

On the basis of Article 153 of the Rules of Procedure of the National Assembly, the National Assembly of the Republic of Slovenia has at its session of 29 September 2005 approved official consolidated text of The Protection Of New Varieties Of Plants Act, comprising:

- The Protection Of New Varieties Of Plants Act – ZVNSR (Official Gazette RS, No. 86/98 of 18.12.1998),
- State Administration Act – ZDU-1 (Official Gazette RS, No. 52/02 of 14. 6. 2002),
- Act Amending The Protection Of New Varieties Of Plants Act – ZVNSR-A (Official Gazette RS, No. 61/06 of 13.06.2006).

No. 801-12/98-3/3  
Ljubljana, 29 September 2006.  
EPA 924-IV

President of the National Assembly  
of the Republic of Slovenia  
M.D. France Cukjati

## **THE PROTECTION OF NEW VARIETIES OF PLANTS ACT** **Official consolidated text (ZVNSR-UPB1)**

### **I. GENERAL PROVISIONS**

#### *Article 1*

This Act regulates the procedure for the protection of new varieties of plants, the granting and the protection of the plant variety right and the competent official body for the protection of new varieties of plants and its authorisations, the carrying out of the cumulative protection prohibition, the authorisation granted to a holder of a plant variety right for acts in relation to the material of a protected variety, and the fines for infringements for implementing Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L No 227 of 1. 9. 1994, p 1, as amended).

The varieties of all genera and species are to be protected, including cross-breeds between genera and species.

#### *Article 2*

The meaning of the terms used in this Act:

1. 'Breeder' means the natural person who has bred, discovered and developed a variety, either 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: the 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 the plant breeder's right.
5. 'The plant breeder's right' is the term for all the rights under Article 15 of this Act.

6. 'Variety' means a plant grouping within a single botanical taxon of the lowest known rank, whose 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, by the official sample and is identified in accordance with the denomination stipulated in this Act.
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.
10. 'Export' shall mean export from the European Community (hereinafter: the Community).
11. 'Import' shall mean import into the Community.

#### *Article 2.a*

Plant variety rights of all plant varieties protected under the scheme for Community plant variety rights shall be given the same treatment as plant variety rights protected under this Act, including measures aimed at ensuring their implementation.

#### *Article 3*

The proceeding for the protection of a new variety, register of applications for the protection of new varieties (hereinafter: register of applications) and register of protected plant varieties shall be kept by a body responsible for administrative, expert and development tasks in the field of protection and registration of varieties of plants (hereinafter: competent official body) as a body within the Ministry responsible for agriculture and forestry (hereinafter: the 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 the variety is:

- new,
- distinct,
- uniform,
- stable and

- denominated in accordance with the provisions of this Act.

A variety for which the application for a plant variety right in the Community has been filed or which is protected under the scheme for Community plant variety rights may not, pursuant to this Act, be subject to additional protection.

#### *Article 5*

The variety is new at the date of filing of the application (hereinafter: the filing date) if it has been sold or economically exploited with the consent of the person entitled in the Community for no more than one year before the filing date and outside the Community for no more than four years before the filing date and, in the 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 the consent or knowledge of the person entitled,
- contract transfer of the rights in the variety,
- contract growing, propagating, processing and storing of the propagating material or harvested material of the variety for the person entitled, provided that the person entitled keeps exclusive ownership rights to the reproduced propagating material, harvested material, or their products,
- 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 that it is done by the person entitled or a person authorised by him,
- official testing of the variety for entry into the variety list or for the preparation of a risk assessment for genetically modified varieties,
- selling harvested material which is a by-product or a surplus product of the creation of a new variety, provided that this harvested material is intended for final consumption and that the name of the variety is not identified.

Propagating material of the variety which is repeatedly used in the production of another variety is considered to be exploited for profit-making purposes when the plants or parts of plants of the other variety are exploited.

#### *Article 6*

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

The variety is of common knowledge, especially if:

- it has been protected or entered in the variety list in any other country or in the Community up to that day;
- an application for variety protection or entry into the variety list was filed in any other country or in the Community, provided that the procedure results in the protection of the variety or the entry the variety to the variety list, or
- propagating material or harvested material of the variety has been marketed or used for profitable purposes up to that day.

