

# ***THE PLANT VARIETY PROTECTION LAW***

ADOPTED BY THE PARLIAMENT OF THE REPUBLIC OF CROATIA

on November 28, 1997

PUBLISHED IN THE «OFFICIAL GAZETTE» No 131/97

on December 5, 1997

## **I BASIC PROVISIONS**

### **Article 1**

This Law regulates methods and procedures of protection of plant varieties, of the grant of plant breeder's rights and of the protection of plant breeder's rights.

### **Article 2**

For the purposes of this Law:

1. Agricultural plant variety (hereinafter: "*the variety*") is a plant grouping within a single botanical taxon of the lowest known rank, defined by the expression of 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 the said characteristics considered as a unit with regards to its suitability for being propagated unchanged.
2. The breeder of the agricultural plant variety (hereinafter: "*the breeder*") is natural or legal person who has been engaged in the breeding process of a new variety; who created or developed the new variety.
3. The breeder's right is the right of the breeder or the right of breeder's legal successor provided for in this Law.

### **Article 3**

1. Breeder's right is granted to the breeder.
2. Common (joint) breeder's right can be granted to more breeders, if they have been working together in the breeding process of the new variety.
3. If several breeders were engaged in the breeding process of the new variety independently of each other, the breeder's right will be granted to the breeder who has first submitted the application for the grant of breeder's right.

#### **Article 4**

1. The breeder's right is granted to: a) natural person – national or resident of the Republic of Croatia; b) legal person with the seat in the Republic of Croatia.
2. Considering the breeder's right protection, foreign natural or legal person has the same rights as nationals of the country, if regulated so by the international Agreements in force in the Republic of Croatia.
3. Considering all due proceedings before the Variety Protection body, state administration bodies and court proceedings, foreign legal and natural persons can protect their rights regulated by this Law through their designated representative, who carries out representation in the variety protection proceedings. The representative can be domestic legal or natural persons.

#### **Article 5**

1. Activities related to plant variety protection regulated by this Law will be carried out by the Institute for Seed and Plant Material Production (hereinafter referred to as «*the Institute*»).
2. The Commission for Agricultural Plant Variety Protection will be established within the Ministry for Agriculture and Forestry, in order to monitor the situation in variety protection, and to issue professional opinions and proposals.
3. The Commission will be established, and Chairman, Secretary and members of the Commission will be appointed by the Minister of Agriculture and Forestry (hereinafter: *the Minister*) by the Official Decision published in the «Official Gazette».
4. Chairman, Secretary and Members of the Commission are entitled to a payment regulated by the Minister.
5. The Minister can establish other working bodies for the implementation of specific activities from Para. (2) of this Article.

#### **Article 6**

1. The Institute will manage for following Registers:
  - The Register of Applications for breeder's right;
  - The Register of Transferred breeder's rights;
  - The Register of Contractual Licenses of breeders' rights;
  - The Register of Designated Representatives.
1. Registers from the Para. (1) are public.

2. Content, form and proceedings of Registers from the Para. (1) of this Article will be regulated by the Minister.
3. The Official Gazette published by the Institute will inform about the rights granted to breeders registered in Registers from the Para. (1) of this Article.

## **II PLANT VARIETY PROTECTION**

### **Article 7**

1. The variety is protected by the award of the breeder's right.\
2. Breeder's right shall be granted if the variety is: new, distinct, uniform, stable and designated (named).
3. The Minister will establish the List of Plant Species which can be protected by the award of breeder's right.

### **Article 8**

1. The variety shall be deemed to be new if, at the date of filing of the application for plant breeder's right, has not been sold or ceded for economic purposes by the breeder not longer than one year before that date in the Republic of Croatia and outside the Republic of Croatia not longer than four years before that date.
2. In the case of trees and vines, the term from the Para. (1) of this Article is six years.
3. The variety shall be deemed to be distinct if it is clearly distinguishable from any other entered variety whose existence is a matter of common knowledge at the time of the filing of the application. This provision is applicable as well to those varieties which are undergoing the process of registration or protection in the Republic of Croatia or in the foreign countries.
4. The variety shall be deemed to be uniform if it is uniform in its relevant characteristics.
5. The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or at the end of each particular cycle of propagation.

