

**12 Annex - Food safety, veterinary and phytosanitary policy**

**41. LAW ON PROTECTION OF PLANT VARIETIES**

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Pursuant to Article 88 item 2 of the Constitution of the Republic of Montenegro, I hereby issue the

### **DECREE ON PROMULGATING THE LAW ON PROTECTION OF PLANT VARIETIES**

I hereby promulgate the Law on Protection of Plant Varieties passed by the Parliament of the Republic of Montenegro at the sixth sitting of the first ordinary session in 2007 on 24 July 2007.

No. 01-962/2

Podgorica, 2 August 2007

The President of the Republic of Montenegro,

Filip Vujanović

### **LAW ON PROTECTION OF PLANT VARIETIES**

#### **I. GENERAL PROVISIONS**

##### **Subject Matter of the Law**

##### **Article 1**

This Law regulates the terms and the procedure for the protection of plant varieties (hereinafter referred to as: varieties) as well as rights and obligations of the holders of plant breeders' rights. This Law shall apply to all plant genera and species.

##### **Article 2**

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

- 1) variety means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant breeders' right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes and is distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered a unit with regard to its suitability for being propagated unchanged;
- 2) protected variety means a variety protected in accordance with the provisions of this Law;
- 3) breeder means:
  - a company, some other legal person, entrepreneur or a natural person (hereinafter referred to as: person) who bred, or discovered and developed a new variety, or
  - the person who is the employer of the aforementioned person from the indent 1 of this item, or who has commissioned the latter's work;
  - legal successor of the person mentioned in indent 1 and indent 2 of this item;
- 4) breeder's right means the right a breeder acknowledged by registration of the protected variety into the Register of Protected Varieties, in accordance with this Law;
- 5) breeder's right holder means a person who has been granted a breeders' right in accordance with provisions of this Law, or his successor in title or heir;
- 6) Register of Applications for variety protection means the register into which duly filed applications for protection of a plant variety are recorded (hereinafter referred to as: Register of Applications);
- 7) Register of Protected Varieties means a register into which protected varieties are recorded;
- 8) UPOV means the International Union for the Protection of New Varieties of Plants.

##### **Rights of Foreign Persons**

##### **Article 3**

As regards variety protection in Montenegro, foreign legal and natural persons shall have the same rights and obligations as its nationals.

##### **Article 4**

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

## **II. VARIETY PROTECTION**

### **1. CONDITIONS OF DURATION**

#### **Conditions**

#### **Article 5**

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

#### **Duration of protection**

#### **Article 6**

The period of protection of a variety shall expire after twenty five (25) years, and in the case of trees and vines it shall expire thirty five (35) years from the day of recognising the breeder's right.

### **2. NEW VARIETY**

#### **Article 7**

The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety in Montenegro in which the application has been filed earlier than one year before that date and in a territory other than that of Montenegro in which the application has been filed earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

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

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

### **3. DISTINCTNESS**

#### **Article 8**

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

In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties.

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

### **4. UNIFORMITY**

#### **Article 9**

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

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

### **5. STABILITY**

#### **Article 10**

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

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

## **6. VARIETY DENOMINATION**

### **Denomination**

#### **Article 11**

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

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

Where a variety denomination proposed is inappropriate for use in Montenegro, the breeder is obliged to suggest a new denomination which shall be registered in the Register of Applications and the Register of Protected Varieties if it proves to be eligible.

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

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

The obligation to use the registered variety denomination shall not expire even after the expiration of the period of variety protection referred to under the Article 6 of this Law, except in the case when, in accordance with the provision of paragraph 8 of this Article, the previous right precludes such use.

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

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

### **Denomination Proposal**

#### **Article 12**

The applicant shall propose a variety denomination in his application.

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

An interested person may, within the period of 60 days from the date of entry in the Registry of Applications, file an objection to the proposed denomination.