### *Article 7*

The variety is uniform if its relevant characteristics distinguishing it from other varieties are sufficiently uniform in expression, subject to the variation 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 the 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*

Any denomination which enables the identification of the variety may be registered as the name of the protected variety and may consist of any word, combination of words, combination of words and figures, or combination of letters and figures, unless this Act stipulates otherwise.

The denomination may 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, unless this already is a common practise;
- is identical with or similar to the denomination that designates an existing variety of the same or 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, recognition, or geographical origin;
- consists of the botanical or general name of the genus or species, or includes such a name that can cause confusion;
- includes words such as "variety, cultivated variety, form, hybrid, cross-breed" or a translation of these terms;
- misleads or causes confusion about the breeder or person entitled;
- is contrary to public order or morality;
- is in opposition to the regulations concerning industrial property rights laws.

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

In exceptional cases, a certain variety may be registered under a different denomination in the Republic of Slovenia, but only if the usage of the previous name is not suitable for linguistic reasons or is contrary to public order and morality.

Closely related species from the fourth 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 in charge of agriculture and forestry (hereinafter: the Minister).

### *Article 11*

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 declared. This provision also stands after the expiration 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 for non-commercial purposes in the private sector.

The same denomination of the protected variety shall be used in all countries, other than exceptions referred to in the fourth paragraph of Article 10 of this Act.

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 registered denomination of the protected variety or a denomination that is identical or confusingly similar to the said denomination cannot be used for any other variety of the same or closely related species.

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

### *Article 12*

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

Where more than one person has created, bred, discovered, and developed a variety jointly, the entitlement to variety protection and the plant breeder's right shall be vested in them or their legal successors jointly.

Where more than one person has created, bred, discovered and developed a variety separately, the one who first submitted an 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 variety protection and plant breeder's right is determined by this contract. If this is not the case, the provisions of the regulation on rights deriving from the employment relationship concerning patents are to be judiciously applied.

### *Article 13*

A plant variety right shall be exercised by the person entitled referred to in the previous Article who is domiciled or has its seat or establishment in a Community Member State.

A legal or natural person who is domiciled or has its seat or establishment outside the Community (further on as: foreign legal or natural person) is granted the same plant variety rights in the Republic of Slovenia as a person entitled referred to in the previous Article, providing this to result from international treaties and conventions, which had been signed or accessed to by the Republic of Slovenia, or under the condition of actual reciprocity. The reciprocity shall be proved by the person referring to it.

In the procedure before the official body, a foreign legal or natural person may exercise the rights deriving from this Act through a procedural representative who is a natural person with residence in the Republic of Slovenia or a legal person with a registered office in the Republic of Slovenia.

A foreign legal or natural person shall file an application through a procedural representative, who is domiciled or has its seat or establishment in a Community Member State.

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

##### *Article 14*

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

##### *Article 15*

The authorisation of the holder of the plant breeder's right is required for the following acts in relation to the propagating material of the protected variety:

- production and reproduction,
- conditioning for the purpose of propagation,
- offering for sale, selling or other marketing,
- 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 the acts mentioned in the first paragraph of this Article also in case of the harvested material of the protected variety, only when:

- the harvested material is obtained through the unauthorised use of propagating material of the protected variety, and
- the holder did not have a reasonable opportunity to exercise his rights in relation to the propagating material of this variety.

The holder's authorisation for the act from the first paragraph of this Article is also required for:

- varieties which are essentially derived from the protected variety, unless the protected variety is itself an essentially 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 variety is an essentially derived variety if:

- it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety;
- it is clearly distinguishable from the initial variety, 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 shall not be infringed when:

- a) the protected variety is exploited or used for:
  - private non-commercial purposes,
  - experimental purposes,
  - breeding of new varieties,
- b) the new variety from the third item of a) of this Article is economically exploited, unless this new variety is an essentially derived one;
- c) 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 sensibly 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 previous paragraph of this Article, shall present all the data on the extent of such further sowing to the holder of plant breeder's right, at 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*

When propagating material of the protected variety, or a variety that is an essentially derived variety, has been sold or otherwise marketed by the holder himself or with his consent, the authorisation of the holder shall not be required for the acts mentioned in the first paragraph of Article 15 of this Act in relation to any material of the protected variety or a variety that is an essentially derived variety, unless such acts involve:

- further propagation of the protected variety or the essentially derived variety, or
- export of the material of the protected or the essentially derived variety which can be used for further propagation, into a state where the plant genus or species to which the variety belongs cannot be protected. This provision does not stand if the exported material is intended for final consumption.