### **Article 9**

1. The variety denomination from the Article 9, Para. (2) may notably consist of one word or of several words up to a maximum of three, or a combination of

figures and letters, or a combination of words and letters, or of a combination of words and figures.

2. Grounds for the exclusion shall exist when the variety denomination:
  1. renders impossible the identification of the variety;
  2. causes confusion or misunderstanding related to the origin, creation, characteristics, value or identity of the variety, or the identity of the breeder;
  3. is identical or can be confused with a variety denomination under which a variety of the same or of a related species is entered in an official list of varieties in the Republic of Croatia or in another member State of the International Union for the Protection of New Varieties of Plants (hereinafter: UPOV);
  4. is the same or can be confused with a designation in which a third party enjoys a prior right;
  5. refers solely to attributes which are also common in other varieties of the species concerned;
  6. consists of a botanical or common name of the genus or species, or includes such a name where this is likely to cause confusion;
  7. suggests that the variety is derived from another known or related variety;
  8. includes words such as «variety», «cultivar», «form», «hybrid», «cross» or their translations.
1. If the variety is already registered in another member State of the UPOV, or if an application for the protection of the same variety has been already submitted in such State, only the variety denomination which has been proposed or already registered in that other State may be proposed and registered as a denomination for the variety.
2. If the variety denomination used in the other State is inappropriate for linguistic reasons, the applicant will propose another variety denomination in three months time.

### **Article 10**

Any person who offers for sale or markets propagating material of a protected variety must, even after the expiration of the protection, use the same registered variety denomination.

### **III SCOPE AND DURATION OF BREEDER'S RIGHT**

#### **1. The establishment of breeder's right**

##### **Article 11**

Breeder of the variety is granted with the breeder's right from the date of the registration in the Register of Breeder's Rights.

#### **2. Scope of breeder's Right**

##### **Article 12**

1. The following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

1. production or reproduction (multiplication)
2. conditioning for the purpose of propagation
3. offering for sale
4. importing, exporting
5. stocking and processing.

1. Protection from Para. (1) of this Article is valid from the date of submission of the application for the grant of breeder's right.

2. Breeder's authorization is not needed for breeding of new varieties and for use for experimental purposes.

##### **Article 13**

The provisions of Para. (1) from Article 12 of this Law shall also apply in relation to:

1. varieties which are essentially derived from the protected variety, and genetically close to the protected variety;
2. varieties which are not clearly distinguishable from the protected variety;
3. varieties whose production requires the repeated use of the protected variety.

#### **3. Period of breeder's right protection**

##### **Article 14**

Breeder's right protection shall last:

1. for wines, fruit trees, ornamental trees including their rootstocks, until the end of the twentieth year following the grant of plant breeder's right;
2. for all other genera or species, until the end of the fifteenth year following the grant of plant breeder's right.

### **Article 15**

1. For the grant and maintenance of the breeder's rights the fees will be paid in accordance with this Law and regulations based on this Law.
2. Fees from the Para. (1) will be established by the Minister.
3. If the fees for the grant of breeder's right will not be paid, the application for the breeder's right will be rejected.

### **Article 16**

The breeder's right ceases:

1. if the holder of the breeder's right waives that right;
2. after the period of protection of the breeder's right has expired;
3. if the breeder's right has been declared null;
4. if the holder does not pay the renewal fee that is due, even after six months of prolonged payment period.

## **IV PROCEEDING FOR THE GRANT OF BREEDER'S RIGHT**

### **1. Starting the Proceedings**

#### **Article 17**

1. The breeder's right is realized in the administrative proceeding led by the Institute.
2. "The Law on General Administrative Proceedings" is applicable for all issues not regulated by this Law.

