

LAW OF UKRAINE
on amendments to the Law of Ukraine on the Protection of Plant Variety Rights

The Verkhovna Rada of Ukraine hereby **decrees**:

The Law of Ukraine on the Protection of Plant Variety Rights (Vedomosti (Gazette) of the Verkhovna Rada of Ukraine, 1993, No. 21, p.218) shall be amended as follows:

LAW OF UKRAINE
on the Protection of Plant variety rights

This Law shall govern the proprietary and personal non-proprietary relations arising in connection with the acquisition, implementation and protection of plant variety rights.

Section I
GENERAL PROVISIONS

Article 1. Definition of terms

In this Law, the terms listed below are used as follows:

breeder – a person who directly created (discovered and/or bred and/or improved) a variety;

botanical taxon – an individual group of plants interrelated by a series of common characteristics and properties, by means of which they may appropriate a taxonomic category.

use of a variety – a particular action relating to a variety, as indicated in this Law in the list of actions requiring the owner's authorization;

owner of a variety – a person to whom the right to a variety belongs, for the period defined by this Law and certified by a patent;

State party – a State that has acceded to the International Convention for the Protection of New Varieties of Plants, adopted on December 2, 1961 and revised on November 10, 1972, October 23, 1978, and March 19, 1991.

examining authority – a scientific authority, empowered by the Office to examine applications, verify the preservation of a variety and carry out other tasks arising from this Law;

application for a plant variety (application) – series of documents required for registering a variety and obtaining protected documents certifying the right to the variety;

applicant – a person filing an application;

collected material – a collected harvest of plants or parts thereof, grown from planting material;

State party competent authority – an authority of a State party registering the rights to varieties;

features – indicators according to which varieties are distinguished in the process of examining an application, regardless of their economic importance;

person – a natural person or legal entity;

patent – a protected document certifying the priority, breedership and right of ownership to a plant variety;

planting material – plants and parts thereof, considered suitable for the reproduction of whole plants;

dissemination of a variety – commercial distribution of a variety entered in a register of varieties;

Register of applications – State Register of Applications for Plant Varieties;

Register of patents – State Register of Rights of Plant Variety Owners;

Register of varieties – State Register of Plant Varieties Suitable for Dissemination in Ukraine;

certificate of authorship of a variety – protected document certifying the personal non-proprietary right of breedership of a variety;

plant variety – individual group of plants (clone, line, first-generation hybrid, population) as part of the lowest of the known botanical taxons which, irrespective of whether it satisfies fully the requirement of the provision of legal protection, may be:

- defined by the extent to which the characteristics constituting the result of the activity of a given genotype or combination of genotypes are displayed;

- separated from some other group of plants by the extent to which at least one of these characteristics is displayed;

- examined as a unified whole from the point of view of its suitability for reproduction in the unchanged form of whole plant varieties;

Office – a State government authority operating as part of a central executive authority specializing in matters relating to agriculture and food.

Article 2. Legislation of Ukraine on plant variety rights

The legislation of Ukraine on plant variety rights shall be based on the Constitution of Ukraine, and consists of this Law, and other laws of Ukraine and regulations governing relations connected to the right of ownership of plant varieties.

Article 3. Sphere of application of this Law

This Law shall apply to varieties of all genera and species of plants.

Article 4. Application of the standards of international agreements

If an international agreement, consent for the binding nature of which in Ukraine is given by the Verkhovna Rada of Ukraine, contains rules other than those established by this Law and the regulations issued in accordance with it, the rules of the international agreement shall apply.

Article 5. Rights of foreigners and stateless persons

Foreigners and stateless persons shall, in accordance with international agreements or on the basis of the principle of reciprocity, have equal rights with the persons in Ukraine specified by this Law.

Article 6. Powers of the Cabinet of Ministers of Ukraine in the sphere of protection of rights to varieties

The Cabinet of Ministers of Ukraine shall:

- dispatch and coordinate the work of the central executive authorities, pursuant to this Law;
- issue regulations on matters relating to the protection of plant variety rights and monitor their enforcement;
- organize international cooperation in relation to the protection of plant variety rights.