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

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

In case the denomination proposed does not comply with this Law, the competent authority shall order the applicant to file a proposal for a new denomination of the variety within the period of 60 days from the day of the receipt of the notification.

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

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

### **Reasons for rejection of the denomination proposed**

#### **Article 13**

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

- 1) is inappropriate for a variety identification;

- 2) consists solely of signs or indications that may serve for indication of a variety, kind, quality, quantity, intended objective, value geographic origin or time of production;
- 3) is contrary to Article 11 of this Law;

Mutually related plant species are laid down by the Ministry.

### **Denomination cancellation**

#### **Article 14**

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

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

### **III. VARIETY protection procedure**

#### **1. APPLICATION**

#### **Article 15**

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

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

#### **Additional information**

#### **Article 16**

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

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

#### **Examination of the application**

#### **Article 17**

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

Where it establishes that the application is not appropriate, the competent authority, stating the reasons for it, shall invite the applicant to solve the deficiencies identified within the period of 30 days from the day of receipt of the notification.

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

#### **Entry into the Register of Applications**

#### **Article 18**

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

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

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

#### **2. RIGHT OF PRIORITY**

#### **Article 19**

Any breeder who has duly filed an application for the protection of a variety with the competent authority of another UPOV member for the grant of a breeder's right shall enjoy a right of priority for a period of 12 months from the day of filing the application.

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

In order to avail himself of the right of priority, the breeder shall furnish the competent authority with the evidence on the priority date within three months from the day of submitting the application.

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

A breeder may provide to the competent authority the necessary information, documents or material necessary for examining the application during the period of two years after the expiration of the right of priority or in the case when the first application has been rejected or withdrawn, within the appropriate deadline, after the rejection, or withdrawal of the application.

The deadline from paragraph 5 of this Article shall be defined by the Ministry.

### **3. VARIETY EXAMINATION**

#### **Examination**

##### **Article 20**

The decision on granting the breeder's right is based on examining the fulfilment of conditions stipulated by this Law. During the examination, the competent authority can breed the species or carry out other necessary verifications, to define the breeding or performing of other necessary verifications, i.e. to take into account results of former breeding or former examinations. The competent authority may demand from the breeder to submit the necessary data, documents or material for the purpose of examination.

#### **Examiner**

##### **Article 21**

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

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

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

#### **Processing examination results**

##### **Article 22**

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

The competent authority shall process the results obtained in the experimental field and laboratory. Processing of results referred to under the paragraph 2 of this Article shall be done in line with methods laid down by the Ministry.

### **4. DECISION ON VARIETY PROTECTION AND GRANTING OF BREEDER'S RIGHT**

##### **Article 23**

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

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

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

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

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

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

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

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

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

## **Data availability and confidentiality**

### **Article 24**

Any interested person may peruse the following:

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

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

## **5. APPEAL**

### **Right of appeal**

#### **Article 25**

Any interested person who deems that the applicant is not entitled to the breeder's right or that he does not have the right of priority or that conditions for protection of a variety under this Law have not been complied with, may lodge a complaint to the Ministry with respect to the entry of the application into the Register of Application or to the entry of the variety into the Register of Protected Varieties within 60 days from the day of publishing the data on the entry.

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

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

### **Decision on complaint to the entry into the Register of Applications**

#### **Article 26**

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

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

### **Complaint to registration in the Register of Protected Varieties**

#### **Article 27**

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

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

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

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

If the complaint submitter fails to act in compliance with the paragraph 3 of this Article, the complaint shall be rejected.

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

## **IV. RIGHTS AND OBLIGATIONS OF THE HOLDER OF BREEDER'S RIGHTS**

### **1. Rights**

#### **Scope of the breeder's right**

#### **Article 28**

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

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

Under conditions referred to in Articles 29 and 30 of this Law, the authorization of the breeder is necessary for the following activities related to the propagating material of a protected variety:

- 1) production or reproduction (multiplication) of the variety protected;
- 2) conditioning for the purpose of propagation of the protected variety;
- 3) offering the protected variety for sale;
- 4) selling or any kind of marketing of the protected variety;
- 5) exporting or importing of the protected variety;
- 6) stocking for any of the purposes referred to in items 1 - 5 of the paragraph 3 of this Article.