#### **Article 18**

1. The proceeding for the grant of breeder's right is initiated by the submission of the application to the Institute.
2. The Institute can accept the application for the grant of breeder's right in foreign country(ies), if this is in accordance with the international agreements signed by the Republic of Croatia.

3. The proceeding for the grant of the breeder's right can be initiated by the submission of the application in foreign country, if this is regulated by the international agreement signed by the Republic of Croatia. Legal impact of granted rights based on such applications is the same as for rights granted for domestic applications, if not regulated differently by the international agreement.
4. The application from the Para. (1) of this Article is accompanied with certain quantity of propagating material of the variety for which the grant of breeder's right has been requested.
5. The language of the application is Croatian.
6. The method and proceedings for the grant of breeder's right are to be established by the Minister.

### **Article 19**

1. The Application from the Article 18 will be marked by date and hour of its submission; the applicant will get the confirmation receipt with date and hour of submission.
2. The submission date is date of a receipt of application which complies with the conditions for the registration in the Register of Applications for the Grant of Breeder's Rights (hereinafter: *Register of Applications*).
3. Reproduction material of the variety for which the grant of breeder's right has been requested, as well as attached documents, shall be kept in confidence.

### **Article 20**

The application, as well as the withdrawal or rejection of the application will be published by the Institute in its Gazette.

### **Formal examination of the Application for the Grant of Breeder's Right**

### **Article 21**

1. After the receipt of the application for the breeder's right, the Institute will analyze it to verify if it complies with the conditions of the registration in the Register of Applications.
2. The Minister is authorized to establish the conditions for the registration of the applicaton in the Register of Application.

## **Article 22**

1. If the application complies with the conditions, it will be entered in the Register of Applications with the date of its submission. The applicant will receive written confirmation of the receipt.
2. If the application does not comply with the conditions set forth in this Law, the Institute will request in a written form the applicant to complete his application. The deadline to complete the application is three months after the submission date of written request.
3. If the applicant completes the application at time from the Para. (2) of this Article, the application will be entered in the Register of Applications with the date of receipt of completed application.
4. If the applicant does not complete the application in granted period, his application will be rejected.

## **Article 23**

1. Correct application for the grant of breeder's right for which the fee has been paid, will be published in the Gazette within three months after the application date.
2. The published notice from the Para. (1) of this Article will contain: date of submission; name and address of the applicant; variety denomination and main characteristics of variety.
3. The published notice from Para. (2) of this Article has to be made available to any interested person.

## **Article 24**

1. After the registration in the Register of Applications, the Institute will examine the compliance with the conditions for the grant of the breeder's right.
2. For the examination of the conditions from Para. (1) of this Article, the Institute will examine the variety, if it does not already detain proof that the variety complies with the conditions from the Article 7, Para. (2) of this Law.
3. The Institute may request from the applicant to submit required amount of propagating material on due date.
4. The Institute can entrust the examination of the variety from Para. (2) of this Article to specialized institutions in foreign countries and accept the results of such examinations.



5. The Institute will accept the results of the examination of proceedings for variety registration (both new created domestic varieties and foreign (varieties) if the conditions from Article 7, Para.(2) are fulfilled.

### **Grant of Breeder's Right**

#### **Article 25**

1. If the examination shows that application satisfies the conditions from Article 24 of this Law, the Institute shall issue the Official Decision on the Grant of Breeder's Right. The breeder's right will be entered in the Register of Breeder's Right.
2. The date of registration in the Register from Para. (1) of this Article is the date of the Official Decision on the grant of the breeder's right.
3. If the examination shows that the variety does not comply with regulated conditions, the Institute will reject the grant of breeder's right.
4. The Official Decision on the grant of breeder's right, as well as the rejection of the application will be published in the Official Gazette of the Institute.

#### **Article 26**

1. The opposition (complaint) may be filed against Official Decisions and other Acts issued in the proceedings of the grant of breeder's right within three months after a delivery date of Decision or other Act.
2. The complaint has to be submitted to the Board for Complaints, established in the Ministry. The Board has three members.
3. The Minister is authorized to establish the Board and to nominate its members.
4. Members of the Board are entitled to receive the payment set by the Minister.