Article 7. Powers of the central executive authority in the intellectual property sphere

The central executive authority in the intellectual property sphere shall participate in the:

- implementation of State policy in the sphere of protection of plant variety rights as intellectual property subjects;
- supervision of the enforcement of this Law;
- establishment of the general requirements for the normative provision of protection of the plant variety rights;
- preparation of expert reports on the names of varieties as regards their relations to signs for goods and services, and appellations of origin;
- broadening of the practice of applying legislation on the protection of plant variety rights, devising proposals on their improvement and inclusion for consideration by the Cabinet of Ministers of Ukraine, in accordance with the established procedure;
- international cooperation relating to protection of the plant variety rights.

Article 8. Powers and obligations of the central executive authority for agriculture and food in the sphere of protection of the rights to varieties

The central executive authority for agriculture and food shall:

- implement State policy in the sphere of protection of the plant variety rights;
- organize and supervise the enforcement of this Law;
- approve the regulations for drafting and filing applications, examine those instruments, and monitor compliance therewith;
- grant patents for plant varieties and certificates of authorship of plant varieties;
- develop the scientific, material and technical potential in the sphere of protection of plant variety rights.

Article 9. Powers and obligations of the Office in the sphere of protection of the rights to varieties

1. The Office shall implement this Law and other regulations for the protection of the plant variety rights, and shall carry out the following functions:

- broaden the practice of applying the legislation on the protection of rights to varieties, devise proposals on their improvement and, in accordance with the established procedure, present them for consideration by the central executive authority in the sphere of agriculture and food;
- define the authorized examination authorities and entrust them with the examination of applications;
- draw up draft regulations for drafting and filing applications, and present them for approval to the central executive authority for agriculture and food;
- organize the receipt of applications, examine them, and take decisions thereon;
- keep a Register of Applications, Register of Patents and Register of Varieties, and guarantee the State registration of applications, patents and varieties;
- organize the verification of the preservation of varieties;
- ensure the verification of compliance with the standards of this Law on the use of variety names;
- publish official information on patents granted for plant varieties and certificates of authorship of such varieties, and issue a catalog of plant varieties suitable for dissemination in Ukraine;

- guarantee international cooperation in the sphere of legal protection of plant varieties and represent the interests of Ukraine in matters relating to protection of the rights to such varieties in international organizations, in accordance with the legislation in force;

- adopt regulations, in accordance with the established procedure, within the limits of its powers;

- organize information-related and publishing activities in the sphere of protection of the rights to varieties;

- organize scientific research work for the enhancement of legislation, activities in the sphere of protection for rights to varieties and the improvement of State testing for plant varieties;

- organize work for the training and retraining of State employees for the protection of the rights to varieties;

- entrust institutions forming part of the State system for the protection of the rights to varieties, in accordance with their specialization, and also examining authorities to carry out individual tasks defined by this Law, Office regulations and other standard-setting instruments in the sphere of legal protection for intellectual property;

- perform other duties in accordance with the relevant Regulations approved by means of the established procedure.

2. The Office may be empowered by the central executive authority for agriculture and food to manage the property of examining authorities relating to State ownership, establish, reorganize and disband such authorities, and conclude and negotiate contracts with their leading officials.

3. The Office's activities shall be funded from the State Budget of Ukraine.

Section II CONDITIONS FOR ACQUIRING PLANT VARIETY RIGHTS

Article 10. **Rights to varieties**

1. Pursuant to this Law, the following rights to varieties may be acquired:

- personal non-proprietary right of breedership of a variety;
- proprietary right of ownership of a variety.

These rights shall be acquired for a variety corresponding to criteria defined by this Law and to which a name shall be assigned in accordance therewith.

2. A personal non-proprietary right of breedership of a variety shall be certified by the Register of Varieties, Register of Patents, certificate of breedership of a plant variety and a patent.

3. The proprietary right of ownership of a variety shall be certified by the Register of Patents and a patent. The scope of legal protection of a variety for which a patent has been granted shall be defined by the series of features contained in the description of the variety entered in the Register of Patents.