Under conditions referred to in Articles 29 and 30 of this Law, activities referred to in the paragraph 3 items 1 - 6 of this Article, in respect of the harvested material, including whole plants and parts of plants obtained through the unauthorised use of the propagating material of the protected variety shall require authorization of the holder of the breeder's right, unless the holder has had reasonable opportunity to exercise his right in relation to the propagating material concerned.

The authorization of the holder of the breeder's right is also required for activities from paragraphs 3 and 4 of this Article regarding the variety:

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

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

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

Within the meaning of paragraph 5, items 1 and 6 of this Article, an essentially derived variety can be obtained, for example, by selection of a natural or induced mutant, or of a somaclonal variant, by cloning the somatic cell, the selection of a variant individual from plants of the initial variety, backcrossing or transformation by genetic engineering.

### **Exceptions to the breeder's right**

#### **Article 29**

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

- personal use and for non-commercial purposes;
- experimental purposes;
- for the purpose of breeding other varieties, with the exception referred to under the Article 28 paragraphs 3, 4 and 5 of this Law.

Taking into account the need for safeguarding the breeder's rights, the Ministry may restrict the breeder's right within reasonable limits, with remuneration that shall not be lower than the market one, in relation to specific agricultural crops, in order to permit farmers to use the harvested material obtained from the protected variety in their own holdings for propagation purposes.

The Ministry shall stipulate the list of agricultural crops from paragraph 2 of this Article.

Exception from paragraphs 1 and 2 of this Article shall not apply for fruits, decorative plants and vegetables.

### **Exhaustion of the breeder's right**

#### **Article 30**

Breeder's right does not cover activities involving a protected variety material, or the variety referred to in paragraph 5 Article 28 of this Law, which was sold or otherwise marketed by the breeder on the territory of Montenegro, or which was sold or otherwise marketed with the breeder's consent, or involving the material obtained from such a material, except when such activities:

- 1) include further multiplication of the concerned variety;
- 2) include exporting the material of that variety which enables the multiplication into a state which does not protect varieties of plant species or genera to which this variety belongs, except in cases of exporting the material for the purpose of final consumption.

Within the meaning of paragraph 1 of this Article, a material in relation to a variety shall have the following meaning:



- 1) any kind of material for multiplication;
- 2) harvested material, including whole plants or parts of plants;
- 3) any product obtained from the harvested material.

### **Provisional protection**

#### **Article 31**

During the period between filing the application for the granting the variety protection and the granting the right on the variety protection, the holder of the breeder's right shall be entitled to equitable compensation from any person who performed activities, during that period, which require the authorisation of the holder of breeder's right in line with the provisions of Article 28 of this Law, once the breeder's right has been granted.

### **Several breeders, breeder and employer**

#### **Article 32**

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

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

## **2. Obligations**

### **Maintenance of the protected variety**

#### **Article 33**

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

### **Monitoring of variety maintenance**

#### **Article 34**

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

### **Providing variety samples**

#### **Article 35**

At the request of the competent authority, the holder of a breeder's right shall be obliged to provide an appropriate quantity of samples of the propagating material of the protected variety, which is necessary for establishing the variety maintenance.

At the request of the competent authority, the holder of the breeder's right shall be obliged to maintain or keep the variety sample.

## **V. LicenCE**

### **Transfer of the breeder's right and giving licences**

#### **Article 36**

A holder of the breeder's right may transfer his rights related to a protected variety entirely or give a licence for certain rights to another person.

The transfer of rights and giving licences shall be executed by a written contract which must contain: the scope of rights, the period of time for which the right is transferred and the amount of fee for using the right, if contracted.