### ***Article 18***

The plant breeder's right shall expire at the end of the twentieth calendar year following the year of the granting; for hops, vine and trees, it shall expire at the end of the twenty-fifth year after the year of the granting, unless otherwise stipulated by this Act.

Irrespective of the provisions of the previous paragraph, the person entitled from Article 12 of this Act who has already filed a complete application shall be entitled to equitable remuneration if, during the procedure for the variety protection, any person has economically exploited or used the variety for which the application had been filed in opposition to Article 15 of this Act. 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 granting the 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 the decision with which it was granted.

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

### **1. Bodies**

#### ***Article 19***

The competent official body shall have the following competencies and tasks:

- to manage the administrative procedure for the protection of new varieties and for the registration of variety denomination in accordance with this Act and the Act on general administrative procedure,
- to maintain the register of applications and the register of protected varieties,
- to publish in the Gazette: applications, including proposals on variety denomination; rejections of applications; registrations and possible changes in the register of applications; withdrawals of applications; decisions on the protection of a variety; as well as 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 the 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 within its competence with the competent bodies in other countries,
- to check the fulfilment of obligations by the holder of the plant breeder's right, and
- to perform other tasks in the field of variety protection.

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

### *Article 20*

The Minister shall appoint an expert commission for plant variety protection (hereinafter: commission).

The commission shall consist of 5 members who will choose a president and deputy from among themselves. The commission shall operate according to the rules of procedure confirmed by the competent official body.

The commission holds the position of an expert in variety protection procedure and proposes decisions regarding the protection of the variety to the competent official body on the basis of an examination of the application and presented documentation.

## **2. Registers**

### *Article 21*

The competent official body shall maintain the register of applications and the register of protected varieties according to the regulations.

The registers shall include data from the documents on the basis of which the entry in both registers is performed. Document files containing these documents are added as annexes to both registers.

The register of applications shall contain the following; in particular:

- the data on the applicant; breeder and/or procedural representative;
- date of complete application;
- the identification of the plant species;
- the proposed denomination for the variety; or a provisional designation;
- in the case where the right of priority is claimed: the country in which the first complete application was filed and the filing date in this country;
- any proposals for the withdrawal of the application;
- notifications of the courts' decisions in relation to the right to file an application.

The register of protected varieties shall contain the following, in particular:

- the plant species and registered denomination of the variety, including all synonyms;
- an official description of the variety or reference documents from the document file which include the official description of the variety;
- in the case of the varieties whose production requires repeated use of other varieties as components, these components are to be listed;
- the name and surname of the holder of the plant breeder's right, breeder and/or procedural representative;
- the date of the granting and of the termination of plant breeder's right with the reasons for termination;
- the name and address of the person to whom the right of economic exploitation of the variety was transferred by the licence contract;
- the name and address of the person to whom a compulsory licence was granted, together with the conditions under which it was granted and the date of expiration of

this right;

- the official announcement of the courts' decisions in relation to the plant breeder's right.

The competent official body shall keep the document files in either original form or as copies for at least five years after the withdrawal or rejection of application, or five years after the expiration of the plant breeder's right.

The more specific contents and means of maintaining the registers shall be specified by the Minister.

### *Article 22*

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

The competent official body is obliged to ensure that every person who expresses a legal interest may examine the following documents from the document files:

- the documents concerning applications,
- the documents concerning the granted plant breeder's right,
- the documentation on the official testing of varieties.

Irrespective of the provisions in the previous paragraph, the applicant can demand, with regard to a hybrid, that the documentation concerning the components of the variety not be subject to public scrutiny.

