

## REPUBLIC OF BULGARIA

Law on the Protection of New Plant Varieties and Animal Breeds<sup>1,2</sup>

## CHAPTER I

## GENERAL PROVISIONS

Article 1Scope

(1) The present Law is to arrange the relations concerning the creation, protection and use of new plant varieties and animal breeds.

(2) The provisions of this law apply to:

– created or discovered and developed, plant varieties of any botanical genus and species, including clone, line, hybrid, and rootstock, irrespective of the method (artificial or natural) of their production, hereinafter referred to as “varieties.”

– created or discovered and developed, breeds, lines or hybrids of farm animals, irrespective of the method of their production, hereinafter referred to as “breeds.”

Article 2Authorities Participating in the Procedure of Securing Legal Protection

The State Variety Commission and the State Breed Commission of the Ministry of Agriculture and Food Industry and the Patent Office are the authorities that participate in the procedure of securing legal protection of the new varieties and breeds.

Article 3National Treatment

The provisions of this Law apply equally to foreign citizens of countries, parties to international treaties in this field, to which the Republic of Bulgaria is a party, such countries being hereinafter referred to as “Contracting States.”

Article 4Right to Authorship

(1) The authorship in a plant variety or animal breed arises with its being created or discovered and developed.

(2) The person who has created or discovered and developed, a plant variety or animal breed is the author (breeder) of this plant variety or animal breed.

(3) When several persons have created or discovered and developed a plant variety or animal breed jointly, they are co-authors of the variety or the breed.

(4) The right to authorship is personal, and not transferable.

(5) The author or co-authors of the plant variety or animal breed has the right to be identified as such in the application, in the certificate and in publications on the variety or the breed.

Article 5Representation

(1) The applicant, the certificate owner, as well as their assignees have the right to perform acts before the Patent Office, the State Variety Commission and the State Breed Commission either personally or through a local intellectual property representative, registered with the Ministry of Agriculture and Food Industry in accordance with rules set by the Minister.

<sup>1</sup> Published in State Gazette No. 84 dated October 4, 1996.

<sup>2</sup> Translation provided by the Bulgarian authorities

(2) Applicants with permanent residence or with company main office abroad are obliged to perform acts before the Patent Office, the State Variety Commission and the State Breed Commission through intellectual property representatives.

#### Article 6

##### Assignment of Rights

(1) All rights stipulated by this Law are transferable, unless otherwise provided for in the Law.

(2) Any assignment of rights as per the preceding paragraph is registered in the Patent Office and published in the Official Bulletin of the Office.

## CHAPTER II

### LEGAL PROTECTION OF PLANT VARIETIES

#### PART I

#### CONDITIONS FOR THE GRANT OF LEGAL PROTECTION

#### Article 7

##### Requirements (criteria)

(1) Legal protection for plant varieties is granted when the variety is:

- new;
- distinct;
- homogeneous;
- stable.

(2) The plant variety should bear a variety denomination related to its generic designation as per Article 12.

#### Article 8

##### Novelty

(1) The variety is deemed to be new if, at the date of filing the application for a certificate, the same or propagating material of the variety or harvest thereof has not been offered for sale, sold, or otherwise used commercially, or has been offered with the consent of the breeder:

- in the territory of the Republic of Bulgaria for not more than one year;

- in the territory of any other country for not more than:

- 6 years when concerning trees or vines;
- 4 years when concerning any other plant species.

(2) Any variety test does not affect its novelty and cannot be used to the prejudice of the breeder's right.

#### Article 9

##### Distinctness (Distinguishability)

(1) The variety is deemed to be distinct when it clearly differs from any other variety which is a variety of common knowledge by the date of filing of application with the Patent Office.

(2) A variety shall be deemed to be a variety of common knowledge if, by the filing date of the application, it has been made by cultivation, is an object of marketing, trade or any other kind of realization, or is an object of a breeder's right, has been entered in the registers of varieties, included in a reference collection or in a publication containing its precise description, or has become well known in some other way.

(3) An application for the grant of a breeder's right or for entry of another variety into the Official Register of Varieties in any country shall be deemed to render the variety well-known as from the filing date of the application, provided the application has resulted in the grant of a breeder's right or in the entry of the variety in the Official Register of Varieties.

(4) The indications allowing to define the characteristics and the peculiarities of the variety must be capable of clear and precise description.

#### Article 10

##### Homogeneity (Uniformity)

(1) The variety is deemed to be homogeneous when, irrespective of the presence of minor deviations, the plants are identical in their basic features, including the peculiarities of their sexual or vegetative reproduction.

(2) The deviations from any species are determined in accordance with the methods approved by the State Variety Commission.

#### Article 11

##### Stability (Steadiness)

The variety is stable when it remains unchanged in terms of its basic features after multiple reproduction (propagation) or, if the breeder has defined peculiar propagation cycle for the variety bred, and at the end of each cycle the variety has kept a conformity to the description specified for it.