The holder of breeder's right shall be obliged to notify the competent authority on the transfer of rights or giving a licence, for the purpose of entry into the Register of Protected Varieties. The notification shall contain data on the person to whom the right has been transferred, i.e. the person to whom the licence has been given, the scope of rights and the time for which the right has been transferred or licence given.

## **Compulsory licence**

### **Article 37**

When the holder of the breeder's right refuses to transfer his right of economic use of the variety protected to other persons, or when he sets unjustified conditions for such transfer, the competent authority may grant the compulsory licence upon the request of the interested person and after considering each separate case, provided that its use is of public interest for developing the plant production, for protection and environmental improvement or for a specific economic branch.

The interested person shall be obliged to prove that, prior to filing the request referred to under the paragraph 1 of this Article, he/she attempted to obtain the authorization from the holder of breeder's right for performing actions referred to in Article 28 of this Law, under reasonable economic conditions and that the authorization was not granted to them within the reasonable period of time.

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

## **Deadline for requesting the compulsory licence**

### **Article 38**

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

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

## **The fee for compulsory licence**

### **Article 39**

The holder of the compulsory licence shall pay the holder of the breeder's right the fee set by an agreement of both sides. If there is no agreement on the amount and manner of paying the fee, the amount of the fee shall be set by the competent court of law, taking into account the circumstances of each individual case and the economic value of the compulsory licence.

## **Scope and duration of the compulsory licence**

### **Article 40**

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

The compulsory licence must not be preclusive.

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

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

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

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

## **Obligation of supply of propagating material**

### **Article 41**

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

## **VI. TERMINATION OF BREEDER'S RIGHT**

### **Reasons for termination of breeder's right**

#### **Article 42**

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

- 1) the holder of the breeder's right presents to the competent authority the written renouncement of the breeder's right, on the date specified in the renouncement, or the date of the receipt of the renouncement;
- 2) the holder of the breeder's right dies or ceases to exist without an heir or legal successor, on the date of death or cessation.

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

### **Nullity**

#### **Article 43**

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

- 1) it is established that the variety was neither new nor distinct at the time of granting the breeder's right,
- 2) it is established that the decision on granting the breeder's right has been essentially based upon information and documents furnished by the applicant, while conditions of stability and uniformity were not complied with at the time of the grant of the breeder's right, and
- 3) the breeder's right has been granted to a person who is not entitled to it, unless transferred in the meantime to a person who is so entitled.

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

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

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

### **Cancellation of the decision**

#### **Article 44**

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

- 1) it is established that the variety is no longer uniform or stable;
- 2) the holder of the breeder's right fails to furnish the competent authority with information, documents or material deemed necessary for verification of the variety maintenance;
- 3) the holder of the breeder's right fails to propose another denomination for the variety within prescribed period of time, if the variety denomination has been cancelled after granting the right;
- 4) the breeder fails to pay the fee for maintenance of breeder's right;
- 5) annual expenses of variety protection have not been paid on the day of arrival of expenses.

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

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

## **VII. COSTS**

#### **Article 45**

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

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

## **VIII. CIVIL LAW PROTECTION**

### **Article 46**

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

- 1) ascertaining of infringement of the breeder's right;
- 2) prohibition of actions infringing the breeder's right;
- 3) compensation for the damage done through infringement of the breeder's right, including the actual damage, lost profit and justified expenditures incurred by legal representation in legal proceedings;
- 4) publishing of the court decision at the expense of the respondent;
- 5) forfeiture or destruction, without compensation, the items and equipment prevailingly used for infringement of the breeder's right;
- 6) forfeiture or destruction, without compensation, the products produced in the course of infringement of the breeder's right.