## **3. Procedural fees**

### *Article 23*

In the procedure for the protection of a new variety and for the maintenance of the plant breeder's right, the fees and 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 the 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 Act, is regulated by the Government of the Republic of Slovenia.

## **4. Procedure for variety protection**

### *Article 24*

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

The competent official body shall make decisions about the application through an administrative procedure.

A complaint lodged at the Ministry against the administrative act of the competent official body is allowed. The complaint is to be submitted within 30 days after the receipt of such act.

### *Article 25*

The standard application form is to be filed and shall include the following data, in particular:

- particulars about the applicant or his representative or authorised person;
- particulars about the breeder unless he is the applicant himself;
- Latin and Slovene name of the species to which the variety belongs;
- a proposal for the denomination of the variety or temporary designation of the variety;
- the state in which the application has already been filed, and the filing date in that state if in the application a claim of priority right is stated;
- a technical description of a variety which can be enclosed to the application and
- in the case of a genetically modified variety, previous approval for variety testing in accordance with the regulations on genetically modified organisms is to be enclosed with the application.

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

### *Article 26*

The competent official body shall examine 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 or the fee has not been paid, the competent official body shall request that the applicant correct it or to pay the fee within 30 days after receiving the request. If an applicant fails to fulfil the request of the competent official body within the defined period, his application shall be treated as not to have been filed, subject to the decision of the competent official body.

A certificate of a complete application is to be issued to the applicant. The complete application is to be entered into the Register of applications and published in the Gazette. Either the date of the receipt of the complete application or the date of the receipt of the additions completing the application shall be entered as the filing date.

An extract from the complete application is to be published in the Gazette within three months after the filing date.

### *Article 27*

An applicant who has filed an application for the protection of a new variety in any other state that has signed international contracts or conventions also signed or acceded to by the Republic of Slovenia may claim a right of priority after submitting a proof of filing of a complete application for the same variety in another state. In this case, the date of the first complete application in the foreign state is considered as the filing date in the Republic of Slovenia.

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

The applicant can claim the right of priority in the Republic of Slovenia no later than 12

months after the filing of a complete application abroad.

#### ***Article 28***

During the procedure for the protection of the variety, any person who has a legal interest may file objections against applications published in the official Gazette under the fourth paragraph of Article 26 of this Act.

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

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

The competent official body shall immediately send the received objection to the applicant and appeal for his response within at least 30 days after receiving the objection.

The competent official body shall respond to the person who has filed the objection at least 3 months after the filing of the objection.

#### ***Article 29***

The competent official body shall examine the application as to substance in such a way that on the basis of the data stated in the application it determines: whether the variety is new and whether the applicant is entitled to the plant breeder's right. If it is established that the conditions set out in Articles 5 and 12 are not met, the application shall be rejected.

#### ***Article 30***

The competent official body 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 Act, the competent official body shall ask 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 competent official body is obliged to use exclusively the denomination of the variety which has been written into the register of applications for the protection of a new variety.

#### ***Article 31***

When the conditions from Articles 26 and 29 of this Act are met, each variety shall undergo a technical examination, the purpose of which shall be:

- to verify whether a variety belongs to the botanical taxon, i.e. the plant genus or species, stated in the application;
- to verify whether a variety is distinct, uniform and stable (Articles 6,7 and 8 of this Act); and
- where the variety is found to meet the conditions from the previous two lines, to prepare an official description of the variety.

Technical examination shall be undertaken on the basis of the results of field trials and laboratory tests of the variety.

Technical examination of the variety can be undertaken by:

- the competent official body, or, on its behalf, by a professional institution in the Republic of Slovenia or abroad where the examination is undertaken in comparable agroclimatical conditions according to standard procedures and methods;
- the applicant, at the request of the competent official body.

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

For the technical examination of the variety, the competent official body can use the examination results obtained in another state which has comparable agroclimatical conditions, provided that the examination was carried out under international systems of examination and that the reports of 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 to the competent official body, within a defined period, all necessary data, documents or propagating material requested for a technical examination of the variety for the purposes specified in the first paragraph of Article 31 of this Act.

If the applicant fails to meet the requirements from the first paragraph of this Article for no justified reason, the application shall be rejected.