#### Article 12

##### Denomination

(1) Any new variety is given a denomination which is related to its genus or species and serves for its identification. The denomination may consist of one or two words, or of a combination of words, letters and numerals, but not exceeding a four-digit number.

(2) The variety denomination should also satisfy the following requirements:

- it should differ from any other denomination used in the country for this species or for species close to it, or from a denomination which designates a variety already existing in each Contracting State, including after the expiration date of the certificate;

- it should exclude any possibility for misleading or misunderstanding with regard to the features, the nature or the identity of the specific variety or the personality of the breeder;

- it should not infringe earlier acquired rights of third parties who have obtained the right to such denomination, if the breeder may be granted right to the same denomination as per item 4. In this case the Patent Office requires from the breeder to propose another variety denomination;

- any person offering for sale or for commercial use in any Contracting State a reproducing material of a protected variety or of a variety in a process of examination is obliged to use the Variety denomination even after the lapse of the protection of this variety, as far as it does not contradict to earlier acquired rights for its use, as per the preceding paragraph.

(3) When a variety is offered for sale or for commercial use, a trademark, an appellation of origin or other designation may be added to the registered variety denomination of the protected variety. After the addition of such designations the variety denomination must be clearly and easily distinguishable.

## **PART II**

### **DOCUMENT FOR PROTECTION**

#### Article 13

##### Certificate

(1) The legal protection of a variety is provided by a certificate.

(2) The certificate certifies for the existence of a registered plant variety, the priority, the right to authorship and the exclusive right of the certificate owner on the variety.

(3) The certificate is granted by the Patent Office after an expert examination of the variety - object of the application.

(4) The certificate has a duration limit as from its date of grant:

- 30 years for tree and vine varieties;
- 25 years for all other varieties.

#### Article 14

##### Right to Apply

(1) The right to apply belongs to the author or to his assignee.

(2) The applicant is considered to have the right to apply, unless otherwise instituted by the court.

(3) In cases when several authors have jointly created or discovered and developed a variety, the right to apply belongs to them jointly. The refusal of one or several of them to participate in the process of application or in the procedure of grant of a certificate is not an obstacle to the rest of them to perform acts as stipulated by the Law, or to exercise their rights.

(4) When a variety is bred under the conditions of Article 16, the right to apply belongs to the employer if he files an application within three months from the date

of receiving a written notification by the author about the variety having been made. Otherwise the right to apply moves to the author.

(5) In case of a variety made on a contract basis, the right to apply belongs to the person assigning the task, unless otherwise provided for in the contract. If the task assignor does not exercise this right of his within the time limits as per paragraph 4, the right to apply moves to the author of the variety.

(6) The employees of the Patent Office and of the State Variety Commission have no right to file applications for plant varieties or to be mentioned as co-authors for the period of their labor relations with these state authorities and for three years after the termination of these relations, excluding the cases when the variety is a result of natural mutations, established during the examination as to substance, as per Article 38, paragraphs 1 and 2.

#### Article 15

##### Right to a Certificate

(1) The right to a certificate belongs to the person who has the right to apply as per Article 14.

(2) When several persons have made a variety independently, the right to a certificate belongs to the person who has first filed an application for this variety with the Patent Office.

#### Article 16

##### Service Variety

(1) A service variety is a variety made or discovered and developed in the performance of duties arising from employment or other legal relations of the author of the variety, unless otherwise provided for by a contract.

(2) The variety is a service variety as per paragraph 1, when during the process of its creation the author has been:

- performing duties inherent to his position;
- performing duties beyond the ones specified in item 1, when such duties have been specifically assigned to him and he has been expected to make the new variety;
- using material or financial resources, provided by the employer or the person who has assigned the task.

(3) When the variety is a service variety only with regard to one or to several of the authors, or the performers respectively, the provisions of paragraphs 1 and 2 and of Article 14 are applicable only to these authors, their employers or task assignors.

(4) Within three months of the creation of the variety, the author is obliged to notify in writing the employer, the task assignor, respectively, about that fact.

(5) The person who has created a service variety has the right to authorship as per Article 4, paragraphs 2, 3 and 4, and the right to an equitable remuneration of not less than 4%, if no provisions for such have been made in the respective contract. The remuneration is determined taking into account in particular the following:

- the profit determined by all kinds of realizations of the variety for the period of the effect of the certificate;
- the value of the variety;
- the contribution of the employer and/or the task assignor in terms of capital investments for the creation of the variety, materials, equipment, knowledge, experience, personnel and other assistance provided;
- the conditions of employment of the author.

(6) When the interests of the employer impose that the variety be applied for after the three-month time period as per Article 14, paragraph 4, the author has the right to an equitable remuneration for the time of suspension of the act of filing the application, as well as to all rights arising from the certificate granted for that variety later. These relations between the employer and the author are arranged by a contract before the expiration of the three months.

