosanitary inspector shall instantly inform the importer or exporter of material of the protected variety and in case of import to Slovenia the receiver of that material. Fitosanitary inspector cancels the adopted measures if the person entitled shall not take legal action or start another procedure to justify the adopted measures within the period of seven days.

## X. PENAL PROVISIONS

### Article 51

A fine of at least 500.000 tollars shall be imposed on a legal person if without the consent of the holder of the plant breeder's right: if he produces or multiplies the propagating material of the variety protected by this law, if he prepares the material of the protected variety for multiplication, if he puts into the market, imports or exports the propagation material of the protected variety and keeps the material of the protected variety for the purposes mentioned above (Article 15).

A fine of at least 350.000 tollars shall be imposed to a legal person:

- if in opposition to the first paragraph of Article 11, puts the material of the protected variety to the market without stating the registered denomination of the variety of the denomination is not correct;
- if in opposition to the fifth paragraph of Article 11 uses the denomination of the variety protected by this law of the denomination which can be confused by that denomination, by some other variety of the same or closely related species;
- if in opposition to the second paragraph of Article 16 and Article 46 does not provide the holder with the requested data.

A fine of at least 70.000 tollars shall be imposed on the person responsible for the legal person for the infringement from the previous paragraph.

A fine of at least 350.000 tollars shall be imposed on an individual for the infringement from the first paragraph of this Article if he does it in connection to independent performance of the activities.

A fine of at least 70.000 tollars shall be imposed on a person for the infringement from the first paragraph of this Article.

## XI. TRANSITIONAL AND FINAL PROVISIONS

### Article 53

The variety which had been protected until the adoption of this law according to the previous valid regulations shall enjoy protection according to this law until the expiry of the granted plant breeder's right.

The plant breeder's right for a variety from the previous paragraph can be proclaimed null and abolished only if defined that at the time of granting not all conditions with regard to the distinctiveness, uniformity and stability of the variety were met.

### Article 54

The procedures for the variety protection that are in place at the date when this law came into force, continue according to this law.

In spite of the provision of the previous paragraph, the variety which is not new on the date when the law came into force, can be exceptionally protected if:

- the application for the protection of this variety was submitted before the adoption of this law,
- the variety fulfils other conditions for protection from Article 4 of this law and
- it is protected or in the process for protection in one of the states which have signed international contracts and conventions signed by the Republic of Slovenia, and the procedure shall be completed by the protection of the variety.

In case of granting the plant breeder's right according to the second paragraph of this Article, the plant breeder's right lasts no more than 20 years and 25 years for trees after the date of grant of the plant breeder's right in the member state in which the variety was first protected.

### Article 55

The Minister shall make regulations on the basis of this law no later than in three months after the date when this law comes into force.

The Government of the Republic of Slovenia issues a decree on fees no later than one months after the date when this law comes into force.

The Office organises its operations within three months after this law coming into force. Until the official beginning of the Office's work, the tasks shall be done by the Ministry.

The Republic of Slovenia provides the premises and equipment as well as financial resources for the organisation and operation of the Office.

Article 56

On the date when this law comes into force in the Republic of Slovenia The following shall cease to be used:

a) provisions of the Law on Approval of New Varieties, the Permission to Introduce Foreign Varieties and the Protection of the Varieties of Agricultural and Forest Plants (Official Gazette SFRJ, No. 38/80 and 82/90) in connection with the protection of the varieties of agricultural and forest plants:

- from the chapter I. BASIC PROVISIONS: Article 1 in the part connected to the protection of new varieties and foreign varieties; point 4 of Article 2, second paragraph of Article 4 and Articles 7 to 10;
- chapter III. VARIETY PROTECTION (Articles 37 to 62);

- from chapter IV. PENAL PROVISIONS: Points 6 to 9 of the first paragraph of Article 63;

- from chapter V. TRANSITIONAL AND FINAL PROVISIONS: Article 66;

b) regulation of the Register of protected new domestic varieties and the Register of protected foreign varieties of agricultural and forest plants (Official Gazette SFRJ, No. 56/89);

c) regulation of the substance and data of the demand for the protection of the varieties of agricultural and forest plants (Official Gazette SFRJ, No. 56/89).

Article 57

This law shall come into force on the fifteenth day following its publication in the Official Journal of the Republic of Slovenia.

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**Note:** This index refers only to those items which, to the knowledge of the Office of the Union, are still relevant.



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<sup>1</sup> Enacted by Czechoslovakia

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<sup>1</sup> The law has been amended recently. It now applies to all plant genera and species.

<sup>2</sup> These texts have been integrated into the Intellectual Property Code

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<sup>1</sup> The Act has been amended further.

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The staff of the Union would like to take this opportunity to wish  
the readers of  
Plant Variety Protection

**HAPPY YEAR 2000!**