### *Article 33*

Where the results of the examination under Article 31 of this Act prove that the variety fulfils the required conditions and that the applicant has performed his obligations, the competent official body shall issue a decision on the protection of the variety and shall publish the results in the Gazette.

Data from the final decision on the protection of the variety or on the rejection of the application shall be included in the register of applications.

On the date of the final decision on the protection of the variety, the plant breeder's right certificate shall be issued to the holder of plant breeder's right and shall take effect from the date of the final decision.

On the basis of the final decision on the protection of the variety, the corresponding data is to be included in the register of 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***

On the basis of a written declaration submitted by the holder of the plant breeder's right, according to the first line of the third paragraph of Article 18 of this Act, the competent official body shall, in an administrative procedure, issue a decision recognising that the plant breeder's right has been terminated at the request of the holder. The plant breeder's right shall terminate on the day following the date of receipt of the written declaration of the holder.

On the basis of the final decision cited in the previous paragraph of this Article, the termination of the plant breeder's right shall be recorded in the Gazette.

### ***Article 35***

In a legal procedure, the competent official body shall declare a decision on the variety protection null and void only when it is established that:

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

### ***Article 36***

The competent official body shall cancel a decision on the protection of a variety in an administrative procedure without the consent or request of any party in the proceedings when:

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

### ***Article 37***

Where a person who is not entitled to the protection of the variety has filed an application for protection or has been granted the plant breeder's right, the entitled person may submit to the competent official body a request for the reassignment of such rights to him/her-self.

The request from the previous paragraph may be submitted no later than 5 years after the publication of the application for the protection of the new variety in the Gazette.

If the unjustly granted rights have been transferred to a third party, this transfer shall become null and void when a request has been submitted according to the first paragraph of this Article.

Irrespective of the provisions under the third paragraph of this Article, the holder of any exploitation right, who had acquired the right in good faith prior to the commencement of the procedure under the first paragraph of this Article, may continue to use the variety subject to paying appropriate remuneration to the entitled person.

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

### *Article 38*

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

- when the applicant or the holder of the plant breeder's right so requests and proves his legal interest for this act; the reasons for the cancellation and a new proposal for the denomination shall be presented in the request;
- when it is subsequently established that the variety denomination was registered in spite of the existence of reasons for refusal under Article 10 of this Act where the holder or any other party is officially prohibited from using this denomination.

The competent official body shall immediately inform, in writing, the applicant or the holder of the plant breeder's right of the proposal or of the request for the cancellation of the denomination and request him/her to propose a new denomination for the variety no later than three months from the date of receipt of the request. The proposed denomination shall undergo the procedure under Article 30 of this Act, and, when it is established that the denomination fulfils the conditions regulated by this Act, the denomination shall be entered into the appropriate Register and published in the Gazette. Simultaneously, the previous denomination shall be cancelled from the Register.

## **7. Restitution**

### *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 to the procedure, who, for justified reasons, failed to pay the fee or to fulfil other obligations to the competent official body and would therefore lose the plant breeder's right under Article 36 of this Act, may request the restitution of his/her right.

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

Where the request is granted, the competent official body shall specify a new time limit by which the petitioner must perform the unfulfilled obligations. The time limit for fulfilment should not exceed the time limit that was delayed, and it begins from the date of receipt of the notification granting the request.

The petitioner for the restitution of his/her right may not demand remuneration if, during the time between the loss of the right and the restoration thereof, any person exploited or entered into a contract for the exploitation of the protected variety in good faith.

## **VI. TRANSFER OF THE PLANT BREEDER'S RIGHT AND ASSIGNMENT OF THE USE OF THE PLANT BREEDER'S RIGHT**

### ***Article 40***

The holder of the plant breeder's right may contract to transfer his rights wholly or partially to any 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 arising from the application.

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

The transfer of rights under the first and the second paragraph of this Article shall not influence the previous rights of the third persons.

The transfer of the plant breeder's right has no legal force for the third persons until the contract has been entered into the relevant register. The request for the entry of the contract for 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 the economic exploitation of the protected variety partially or wholly to a 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 been entered into the relevant register according to the previous paragraph, has no legal force.