(7) When a variety certificate application is filed by the author within three years from the termination of the labor contract or of any other legal relations as per paragraph 1, the employer, the task assignor, respectively, may claim for the right to obtain the certificate, except for the case when he has been notified by the author of the variety created and has not exercised the right under Article 14(4). This right may be exercised within one year from the publication for the application as per Article 36.

(8) The remuneration to the author is payable by the employer, and when the employer is not the certificate owner it is payable by the certificate owner.

(9) In case of remuneration as per paragraphs 5, 6 and 8, irrespective of whether it is negotiated in a contract

or specified in accordance with the rules regulated, which is considered unfair in view of the real profit gained and the value of the variety, such remuneration may be increased upon the author's request. In case of refusal on the part of the employer, the dispute is settled through the court.

(10) When a service variety is created or discovered and developed outside the country, the rights of the author, if any, are determined in accordance with the operative rules, regulating the relations with the employer.

#### Article 17

##### Provisional Protection

(1) For the period from the publication for the application for grant of a certificate for a variety with the Patent Office until the grant of a certificate, a provisional protection is provided to the applicant against illegal acts of other persons.

(2) The scope of the provisional protection is determined by the description and the embodiment, insofar as the certificate granted does not extend the latter.

(3) The applicant is entitled to an equitable remuneration payable by the person who, during the period specified in paragraph 1, has performed acts which, after the grant of a certificate, require the certificate owner's consent in accordance with Article 18.

### **PART III**

#### **BREEDER'S RIGHTS**

#### Article 18

##### Scope of the Exclusive Right of the Certificate Owner

(1) The exclusive right of the certificate owner with regard to reproductive or vegetative propagating material of a variety protected by a certificate includes the right to use, the right to dispose of the certificate and the prohibition of other persons to use it without his consent. The right to use covers the following activities:

- production or reproduction (propagation);
- preparation for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting;
- importing;

- stocking for any of the purposes specified in items 1 to 6.

(2) The acts of third persons referred to in items 1 to 7 of paragraph 1 performed in respect of reproductive or vegetative propagating material of a variety protected by a certificate require the authorization of the certificate owner. The latter may give his consent in accordance with the conditions and limitations of Articles 19, 20 and 21.

(3) The provisions of paragraph 2 apply in respect of harvest, obtained through the unauthorized use of reproductive or vegetative propagating material of the protected variety and if the certificate owner has not had reasonable opportunity to exercise his rights in relation to the said reproductive or vegetative propagating material of the variety.

(4) The provisions of paragraph 2 apply in certain cases to products obtained directly from material of the protected variety, in accordance with the regulations or instructions as per paragraph 9. They may apply only if such products have been obtained through the unauthorized use of the protected variety, and if the certificate owner has not had reasonable opportunity to exercise his right in relation to the said material. Under the provisions of paragraph 2 directly obtained products are also considered to be "material."

(5) The provisions of the preceding paragraphs apply also to:

- varieties which are essentially obtained from the variety for which a certificate has been granted and when this variety is not itself an essentially derived variety;
- varieties which are not distinct in accordance with the provisions of Article 9 from the protected variety;
- varieties whose production requires the repeated use of the protected variety.

(6) For the purposes of paragraph 5(1), a variety is considered to be essentially derived from another variety, referred to hereinafter as "initial variety", when:

- it is predominantly derived from the initial variety, or from a variety which is itself essentially derived from the initial variety;
- it is clearly distinct from the initial variety in accordance with the provisions of Article 9;
- irrespective of the resulting differences, it conforms to the initial variety in the expression of the essen-

tial characteristics, which result from the genotype or combination of genotypes of the initial variety.

(7) Regulations and instructions issued in accordance with paragraph 9 may specify possible acts of obtaining derived varieties at least under the provisions of the preceding paragraph.

#### Article 19

##### Limitation on the Breeder's Rights

(1) Irrespective of the provisions of Article 18, paragraph 1, for the purposes of stimulating agricultural production, farmers have the right to use for their own needs for the purpose of reproduction in their own farms the product of harvest they have obtained through planting in their own farm, propagating material of a variety other than the hybrid or the artificially obtained variety, protected by a certificate.

(2) The provisions of the preceding paragraph apply only to plant species in accordance with a list specified by the Ministry of Agriculture and Food Industry.

#### Article 20

##### Exceptions to the Breeder's Right

The breeder's right does not extend to:

- acts done privately with a view to personal needs and for non-commercial purposes;
- acts done for experimental purposes;
- acts done for the purposes of breeding other varieties except when the provisions of Article 18(3) apply and the acts under the preceding item.

#### Article 21

##### Exhaustion of the Breeder's Right

The right of the breeder does not extend to acts concerning the material of the protected variety, or material derived from it, or of a variety specified in the provisions of Article 18, paragraph 5, which has been sold or otherwise marketed by the certificate owner or with his consent in the territory of the country, unless such acts:

- involve further propagation of the variety;
- involve an export of material of the variety, allowing its propagation in a country which does not pro-

tect varieties of the plant genus or species to which the variety belongs, except when the exported material is for final consumption purposes.