4. The rights to a variety in question shall be acquired in accordance with the procedure established by this Law.

Article 11. **Protectability criteria for a variety**

1. The various embodiments of a variety, to which rights may be acquired shall be a clone, line, first-generation hybrid and population.

2. A variety shall be considered protectable – suitable for the acquisition of a right thereto as an intellectual property subject, if, when the features denoted by a particular genotype or combination of genotypes are disclosed, the variety is novel, distinctive, uniform and stable.

3. A variety shall be considered novel if, prior to the date on which the application is considered to have been filed, the applicant (breeder) or other person with his permission has not sold or transferred by any other method the material of the variety for commercial use:

(a) on the territory of Ukraine – one year prior to this date;

(b) on the territory of another State – in relation to timber, shrubs and vines for six years and, as regards other types of plants, four years prior to this date.

4. The novelty of a variety shall not be lost, if any of its material has been given, including prior to the dates indicated in paragraph 3(a) and (b) of this Article:

- with misuse to the detriment of the applicant;
- in fulfillment of the agreement on the transfer of the right to file an application;
- in fulfillment of an agreement on the propagation of the material of a variety reproduced and its testing, provided that the material collected as a result was transferred only to the applicant and not used to produce another variety;
- in fulfillment of the measures defined by legislation, in particular as regards biological safety or the establishment of the Register of Varieties;
- as a by or waste product obtained when a variety is created or improved, without reference to the variety and only for consumption purposes.

5. A variety shall meet the requirement of distinctiveness, if, when its features are disclosed, it is clearly distinguished from any other variety, known to date, for which an application is considered to have been filed.

A variety, contrary to that claimed, shall be considered generally known, if:

- (a) it is disseminated on a particular territory in a specific State;
- (b) information on the disclosure of its features has become generally known in the world, in particular by means of their description in some publication already issued;
- (c) it is displayed as samples in a generally accessible collection;
- (d) it is granted legal protection and/or is entered in the official register of varieties in a particular State; it is also considered to be generally known from the date on which the application for the grant of a right is filed, or of inclusion in the register.

6. A variety shall be considered uniform if, taking into account the features of its propagation, plants of this variety remain sufficiently uniform in terms of their fundamental characteristics, as indicated in the description of the variety.

7. A variety shall be considered stable if its fundamental characteristics, as indicated in the description of the variety, remain unchanged following repeated propagation or, in the case of a special propagation cycle, at the end of each such cycle.

Article 12. Conditions for the State registration of a variety

A variety may be included in the Register of Varieties, if it is protectable in accordance with the rules of Article 11 of this Law, suitable for dissemination in Ukraine according to the requirements of Article 14 of this Law, and a name is assigned to it, pursuant to the requirements of Article 13 of this Law.

Article 13. Variety name

1. A name shall be assigned to a variety, which shall uniquely identify it and distinguish itself from any other name in Ukraine and in other States parties from an existing variety of the same or a closely-related species.

2. The name of a variety shall include its generic or species designation and the name itself.

3. The name itself may take the form of any word, combination of words, combination of words and figures, or combination of letters and figures.

4. The name of a variety shall not:

- (a) contravene the principles of humanity and morality;
- (b) consist only of figures, except in cases where this corresponds to established practice for naming varieties, or consist exclusively of signs or designations indicating the type, maturity group, quality, designation, value, origin or cultivation technology;
- (c) generate a misleading or mistaken perception of the characteristics, value or geographical origin of a variety, and also of the breeder of the variety or other person concerned;

(d) be identical or similar to the point of confusion with the name of a variety, the rights to which have been acquired in Ukraine or another State party.

5. A variety shall be provided in Ukraine and in another State party under the same name.

Article 14. Suitability of a variety for dissemination in Ukraine

A variety shall be considered suitable for dissemination in Ukraine, if it is suitable for legal protection, may be used to satisfy the needs of society and is not forbidden for dissemination on the grounds that it is a threat to life and human health, cause of harm to fauna and flora, and to the preservation of the environment. The criteria for prohibiting the dissemination of varieties in Ukraine shall be devised by the Office and approved by the central executive authority for agriculture and food.