The form, terms and the content of the licence contract, as well as the legal protection afforded therein, are prescribed by regulations on contractual relations.

### ***Article 42***

Where there is a public interest and where the protected variety is not economically exploited, or not exploited to a sufficient extent by the holder of the plant breeder's right or by another person on his/her behalf, and he/she does not want to assign the right for exploitation to another person, or sets unjustified conditions for the assignment of the right, another person may be granted a compulsory licence.

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

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

The compulsory licence shall 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 shall confer on the licensee a non-exclusive right to perform the acts from Article 15 of this Act, either partially or wholly, with the purpose of supplying 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 established, on the basis of a new examination, that the conditions for the granting of the license continue to exist.

The competent official body shall make decisions upon the request for a grant or extension of the compulsory licence in an administrative procedure. Before granting a compulsory licence, the competent official body may hear the opinion of the associations concerned.

Where a compulsory licence is granted, the holder of the plant breeder's right is entitled to adequate remuneration.

The amount of remuneration from the previous paragraph shall be agreed upon between the holder of the plant breeder's right and the licensee. If an agreement is not reached, the competent official body shall fix the amount.

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

Where a compulsory licence is granted, the holder of the plant breeder's right may request a professional institution, authorised to control the production of the propagating material, for data on the production of the propagating material of the protected variety.

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

### *Article 43*

The holder shall pay an annual fee for the plant breeder's right to remain in force.

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

If the annual fee is not paid within the additional time limit set by the competent official body, which shall not exceed 6 months after receipt of the notification, this right shall be cancelled.

#### ***Article 44***

While the plant breeder's right is in force, the holder shall be under an obligation to maintain the protected variety or its hereditary components unchanged .

At the request of the competent official body, the holder shall provide the competent official body, or an authority designated by it, within the prescribed period, with the data, documents, or propagating material that is needed for verifying the maintenance of the variety.

Where it is verified that the holder has failed to maintain the variety, the competent official body shall start the procedure for cancellation of the plant breeder's right.

#### ***Article 45***

At the request of the competent official body, the holder shall provide, within a prescribed period, an appropriate sample of the propagating material or its hereditary components:

- for an official sample or for the renewal of the official sample;
- to perform a comparative examination of other varieties subject to the protection procedure.

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

#### ***Article 46***

Any person economically exploiting or using the propagating material of the protected variety without the authorisation of the holder of the plant breeder's right or contrary to the agreement with him, shall, at the request of the holder, present all the relevant data to the holder.

If the data is not presented voluntarily, the holder of the plant breeder's right may request that the competent official body issues a temporary decree obliging the perpetrator to present the data to the holder. A complaint against the decree shall not stay its execution. The temporary decree shall be issued through an administrative procedure.

### **VIII. JUDICIAL PROTECTION**

#### ***Article 47***

Any person who infringes on the rights deriving from the application or the plant breeder's right shall be held responsible for damages according to regulations on damage repayment.

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

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

### ***Article 48***

Legal action may be brought against the infringement of the plant breeder's right 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 may be submitted.

An action shall be brought before the court that has jurisdiction in disputes relating to intellectual property rights.

## **IX. CONTROL**

### ***Article 49***

Supervision of the implementation of provisions of Articles 11, 15, 16 and 46 of this Act shall be exercised by phytosanitary, agricultural and forestry inspectors pursuant to competencies provided for with acts governing agricultural seeds and propagating material, forestry reproductive material and plant health.

When a phytosanitary, agricultural or forestry inspector, exercising the supervision, has reasons to believe that provisions of the Act have been violated, he shall prohibit production, reproduction, sale or other marketing of the material of a protected variety and order other appropriate measures.

### ***Article 50***

When the holder of the plant breeder's right proves that his right could be infringed by export of material of the protected variety out of Slovenia or import into Slovenia, the phytosanitary inspectors may, at his request, decide that:

- the holder or his representative may examine this material;
- this material shall be seized, taken off the market and kept.

As to the proposal from the first paragraph of this Article, the holder shall provide the phytosanitary 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 phytosanitary inspectorate, the holder shall pay a precautionary sum of money for possible damages caused by these measures.