#### Article 22

##### Contractual License

(1) The variety applied for or protected by a certificate may be a subject to a license contract.

(2) The license contract may grant exclusive, non-exclusive, full or limited license.

(3) License contracts are recorded in the Register of the Patent Office, and enter into effect from their registration date. A publication for them is made in the Official Bulletin.

#### Article 23

##### Compulsory License

(1) The Ministry of Agriculture and Food Industry may grant a compulsory license for a protected variety in favor of any person involved upon his request, if at least one of the following conditions is satisfied:

- the variety has not been used for a period of five years from the filing date of the certificate application or three years from the date of grant of the certificate, and when the public interest requires the granting of a compulsory license, the time limit which expires later being valid;
- the variety has not been used to a degree sufficient to satisfy the national needs or social necessities within the time limits as per the preceding item, except when the certificate owner proves that he was not in a position of doing this;
- declared national state of emergency - for the time of its duration and when the variety contributes to overcoming such state.

(2) The petitioner as per the preceding paragraph has to prove that he is in a position to use the variety within the limits of the compulsory license requested.

(3) The compulsory license may be only non-exclusive and untransferable.

(4) The compulsory license may be terminated if the licensee, within one year after its grant, has made no steps towards preparation for the use of the variety. In

any case, the compulsory license shall be terminated if, within a time limit of two years after its grant, the licensee has not started to use the variety.

(5) The certificate owner may ask for cancellation or change of the conditions for the grant of a compulsory license as per paragraph 1 after the expiration of one year, if the conditions for the compulsory license decision have changed in the meantime.

(6) For a granted compulsory license, the breeder is entitled to an equitable compensation payable by the user. When there is no agreement, the compensation due is determined through the court.

(7) Compulsory license is not granted in favor of a certificate infringer.

#### Article 24

##### Service License

(1) The Ministry of Agriculture and Food Industry may order the grant, only in cases of emergency, for the needs of national defense and security, of a service license for the use of a certain variety which is the object of a certificate application or of a certificate already granted.

(2) The service license is ordered upon the request of the Ministry of Defense or the Ministry of Internal Affairs. Such order determines all conditions for the service license including those related to the equitable compensation for the use of the variety.

(3) Where there is no agreement regarding the compensation payable to the breeder, the latter is determined through the court.

#### Article 25

##### Special Treatment

(1) The Minister of Agriculture and Food Industry approves, in some extreme cases only, a List of a limited number of varieties being subject to certificate applications, which cannot be distributed or used freely without special authorization, when they are of interest to the national defense and security or the social health care.

(2) The breeder has the right to an equitable compensation. Where there is no agreement, the compensation to be paid is determined through the court.

#### Article 26

##### Legal Protection Abroad

(1) Bulgarian natural persons and legal entities have the right to choose any other Contracting State as per Article 3, in which they would file their first application for granting legal protection of a variety.

(2) The applicant may file an application for legal protection in any other state after having applied as per the preceding paragraph without waiting for the grant of a title of protection by the country as per the preceding paragraph.

(3) The applicant as per paragraphs 1 and 2 cannot apply for legal protection abroad without a special permission in case his variety is in the List as per Article 25(1).

#### Article 27

##### Lapse of the Certificate

(1) The certificate lapses in cases of:

- expiration of the time for which it has been granted;

- written refusal by the certificate owner, considered from the day of deposit with the Patent Office. The refusal of one of the certificate co-owners does not terminate its effect with respect to the others;

- in cases when the certificate owner:

- is not in a position to provide, within one year for annual species and two years for perennial species from the request of the State Variety Commission, authentic sowing or planting material, allowing the reproduction of the variety already created with its morphological and biological characteristics as defined at the moment of the grant of the certificate, the Patent Office being notified thereof;

- does not provide the competent authorities, within the prescribed time limit, with reproductive material, documents or instructions considered necessary for exercising control over the new variety or does not allow the Institute of Introduction and Plant Resources to take a sample for the storage of the variety.

- in case of failure to pay the due maintenance annuity for the certificate under Article 42, paragraphs 2 and 3.

(2) A certificate which has lapsed for failure to pay the annuity may be renewed within six months from the last day of the month when the certificate was granted, provided the overdue fee is paid at a double rate at the Patent Office.

#### Article 28

##### Infringements of the Certificate Owner's Rights

(1) Any use of the variety covered by the scope of the certificate protection as per Article 18, which has been made without the consent of the certificate owner, constitutes an infringement.

(2) Any person who performs the acts as per the preceding paragraph with a certificate protected variety produced by other persons in infringement of the certificate, is responsible for infringement only if the person has acted deliberately.

(3) The owner of a certificate for a variety and the exclusive licensee can bring an action for infringement of rights, unless otherwise specified.

(4) The licensee as per Article 22, the compulsory licensee as per Article 23 and the licensee as per Article 24 may bring an action for infringement of rights stemming from the certificate, if the certificate owner does not exercise his own right to bring an action within six months from the date of receipt of a written invitation from the licensee.