#### **Article 27**

1. Every holder of breeder's right shall ensure that, throughout the period for which the right is exercisable, he is in a position to provide the Institute with propagating material of the protected variety.
2. The holder of the breeder's right shall pay a renewal fee for the maintenance of his breeder's right. The fee will be determined by the Minister.

#### **Article 28**

1. When the decision on the grant of breeder's right has been published, the «Breeder's Right Document» will be issued.

2. Based on the request of the breeder, the Breeder's Right Document can be accompanied by the list of granted breeder's right.
3. The Minister is authorized to establish form and content of the Document from the Para. (1) of this Article.

### **Article 29**

1. The Official Decision on the grant of breeder's right will be issued to the breeder who has first submitted the Application for the grant of breeder's right.
2. If the Application for the grant of breeder's right has been submitted by more breeders jointly, breeder's right will be granted to all breeders.
3. The Official Decision on the grant of breeder's right from Para. (2) of this Article does not regulate mutual rights of applicants (breeders).

### **Special provision for the proceedings of the grant of breeders' rights**

### **Article 30**

Within six months after the publication of the Official Decision on the grant of breeder's right, any person with the legal interest may file an opposition against the grant. The opposition can be based on the claim that the applicant is not the breeder of the variety, or that the variety does not comply with the conditions from Article 7-9, and 25 of this Law.

### **Article 31**

1. After the proceedings in case of the opposition, the Official Decision on the adoption or rejection of the opposition will be issued by the Institute.
2. If the opposition is adopted, the Official Decision will amend or cancel the Official Decision on the grant of breeder's right.

### **Article 32**

The Official Decision on the grant of breeder's right will be declared null, if it will be proven that the conditions for the grant of breeder's right regulated by this Law have not been respected.

### **Article 33**

If the applicant of the request for the annulment of the Official Decision on the grant of breeder's right abandons his claim, the Institute can proceed following its official duty.

## **V TRANSFER OF BREEDER'S RIGHT AND CESSION OF THE USE OF RIGHT**

### **Transfer of breeder's right**

#### **Article 34**

1. The holder of the breeder's right can transfer his right completely or partially to other persons under the contract.
2. The provision of Para. (1) of this Article is also valid for the applicant of the Application for the grant of breeder's right.

#### **Article 35**

1. The contract referred to in Article 34 of this Law has to be in a written form.
2. The contract from the Para. (1) of this Article will be entered in the Register of Transferred Breeder's Rights.
3. The contract which is not in a written form has no legal effect towards third parties.

### **Grant of breeder's right to exploit the variety**

#### **Article 36**

1. For the contractual grant of breeder's right, license contract has to be concluded in accordance with this Law and other regulation.
2. License contract has to be in written form.
3. Para. (1) of this Article is also valid for the applicant for the grant of breeder's right.
4. If the Application has been submitted by more persons or if the breeder's right has been granted to more persons, the accord of all those persons is needed for the license contract.

#### **Article 37**

1. License contract has to contain the following data: licence duration, scope of licence, the royalty.
2. The Contract from Para. (1) of this Article will be entered in the Register of Contractual Licenses of Breeders' Rights.
3. License contract not entered in the Register from Para. (2) of this Article has no legal effects towards third parties.

## **Compulsory licenses**

### **Article 38**

1. If the holder of the breeder's right himself, or through other person, does not use or uses insufficiently his right, other person can obtain his right upon the payment of royalty to the holder of the breeder's right.
2. The Institute shall grant the compulsory licenses upon request, if:
  1. the holder of the breeder's right does not produce or sell on his own or through other license user sufficient amount of propagating material or product;
  2. the use of breeder's right has public importance.
1. A compulsory license can be granted to the person who proves that he disposes of propagating material, as well as of production -, technical- and financial facilities for the use of breeder's right.
2. A compulsory license will not be granted for more than three years; this period can be extended if the conditions for additional grant of the license exist.