The phytosanitary inspector shall immediately inform the importer or exporter of material of the protected variety and, in the case of importation into Slovenia, the receiver of that material. The phytosanitary inspector shall cancel the adopted measures if the person entitled does not bring a legal action or start any other procedure to justify the adopted measures within a period of seven days.

## **X. PENAL PROVISIONS**

### ***Article 51***

A fine between SIT 500,000 and 30 million shall be imposed on a legal person or sole

proprietor for committing any breach in relation to affecting the acts specified in the first paragraph of Article 15 of this Act without a permission given by the holder of the plant variety right.

A fine between SIT 100,000 and 1 million shall be imposed on the responsible person of a legal person or the responsible person of a sole proprietor for committing any breach referred to in the preceding paragraph.

A fine between SIT 100,000 and 300,000 shall be imposed on an individual person for committing any breach referred to in the first paragraph of this Article.

#### ***Article 52***

A fine between SIT 350,000 and 30 million shall be imposed on a legal person or sole proprietor for committing a breach:

- if, contrary to the first paragraph of Article 11, putting on the market material of a protected variety without stating the designated denomination or stating it incorrect;
- if, contrary to the fifth paragraph of Article 11, using denomination of a variety, which is protected under this Act, or any denomination which might be confused with it, in connection with another variety of the same or biologically related botanical species;
- if, contrary to the second paragraph of Article 16 or Article 46 of this Act, not providing a holder with the required information.

A fine between SIT 70,000 and 1 million shall be imposed on the responsible person of a legal person or the responsible person of a sole proprietor for committing any breach referred to in the preceding paragraph.

A fine between SIT 70,000 and 300,000 shall be imposed on an individual person for committing any breach referred to in the first paragraph of this Article.

### **XI. TRANSITIONAL AND FINAL PROVISIONS**

#### ***Article 53***

The variety which had been protected until the adoption of this Act according to the previous valid regulations shall enjoy protection in accordance with this Act until the expiration of the granted plant breeder's right.

The plant breeder's right for a variety from the previous paragraph may be proclaimed null and void only if it is determined 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 variety protection that are in place at the date of enforcement of this Act shall continue, in accordance with this Act.

Irrespective of the provision of the previous paragraph, a variety which is not new on the date when this Act came into force, may, by way of exception, be protected if:

- a) the application for the protection of this variety was submitted before the adoption of this Act;
- b) the variety fulfils other conditions for protection under Article 4 of this Act; and
- c) it is protected or the or is subject of an application for protection in one of the states which have signed international contracts and conventions also signed by the Republic of Slovenia, provided that the procedure results in the protection of the variety.

Where the plant breeder's right is granted according to the second paragraph of this Article, the plant breeder's right shall last no more than 20 years, or 25 years for hops, vine and trees, after the date of granting 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 Act no later than three months after the date when this Act comes into force.

The Government of the Republic of Slovenia shall issue a decree on fees no later than one month after the date when this Act comes into force.

The competent official body shall organise its operations within three months after this Act coming into force. Until the official opening of the competent official body, its tasks shall be carried out by the Ministry.

The Republic of Slovenia shall provide the premises and equipment, as well as financial resources, for the organisation and operation of the competent official body.

#### *Article 56*

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

- a) provisions of the “The Approval of New Varieties, Permission to Introduce Foreign Varieties, and Protection of Varieties of Agricultural and Forest Plants Act” (Official Gazette SFRJ, No. 38/80 and 82/90) relating to the protection of varieties of agricultural and forest plants:
  - from Chapter I BASIC PROVISIONS: Article 1 in the section related to the protection of new varieties and foreign varieties; point 4 of Article 2; the second paragraph of Article 4; and Articles 7 through 10;
  - Chapter III VARIETY PROTECTION (Articles 37 through 62);
  - from Chapter IV PENAL PROVISIONS: Points 6 through 9 of the first paragraph of Article 63;
  - from Chapter V TRANSITIONAL AND FINAL PROVISIONS: Article 66;
- b) Rules on 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) Rules on the content and data to be filled in the application for the protection of the varieties of agricultural and forest plants (Official Gazette SFRJ, No. 56/89).

***Article 57***

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