(5) Any licensee may take part in the court proceedings for infringement of rights stemming from the certificate, when the action has been entered by the certificate owner. The same applies also to the certificate owner, when the action has been entered by the licensee as per paragraphs 3 and 4.

(6) The action for infringement of rights to the variety may also be entered by the applicant before the grant of a certificate, after the publication for the application has been performed by the Patent Office.

#### Article 29

##### Actions for Infringement of Rights Stemming from a Certificate

(1) The actions for infringement of rights, stemming from a certificate may be:

- action to ascertain the fact of the infringement;
- action for compensation of the damages suffered and benefits lost;
- action to stop the infringer from acts infringing the certificate owner's rights.

(2) In case actions for infringement as per the preceding paragraphs are respected by the court, the court can decree also reprocessing or destruction of the subject of infringement, as well as of the tools of the infringement if the latter is done deliberately.

#### Article 30

##### Provision of Proofs

The type of proofs and the order of their gathering and provision as per the preceding Article is performed in accordance with the Civil Procedure Code.

#### Article 31

##### Invalidity of the Certificate

(1) The certificate granted is declared invalid when it is ascertained that:

- the conditions specified in Articles 8 and 9 were not complied with at the time of the grant of the certificate;
- the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to a person who is so entitled.

(2) On the basis of an enforced court decision as per item 2 of the preceding paragraph, the Patent Office grants a new certificate to the person named in the decision, at his request, without terminating the effect of the certificate declared invalid.

- (3) The invalidation of a certificate does not affect:
- effective awards concerning infringement of the certificate;
  - license contracts concluded and performed before the invalidation of the certificate, unless otherwise agreed.

#### **PART IV**

#### **EXAMINATION OF VARIETIES**



Article 32Filing of a Certificate Application

(1) The certificate application for a variety is filed with the Patent Office and is recorded in the Variety Applications Register.

(2) Filing date of the application is the date of receipt by the Patent Office of the following documents:

- a request for grant of a certificate for a variety with identification data for the applicant and the author of the variety;
- a description of the variety;
- a proposal for a denomination of the variety;
- filled in technical questionnaire for the species;
- paid fees for filing and publication of the application.

(3) The certificate application should relate to one variety only.

(4) The documents as per paragraph 2 are submitted in Bulgarian. The variety denomination, the technical questionnaire and the description accompanied by illustrating materials are submitted in three copies. The names of the applicant and the author, as well as the variety denomination are filled also in Latin.

(5) In case of an applicant filing an application through an intellectual property representative, a power of attorney is attached to the application.

Article 33Withdrawal of the Application

The application for a variety certificate may be withdrawn through a written declaration by the applicant, unless there is a certificate already granted. In case of withdrawal of the application, the applicant loses the priority right as per Article 34.

Article 34Priority Right

(1) The applicant who has filed a certificate application in accordance with Article 32 enjoys the priority right from the filing date.

(2) In case the applicant has filed earlier applications for legal protection of one and the same variety in Contracting States prior to his application with the Patent Office, he may claim Convention priority for a period of twelve months considered from the date of the initial application filing.

(3) The priority right as per the preceding paragraph is recognized if the applicant has made a declaration for a claimed priority when filing his application with the Patent Office and has paid the relevant fee. The priority right is proved within three months from the date of filing the application with the Patent Office by copies of the documents constituting the initial application, as well as by samples or other proofs. The copies must be certified by the office in which the initial application has been filed. Any failure to observe the above time limits and unpaid fees for the claimed priority result in the loss of the latter.

(4) The applicant as per the preceding paragraph is given the opportunity within a period of two years after the expiration of the term of priority or in case the initial application has been rejected or withdrawn, to submit for examination additional information, documentation or material.

Article 35Preliminary Examination

(1) The application for a variety certificate registered in the Patent Office is subject to preliminary examination within one month from its filing date in order to check:

- the formal regularity of the application and the documents attached to it according to Article 32;
- the contents of the documents enclosed;
- the compliance of the denomination of the plant variety to the requirements of Article 12. With the consent of the Patent Office, the applicant may give a provisional proposal for a denomination instead of the variety denomination for the needs of the examination.

(2) The Patent Office notifies the applicant of the shortcomings found and gives him three months to correct them. If the applicant fails to respond within the specified period of time, the application is deemed to be abandoned.

done and the examination for it is terminated. In such case the applicant loses the priority right as per Article 34(1).

#### Article 36

##### Publication for the Application

(1) The Patent Office makes a publication for the application in the Official Bulletin immediately after the expiration of the fourth month, but not later than the sixth month from the filing date of the application.

(2) The Patent Office does not allow access to materials related to a certificate application prior to the publication for it, unless there is a written permission by the applicant.