Section III

PROCEDURE FOR ACQUIRING RIGHTS TO A PLANT VARIETY

Article 15. General provisions of the procedure for acquiring rights to a variety

1. The rights to a variety shall be acquired in Ukraine by filing an application with the Office, examining the application and State registration of the rights.

2. The rights to a variety in foreign States shall be acquired independently of the acquisition of such rights in Ukraine.

3. Breeders, applicants and owners of varieties in relations governed by this Law may be replaced by their representatives, in particular those specializing in intellectual property, registered in accordance with the relevant provisions approved by the Cabinet of Ministers of Ukraine. In such a case, relations with representatives are considered in the same way as relations with breeders, applicants and rights owners.

Article 16. Breeder's right

1. The right to file an application for a plant variety shall belong to the breeder of the variety, unless otherwise specified by this Law.

2. If a variety has been created jointly by several breeders, they shall all have equal rights to file an application, unless otherwise specified by agreement between them. The refusal by one or more of them of the rights to a variety shall not extend to other breeders.

3. In cases where the conditions of an agreement relating to the breeders of a variety are reviewed, the Office shall, at the general request of the persons indicated in the application as breeders and also of the breeders not stated in the application, insert changes into the appropriate documents in accordance with the established procedure.

4. The breeder of a variety shall retain the right of authorship, which shall be a personal, non-proprietary right and shall be protected indefinitely, pursuant to Article 37 of this Law.

Article 17. **Employer's right**

1. If a variety is created by a breeder in connection with the fulfillment of professional duties, or at the request of an employer, the use of experience, production knowledge, production secrets, equipment, or material and financial means of the employer, the right to file an application for the variety shall belong to the employer, unless specified otherwise by the employment agreement (contract) between the employer and breeder.

2. Subject to the conditions contained in the first part of this article, the breeder of a variety shall submit written notification of the variety he has received, with a sufficiently full description, to the employer.

3. An employer shall, within 60 days of receiving a breeder's notification, file with the Office an application for the grant of a patent, assign the right thereto to another person, or decide to retain the information on the variety as confidential. Within this period, the employer shall conclude, with the breeder of the variety, a written agreement on the level of and conditions for payment of his fair remuneration, in accordance with the economic value of the variety and other benefit to the employer.

The Cabinet of Ministers of Ukraine may establish the minimum rates of the remuneration in question and the procedure for their indexation.

4. If an employer (employer's successor) does not satisfy the requirements of part three of this article within the prescribed period, or does not use the variety while preserving the information on it as confidential for more than four years from the date on which notification is received from the breeder of the variety, the right to file an application and to obtain a patent shall be assigned to the breeder and the employer shall retain the preferential right to acquire a non-exclusive license to use the variety.

5. Disputes on the conditions for the payment of remuneration to the breeder of a variety by an employer, together with the level thereof, shall be settled by the courts.

Article 18. **Successor's right**

The right to file an application to obtain a patent for a plant variety shall be held accordingly by the breeder's or employer's successor.

Article 19. **Right of the first applicant**

If a plant variety is created by two or more breeders (groups of breeders) independently of each other, the right to obtain a patent shall belong to the applicant whose application has an earlier filing date or, where priority is claimed, an earlier priority date, provided that the application in question is not considered to have been withdrawn or has not been withdrawn, or a decision has not been taken to refuse to grant a patent.

Article 20. **Application for a variety**

1. An application for a variety shall be filed with the Office by a person entitled to do so, in accordance with Articles 16, 17 and 18 of this Law.

2. An application shall relate to one variety only.
3. An application shall be drafted in Ukrainian and shall contain:
 - a request to enter a variety in the Register of Varieties and to grant a patent for the variety, or a request to enter a variety in the Register of Varieties;
 - the name (title) and address of the place of residence (business) of the applicant;
 - the name and address of the place of residence of the breeder(s);
 - an indication of the botanical taxon (in Ukrainian and Latin);
 - the proposed name of the variety;
 - a description of the variety;
 - an indication of the factors for defining the suitability of the variety for dissemination in Ukraine (where necessary);
 - information on the origin of the variety;
 - information on other applications for the variety;
 - information on the commercial use undertaken;
 - proof of payment of the application filing fee;
 - other information stipulated by the Office, required for acquiring the rights to the variety.
4. The description of a variety shall disclose the characteristics of the variety and its properties to the extent required to define it.
5. The breeder shall be entitled to request that no reference be made to him as such in any kind of publication relating to the application or patent.
6. Samples of the planting material shall be attached to the application, in accordance with the procedure established by the Office.
7. Other requirements for application documents shall be determined by the Office.
8. A fee shall be payable for filing an application. A document relating to payment of the fee shall be submitted to the Office together with the application, or within two months of the application filing date. This period may be extended by six months, provided that the appropriate fee is paid.