### **Article 39**

The owner of the compulsory license must pay the royalty to the holder of the plant breeder's right in the amount agreed jointly. If parties can not agree upon the royalty fee, the fee and the way of payment will be determined by the Institute.

### **Article 40**

1. The Institute takes the decision on the application for the grant of a compulsory license.
2. Application for the grant of compulsory license may be submitted after the period of five years following the grant of the breeder's right.

## **VI COURT PROTECTION**

### **Complaint against the violation of breeder's right**

### **Article 41**

1. Any person violating the breeder's right, which derives from application or from already granted right, is responsible for the damage according to general provisions for indemnification.

2. A person whose right has been violated is entitled, apart from indemnification, to request the prohibition of further activities of the person who has violated his right, and to request the sentence declaring the violation to be published at the expenses of the defendant.
3. The violation of breeder's right is every unauthorized economical exploitation of the breeder's right.

#### **Article 42**

1. The complaint against the violation of the breeder's right may be filed within three years after the date when the prosecutor has become aware of the violation.
2. The complaint can not be filed after five years following the violation.
3. Proceedings for the complaint against the violation of the breeder's right are urgent, and will be done by competent Court.

#### **Dispute of granted breeder's right**

#### **Article 43**

During the period of granted breeder's right, the holder of breeder's right can file the request before the competent Court in order to be proclaimed the holder of breeder's right, if the same right had been granted and registered to another person.

#### **Article 44**

1. Within three months from the submission of a legally valid court decision which approves the request, the prosecutor has the right to demand from the Institute to enter his right in the Register of Breeder's Rights and to issue an appropriate document.
2. If the person from Para. (1) of this Article does not submit the application, breeder's right will be deleted from the Register of Breeders' Rights.

#### **Article 45**

Rights obtained by the third person from previous holder of rights are valid for the new holder of rights, if they have been registered in the appropriate Register, or if the application for the registration has been submitted before the notice of court proceedings.

## **Breeder's complaint for the grant of breeder's right**

### **Article 46**

1. The breeder can file a complaint before the competent court in order to be mentioned in all documents related to the grant of breeder's rights.
2. In the case of death of a breeder, his successors will have the right to file the complaint.
3. The complaint from Para. (1) of this Article can be filed during the proceedings for the grant of breeder's right and during the validity of the breeder's right.

## **VII REPRESENTATION**

### **Article 47**

1. Natural and legal persons who represent the applicant in the proceedings of the grant of breeder's right have to be registered in the Register of Representatives, managed by the Institute.
2. The Minister is authorised to establish the method and proceedings for the registration, and conditions for natural and legal persons who act as representatives.

## **VIII THE CONTROL OF IMPLEMENTATION OF THE LAW**

### **Article 48**

The Ministry is authorised to carry out the administrative control of the implementation of this Law. The Ministry is responsible for administrative proceedings carried out by the Institute.

## **IX TRANSITIONAL AND FINAL PROVISIONS**

### **Article 49**

Acts and regulations for the implementation of this Law will be established by the Minister within one year after the entry into force of this Law.

### **Article 50**

As an exception of Article 8, Para. (1) of this Law, plant breeders of those varieties which have been protected according to former regulations, and their legal successors, can submit an application for the grant of breeder's right within one year after entry into force of this Law.

## **Article 51**

Prior to the establishment of the Institute referred to in Article 5 of this Law, but not longer than one year after the entry into force of this Law, activities of the Institute will be carried out according to former legal acts valid prior to entry into force of this Law.

## **Article 52**

This Law shall enter into force on the eighth day after its publication in the «Official Gazette» of the Republic of Croatia.

Class: 320-20/96-02/01

Zagreb, November 21, 1997

**PARLIAMENT OF THE REPUBLIC OF CROATIA**

**HOUSE OF REPRESENTATIVES**

**President of the House of Representatives**

**Vlatko Pavletić, Ph.D.**

Published in «Official Gazette» No 131/97 on December 5, 1997