(3) The access to materials related to applications as per paragraph 2 is admissible to the Ministry of Agriculture and Food Industry under Articles 23, 24 and 25, and to the Ministry of Defense and the Ministry of Internal Affairs in accordance with Articles 24 and 25.

#### Article 37

##### Submission of the Application for Examination as to Substance

Within one month after performing the preliminary examination of the application, the Patent Office submits the application to the State Variety Commission for examination as to substance, notifying the applicant to pay the due fees to the State Variety Commission.

#### Article 38

##### Examination as to Substance

(1) For each application for a certificate the State Variety Commission undertakes an examination within a period of two to four years in order to establish whether the plant variety complies with the requirements of Article 7. When necessary, this time limit may be prolonged upon the applicant's request.

(2) For the purposes of examination, the State Variety Commission tests the variety in its own or other experimental stations, specialized institutions, laboratories and offices, and describes and proves the features which allow to define and distinguish the new variety.

(3) The applicant provides, free of charge, sowing and planting material necessary for the variety testing, as

well as any additional information and documentation specified in the regulations of Work of the State Variety Commission.

(4) If during the process of examination it is found that the denomination applied for in the Patent Office does not comply with the requirements of Article 12(1) and (2), the applicant is given two months to propose a new denomination. In case of failure to observe the time limit specified, the application is considered abandoned and the proceedings related to it are terminated.

(5) The examination with respect to the denomination should establish whether the variety denomination applied for is identical to that of the application for the same variety in other Contracting States.

(6) When the State Variety Commission judges that the variety does not comply with the requirements of Article 7, it notifies in writing the applicant giving the grounds for this judgment, and invites him to respond within three months. If the applicant fails to respond within this time limit or unreasonably maintains his application, the State Variety Commission refuses to make a conclusion for the recognition of the variety, sending a report to the Patent Office.

(7) The State Variety Commission makes a decision for the recognition of the variety when, as a result of the examination as to substance, it finds out that the variety applied for complies with the requirements of Article 7 and, within one month, prepares a report to the Patent Office.

(8) When the variety meets also the requirements for economic properties in accordance with the Work Regulations of the State Variety Commission, it is registered in the Register of Varieties and in List A of the Official Variety List of the country. The decision for the registration of the variety in List A is made by an expert commission of the State Variety Commission and is approved by the Minister for Agriculture and Food Industry.

(9) When the variety does not meet the requirements of the preceding paragraph, it is registered in the Register of Varieties and in List B of the Official Variety List.

(10) Within the terms specified in paragraph 7, the State Variety Commission submits to the Patent Office its report, the formalized description, the abstract, and a copy of the decision for the recognition of the variety. The State Variety Commission may correct or supplement the description at any time in correspondence with the development of the agronomic science. Those corrections and additions do not affect the scope of protection.

(11) The State Variety Commission may use the results of an earlier examination of the same variety carried out by competent authorities in the country or abroad.

(12) The State Variety Commission may enter into agreements with competent authorities of Contracting States for the performance of examination of foreign plant varieties in the country, as well as to assign the use of the results of such examinations by the competent authorities of the Contracting States.

(13) All actions for protection after the performed examination as to substance are carried out by the Patent Office on the basis of the decisions and reports of the State Variety Commission.

#### Article 39

##### Prolongation of Terms

Upon applicant's request, filed before the expiration of the time limits as per Article 35(2), Article 38(4) and (6), these time limits may be prolonged by three months but not more than twice. On request of prolongation of time limits the applicant pays fees.

#### Article 40

##### Grant of a Certificate

The Patent Office grants a certificate based on the decision for the recognition of the variety and if within three months from the notification of the applicant of the decision the fees are paid for the grant and publication of a certificate.

#### Article 41

##### Publication for a Certificate Granted

(1) A publication for a granted variety certificate is made in the Official Bulletin of the Patent Office.

(2) Any changes of the legal status of the application and the certificate are published in the Official Bulletin.

(3) The granted certificate is entered in the Register of Variety Certificates of the Patent Office.

#### Article 42

#### Fees

(1) For all actions under this Law before the Patent Office and the State Variety Commission due fees are payable at rates regulated by the Council of Ministers.

(2) An annual fee is payable for keeping the certificate in force.

(3) The annual fee for the first and for any of the following years is payable not later than the last day of the month in which the certificate has been granted.

(4) The funds raised as per paragraphs 1, 2 and 3 are used for financial support of the specified authorities.

### **CHAPTER THREE**

#### **LEGAL PROTECTION OF ANIMAL BREEDS**

#### Article 43

##### Examination of the Animal Breeds

(1) The application for an animal breed certificate is filed with the Patent Office and is entered into the Register of animal breeds applications, whereupon examination is performed by the State Breed Commission in accordance with the Work Regulations of this Commission.

(2) In the procedure of the substantive examination of the breed the State Breed Commission studies and analyses the following specific requirements:

- breeding purpose;
- brief characteristics of the initial breeds;
- description of the methods for the creation of the breeds;
- productive qualities and morphological features of the breeds;
- adaptability and resistance against diseases;
- number, race and genealogical structure;
- region of distribution.