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

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

### **Statute of limitations**

#### **Article 47**

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

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

### **Relief**

#### **Article 48**

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

### **Securing evidence**

#### **Article 49**

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

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

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

### **Proposal for relief**

#### **Article 50**

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

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

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

## **Respondent's obligation to present information**

### **Article 51**

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

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

## **IX. INSPECTION SURVEILLANCE**

### **Article 52**

Inspection surveillance over the enforcement of this Law shall be done by the competent authority through a phytosanitary inspector, in compliance with the Law, for the purpose of protection of breeder's right obtained according to this Law.

Provisions of other acts which regulate production, granting and marketing of the material of protected varieties, import or export of such material, must not affect the application of this Law.

### **1. Authorisations of a phytosanitary inspector**

#### **Article 53**

A phytosanitary inspector performs inspection surveillance particularly relating to:

- 1) examination of distinctness, stability or uniformity of varieties in the experimental field or laboratory of the examiner;
- 2) examiner's compliance with the conditions for examination of varieties in the experimental field or laboratory;
- 3) actions referred to under the Article 28 of this Law performed without authorisation of the holder of breeder's right regarding the protected variety;
- 4) use of the protected variety denomination;
- 5) sampling of propagating material, free of charge, for the purpose of establishing the compliance with the conditions as laid down by this Law.

### **2. Administrative measures and actions**

#### **Article 54**

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

- 1) prohibit placing on the market, import or export of propagating material of varieties if it is established that the propagating material fails to meet the conditions as laid down by this Law or that the right of the holder of breeder's right has been breached;
- 2) prohibit the examiner to examine varieties in the experimental field or in the laboratory in case of failing to remove the deficiencies regarding conditions laid down by this Law.

## **X. PENALTY PROVISIONS**

### **Article 55**

A fine ranging from 200 to 300 minimum wages in Montenegro shall be imposed on a body, business organisation or other legal person or entrepreneur if:

- 1) they use the variety denomination not granted by the decision of the competent authority (Article 12 paragraph 8);
- 2) they produce or reproduce, maintain for the purpose of multiplication, selling or otherwise marketing, importing, exporting or storing for any of these purposes the protected variety without the authorisation of the holder of breeder's right (Article 28 paragraph 3).

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

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

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

**Article 56**

A fine ranging from 150 to 200 minimum wages in Montenegro shall be imposed on a body, business organisation or other legal person or entrepreneur if upon request of the competent authority fails to supply the person to whom the compulsory licence was granted with the appropriate quantity of propagating material necessary for use of the compulsory licence (Article 41).

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

**XI TRANSITIONAL AND FINAL PROVISIONS**

**Protection of renowned varieties**

**Article 57**

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

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

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

- o registration referred to under the paragraph 1 item 2 indent 1 of this Article;
- o grant of the breeder's right referred to under the paragraph 1 item 2 indent 2 of this Article; or
- o when the variety ceased to be new in line with the provision referred to under the paragraph 1 item 2 indent 3 of this Article.

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

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

**Article 57a**

Provisions of the Law on Application of Regulations on Protection of Intellectual Property Rights (Official Gazette of the Republic of Montenegro, 45/05) and the Decree on proceedings of a customs body with goods for which there is a reasonable doubt that it breaches intellectual property rights (Official Gazette of the Republic of Montenegro, 25/05) are accordingly applied on the breeder's right established by this Law.

**Article 58**

Secondary legislation for implementation of this Law shall be adopted within the period of one year from the day of entry into force of this Law.

The legislation adopted on the basis of the Law on Protection of Varieties of Agricultural and Forest Plants (Official Gazette of the Federal Republic of Yugoslavia 12/98, 28/ 2000, 37/02) shall apply until the legislation based on the authority of this Law is adopted, unless it is contrary to this Law.

**Article 59**

On the day this Law enters into force, the Law on Protection of Varieties of Agricultural and Forest Plants (Official Gazette of the Federal Republic of Yugoslavia 12/98, 28/ 2000, 37/02) shall be repealed.

**Entering into force**

**Article 60**

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