Article 21. **Date on which an application is considered to have been filed**

1. The application filing date shall be considered to be the date on which the Office receives all the application materials specified in Article 20(3) of this Law, or part of the materials containing at least:

- (a) information on the applicant, drafted in Ukrainian;
- (b) an indication of the botanical taxon (Latin and Ukrainian designations);
- (c) the name or temporary designation of the variety, as proposed by the applicant;
- (d) where priority is claimed – the name of the State party in which a previous application for this variety has been filed, and the filing date of this application;
- (e) a description of the variety, allowing it to be identified, and drafted in Ukrainian or another language. If it is drafted in another language, in order to retain the filing date of the application a translation of the description of the variety into Ukrainian shall be submitted to the examining authority within two months of the application filing date.

2. If the Office considers that, at the time they are received, the application materials do not meet the requirements of the first part of this article, it shall inform the applicant accordingly.

A two-month period shall be allocated for the inclusion of amendments in the materials, starting from the date on which the applicant receives notification from the examining authority. If, during this time, non-compliance is eliminated, the application filing date shall be considered to be the date on which the examining authority receives the corrected materials. In the opposite case, the application shall be considered not to have been filed, notification of which shall be sent to the applicant.

3. A decision to establish the application filing date shall be sent by the examining authority to the applicant once the document concerning payment of the application filing fee has been received. In the case of non-payment or late payment of the fee, the decision shall not be sent, and the application shall be considered to have been withdrawn.

Article 22. **Right to application priority**

1. An applicant shall be entitled to claim priority according to the filing date of a previous application for the same variety with the competent authority of another State party, provided that the application is filed with the Office not later than twelve months from the filing date of the previous application with the competent authority of the other State party and, on the application filing date, the previous application was valid. If the last day of this period is a non-working day, the period shall be extended until the first subsequent working day.

2. An applicant wishing to claim priority shall file a priority claim, a copy of a previous application together with an indication of the filing date of this application and its number, certified by the body with which it was filed, and a translation thereof into Ukrainian. These documents shall be submitted to the examining authority prior to the end of a three-month period from the application filing date.

3. The deadlines stated in this part, which have been missed as a result of unforeseen circumstances beyond the applicant's control, may be extended by two months, provided that the appropriate fee has been paid. In the opposite case, the applicant shall lose his priority right.

Article 23. Application confidentiality

An application and the materials for its examination shall be kept by the Office in secret and, without the authorization of the applicant or variety owner, no information thereon shall be disclosed, unless otherwise stipulated by this Law and the rules for examining an application.

In the case of a variety whose propagation requires the repeated use of other varieties (components), an applicant may, when filing an application, request that the information he has provided and the testing results should not be publicized.

Article 24. Withdrawal of an application

An applicant shall be entitled to withdraw an application at any time up to the date when he receives a decision on the registration of a variety.

Article 25. Application examination

1. The examination of an application shall have the status of a State scientific and technical examination. It shall be conducted in order to establish whether the application and variety meet the requirements of this Law and of the preparation of the reasoned expert opinions and decisions on the application.

2. An application shall be examined by expert authorities appointed by the Office, in accordance with this Law and the rules established on the basis thereof.

3. An application examination shall consist of a formal examination (examination of formal characteristics) and a qualified (principal) examination.

4. An applicant shall be entitled, at his own initiative or on a proposal by the examining authority, either personally or through his representative, to participate, in accordance with the established procedure, in the examination of issues arising during the conduct of an examination.