(3) The examination as to substance for foreign animal breeds is done with their generation, born in our country.

(4) The State Breed Commission, after a decision is taken for the recognition of the breed, submits within one month to the Patent Office its report, the formalized description, the abstract and a copy of the decision for recognition of the breed, notifying the breeder to the due fees to the Patent Office.

#### Article 44

##### Legal Protection

The legal protection of animal breeds is provided by a certificate, which has a duration of 30 years from the date of its grant.

#### Article 45

##### Provisions for Animal Breeds

(1) The provisions for plant varieties are also applicable to animal breeds, unless otherwise specified in this Chapter.

(2) The provisions of Chapters IV and V are also applicable to animal breeds and in compliance with the specific peculiarities, stipulated in this Chapter.

## CHAPTER FOUR

### DISPUTES

#### Article 46

##### Kinds of Disputes

Disputes related to the creation, protection and rights stemming from the certificate, are considered through administrative channels or through the court.

#### Article 47

##### Disputes Considered Through Administrative Channels

- (1) Through administrative channels are considered:
- appeals against decisions for the suspension of the proceedings on applications for grant of certificates as per Article 35;
  - appeals against decisions for the refusal to grant a variety certificate;
  - appeals against decisions for the suspension of the proceedings as per Article 38, paragraph 4, regarding

the compliance of the variety denomination to the provisions of Article 12;

- requests for invalidation of a certificate granted as per Article 31;
- appeals against a refusal to renew the certificate as per Article 27(2);
- appeals against decisions on the grant or refusal to grant a compulsory license.

(2) The appeals and requests as per the preceding paragraph are considered by specialized commissions appointed by the President of the Patent Office and consisting of a state examiner and a lawyer from the Patent Office and an expert from the Ministry of Agriculture and Food Industry. The commissions as per paragraph 1(6) are appointed by the Minister for Agriculture and Food Industry.

(3) With regard to the requests as per paragraph 1, item 4, it is possible to organize *ex officio* proceedings by the Patent Office and the State Variety Commission.

(4) The proceedings as per paragraphs 1 and 2 are initiated after the payment of a fee, excluding the cases of *ex officio* proceedings.

(5) The commission as per paragraph 2 take decisions within three months in relation to appeals under paragraph 1, items 1, 2, 3 and 5, and within 6 months in relation to requests under paragraph 1, item 4.

#### Article 48

##### Terms of Appeal

(1) Appeals as per Article 47(1), items 1, 2, 3, 5 and 6 are filed within three months from the date of receipt of the decision.

(2) The requests as per Article 47(1), item 4 are admissible during the entire term of effect of the certificate.

#### Article 49

##### Renewal of Time Limits

Time limits exceed because of special, unforeseen circumstances may be renewed upon the applicant's request. The request is filed within three months after the

elimination of the reason for exceeding the time limit, but not later than one year after the expiration of the exceeded time limit. The decision on the renewal of the time limit is taken by the President of the Patent Office.

#### Article 50

##### Court Control

The decisions of the commissions of the Patent Office or of the Ministry of Agriculture and Food Industry are subject to appeal before the Sofia Civil Court under the Administrative Proceedings Law.

#### Article 51

##### Court Disputes

- (1) The Sofia Civil Court considers:
- disputes for authorship (co-authorship);
  - disputes for the right to apply and the right to a variety certificate;
  - disputes for infringement of the applicant's rights and the exclusive rights of the variety certificate owner. When the claim is presented by the applicant before the grant of the certificate, the proceedings are suspended until the publication of the certificate by the Patent Office;
  - disputes related to the conclusion, realization and termination of license contracts;
  - disputes related to the service nature of the variety as per Article 16 and the amount of remuneration payable to the author of a service bred variety;
  - disputes related to the amount of the compensation, due to the certificate owner as per Articles 23, 24 and 25.
- (2) Claims as per paragraph 1(5) are lodged within one year after the grant of the certificate.

### **CHAPTER FIVE**

#### **ADMINISTRATIVE PENALTY PROVISIONS**

#### Article 52

##### Sanctions

(1) Any person who without the consent of the certificate owner performs any of the actions specified in Article 18, is sanctioned with a penalty from 100 000 up to 1 000 000 leva, and with a penalty from 1 000 000 to 10 000 000 leva when repeating the infringement. The propagation material shall be confiscated.

(2) The infringement is ascertained with an act drawn up by an official appointed by the Minister for Agriculture and Food Industry. The administrative penalty does not exclude criminal liability and other sanctions under the laws of the country.

(3) The act shall be drawn up and the penal injunction shall be issued, appealed against and implemented under the Administrative Violations and Penalties Law.

#### Additional Provisions

§ 1. Within the meaning of this Law:

“Plant variety” is a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully satisfied:

- can be defined by the expression of the features, characterizing a given genotype or a certain combination of genotypes;
- can be distinguished from any other plant grouping by the expression of at least one of the specified characteristics;
- is considered as a unit with regard to its suitability for being propagated unchanged.