5. An applicant shall be entitled, at his own initiative, to make corrections to an application and to refine the characteristics disclosed in the description of the variety. These corrections and refinements shall not be taken into account, if they were received by the Office after the date on which the applicant received a decision on the application.

A fee shall be payable for the filing of a request by an applicant to make corrections and refinements to an application after the relevant information has been entered in the Register of Applications.

Article 26. Formal examination

1. A formal examination of an application shall be carried out in order to determine whether the formal features of the application meet the requirements of this Law and comply with the rules for drafting and filing an application drawn up by the Office on the basis thereof.

2. During a formal examination:

(a) the application filing date shall be determined in accordance with Article 21 of this Law;

(b) it is verified whether the content of the application documents complies with the requirements of Article 20(3) of this Law;

(c) an application shall be compared with a copy of a previous application submitted by the applicant, where such a copy is submitted to the competent authority of the State party, and the priority date shall be established in accordance with Article 22 of this Law;

(d) it shall be established whether the application filing fee has been paid.

3. Where the materials which may be used as a basis for establishing the application filing date are received:

(a) notification shall be sent to the applicant of the acceptance of the application for examination, together with the application number and filing date;

(b) information shall be entered in the Register of Applications, containing the details indicated in Article 20(3) of this Law, the application number and filing date, and also, where priority is claimed, the priority date. The information entered in the Register of Applications shall be made available to all parties.

4. Where the materials, on the basis of which the application filing date cannot be established, are received, the application shall be considered not to have been filed, and an appropriate expert report indicating the date of receipt of these materials should be sent by the applicant.

5. Where the formal characteristics of the application comply with the established requirements and positive opinions are received in relation to paragraph 2(a), (b) and (d) of this Article:

(a) an expert opinion on the positive results of a formal examination and the possibility of carrying out a qualifying examination is sent to the applicant;

(b) information on the application, containing the details indicated in Article 20(3) of this Law, the application number and filing date, and also, where priority is claimed, the priority date, are published in the Official publication;

(c) the competent authority of each State party shall be informed of the name of a variety proposed by the applicant.

6. The first notification to the applicant of a formal examination, which may be the notification according to paragraph 3(a) of this Article, according to paragraph (4) of this Article, or paragraph 5(a) of this Article, shall be sent by the Office not later than six months after the date on which it receives the application materials.

7. Following publication of the information on the application, any person shall be entitled to consult the application materials, in accordance with the established procedure.

8. Where the formal features of an application do not comply with the established requirements, an appropriate expert report shall be sent to the applicant.

The applicant shall remove the source of incompatibility indicated within two months of the date on which he receives the expert report. This period may be extended by six months, provided that the corresponding fee has been paid. In the opposite case, a decision shall be sent to the applicant on the refusal to grant State registration for the rights to a variety.

A deadline missed for justifiable reasons shall be renewed, provided that the applicant submits a request within twelve months of the date on which the deadline expires and that the corresponding fee has been paid.

Article 27. **Qualifying examination**

1. A qualifying examination shall envisage a series of tests to be carried out as a requirement for the preparation of an expert report on an application, and also a decision to be taken on the State registration of a variety and the rights thereto.

2. A qualifying examination shall be carried out at the request of an applicant and provided that the applicant has paid the corresponding fee. An applicant may file the request concerned not later than three years after the application filing date. If this request does not reach the Office within the prescribed period, the application shall be considered to have been withdrawn.

3. The fee for carrying out a qualifying examination for varieties not subject to State testing shall be lower than the similar fee for varieties subject to such testing.

4. When carrying out the qualifying examination:

(a) it shall be determined whether the object described in the application, and the planting material attached thereto, relate to plant varieties;

(b) the proposed name of the variety shall be examined, in accordance with the procedure defined in Article 28 of this Law;

(c) the novelty of the variety shall be determined in accordance with Article 11(3) and (4) of this Law;

(d) it shall be determined whether the variety meets the criteria of distinctness, uniformity and stability, in accordance with Article 11(5), (6) and (7) of this Law;

(e) with the aim defined in subparagraphs (c) and (d) of this part, and also in order to determine the suitability of a variety for dissemination in Ukraine, State testing of the variety shall be carried out in accordance with Article 29 of this Law. In that regard, the results of the testing of a variety, carried out by the competent authority of any State party, may be taken into account;

(f) possible objections raised by third parties to the provision of the rights to a variety shall be examined according to the procedure specified in Article 30 of this Law.