“Propagating material” is a whole plant, seeds, planting material, as well as parts of this plant, insofar as they contain at least one cell and are used for reproduction of the whole plant, irrespective of the method of their production - artificial or natural.

“Animal breed” is a group of animals of common origin and of one species, similar in genetically determined economic and biological properties and morphological characteristics, demanding similar requirements as to natural and production conditions.

“Breeder” is the person:

- who has created or discovered and developed the plant variety or the animal breed;

- the employer or task assignor to the person as per the preceding item on the basis of a contract between them;

- assignee to the persons as per the preceding items.

“Economic properties of the variety” are properties conditioning the suitability of the variety to be used as an object of reproduction and as a material for the production of plant products having specific destination and quality.

“Official variety list” is a catalogue consisting of:

- list A for varieties recommended (allowed) to be used in the country;

- list B for varieties for which certificates have been granted under the present Law.

#### Transitional and Final Provisions

§ 2. Applications for inventors’ certificates for plant varieties and animal breeds, for which there is no document for protection granted or final decision for rejection issued before the entry into force of this Law, may be transformed into certificate applications. The transformation is carried out after filing a request with the Patent Office within the terms specified in paragraph 3(2) by the persons and under the order of the provisions of Article 14.

§ 3.(1) Inventors’ certificates for plant varieties and animal breeds issued prior to the entry into force of this Law, which in accordance with paragraph 2(2) of the Patent Law have been excluded from transformation as per Article 7 of the Patent Law, may be transformed into certificates after filing a request with the Patent Office.

(2) The requests are filed within 6 months after the entry into force of the Law, and the Patent Office issues a certificate to one of the applicants, observing the following order of persons so entitled:

- to the author, when the variety or the breed has been created independently;

- to the following persons, when the variety or the breed has been created under the conditions of a service bred variety:

- to the employer and/or the task assignor;

- to the user of the variety or the breed, when such variety or breed represents his main production;

- to the author of the variety or the breed.

(3) Transformation of inventors’ certificates is carried out on the basis of an additional examination for compliance with the provisions of Articles 9, 10 and 11 and a decision proposed by the State Variety Commission as per Article 38, paragraph 10. The additional examination may use the results of earlier tests of the variety or the breed.

(4) Certificates issued as per the preceding paragraphs have a term of validity of 20 years from their date of granting. The persons who have used the variety or the breed prior to the transformation of inventors’ certificates but after the date of an inventor’s certificate application, do not enjoy the rights of prior users.

(5) The rights stemming from a certificate issued under this paragraph arise from the date of its grant by the Patent Office.

(6) Inventors’ certificates which have not been transformed into certificates as per the preceding paragraphs will lapse.

§ 4. The decisions of the Patent Office for the transformation of applications and inventors’ certificates into certificates are subject to appeals before the Sofia Civil Court under the order of the Administrative Procedure Law.

§ 5. For transformation of inventors’ certificates into certificates due fees are payable for transformation, examination, grant of a certificate, publication of the performed transformation. The fees for transformation of inventors’ certificates into certificates are payable upon filing the requests as per paragraph 3(1), and all other fees are payable in accordance with this Law.

§ 6. Property and non-property rights of authors of recognized and introduced inventors’ certificates, which have arisen prior to the entry into force of this Law and have not been transformed as per paragraph 3(1), are settled until their exhaustion under the order of the Law which has been in force when they have arisen.

§ 7.(1) The status of the State Variety Commission and the State Breed Commission is arranged by the Rules of the Council of Ministers.

(2) The State Breed Commission is constituted in case of necessity and its members are approved by the Minister for Agriculture and Food Industry.

§ 8. The Law on Sowing and Planting Materials (publ. State Gazette No. 12 of 1958, rev. State Gazette No. 99 of 1963, No. 36 of 1979, No. 103 of 1990) is changed as follows:

– in Article 2 the words “regional varieties” are replaced by “of the varieties registered in List A of the Official Variety List”.

– in Article 3 the text “approved by the Ministry of Agriculture and Forests” is replaced by “registered in List A of the Official Variety List”.

– Article 5 is canceled.

– Article 6 is canceled.

– in Article 8, paragraph 1, the words “regional, bred and local varieties” are replaced by “varieties registered in List A of the Official Variety List”.

– in Article 8, paragraph 2, the word “not regional” is replaced by “not registered in List A of the Official Variety List.”

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§ 9. The Minister for Agriculture and Food Industry and the President of the Patent Office issue regulations and instructions and give directions for the execution of the provisions of this Law.

§ 10. This Law enters into force three months after its publication in the State Gazette.

§ 11. The execution of this Law is assigned to the Minister for Agriculture and Food Industry and the President of the Patent Office.

This Law was accepted by the 37th People’s Assembly on September 19, 1996, and is signed with the state seal.