5. Based on the results of a qualifying examination in accordance with the procedure defined by Article 31 of this Law, a reasoned expert opinion shall be put forward on an application, and a decision shall be taken on the State registration of a variety and the grant of a patent, or on the refusal to register a variety and to grant a patent.

6. When carrying out a qualifying examination, the Office and its examining authority shall be entitled to request from the applicant additional materials, information, documents, samples and so on, as required for the examination.

The applicant shall be entitled, within one month of receiving the request to provide copies of the materials opposed to an application. The examining authority shall provide these copies free of charge within one month of the date on which it receives the applicant's request.

The applicant shall supply the materials, information and so on, requested by the Office or its examining authority, within two months of the date on which it receives the request or copies of the materials opposed to the application. This period may be extended by twelve months, provided that the corresponding fee has been paid. In the opposite case, the application shall be considered to have been withdrawn and an appropriate notification shall be sent to the applicant.

A deadline missed for justifiable reasons shall be renewed, provided that the applicant submits a request within twelve months of the date on which the deadline expires and that the corresponding fee has been paid.

Article 28. Examination of the name of a variety

1. The proposed name of a variety shall be examined in order to determine whether the name complies with the requirements of Article 13 of this Law.

2. The central executive authority in the sphere of intellectual property shall participate in the preparation of expert reports on the name of a variety as regards its relationship to marks for goods and services, and appellations of origin.

3. Where the Office establishes that the proposed name of a variety does not comply with the established requirements, an expert report shall be sent to the applicant requesting that another name be proposed for the variety.

4. Any person may file with the Office a reasoned objection regarding the proposed name of a variety, within three months of the date of its official publication. The competent authority of any State party may submit its comments in this regard.

The examining authority shall send any objections and comments to the applicant.

5. An applicant shall inform the Office of his position on the expert report in question, and the objections and comments raised, within three months of the date of their receipt. He may refute them, and leave the proposed name of a variety unchanged, or propose another name for the variety.

The period in question shall be extended by six months, provided that the corresponding fee has been paid. In the opposite case, an application shall be considered to have been withdrawn, and the applicant shall be notified accordingly.

A deadline missed for justifiable reasons shall be renewed, provided that a request is submitted within twelve months of the date of its expiry and that the corresponding fee has been paid.

6. The alternative name for the variety proposed by the applicant shall be officially published. The competent authority of each State party shall be informed accordingly. The new name shall be examined in accordance with the same procedure as used for the name of the variety proposed previously.

7. An expert report shall be sent to the applicant and/or person raising an objection concerning the results of the consideration of the objection or comments made.

8. If the examination carried out does not reveal that the proposed name of a variety is incompatible with the requirements of Article 13 of this Law, an expert report confirming acceptance of the name shall be sent to the applicant.

9. At the request of an applicant, the name of a variety accepted by the Office may be changed, provided that a request is received prior to a decision on State registration of the rights to the variety being taken and that the corresponding fee has been paid.

10. The name of a variety shall be approved by a decision on the State registration of the variety and the rights thereto, and shall be registered at the same time as information on the variety is entered in the appropriate publications.

The competent authority of each State party shall be informed of the registered name of a variety.

Article 29. State testing of a variety

1. The central executive authority for agriculture and food shall, on behalf of the Office, approve a list of genera and species of plants, the varieties of which shall be subject to State testing of the variety and determination of its suitability for dissemination in Ukraine.

2. State testing of a variety shall be carried out by the Office and by the examining authorities appointed thereby, according to the State testing method approved by the central executive authority for agriculture and food, provided that the corresponding fee has been paid beforehand.

3. The suitability of a variety for dissemination in Ukraine shall be determined in accordance with Article 14 of this Law.

4. Experimental samples of varieties, imported into Ukraine for State testing purposes, shall not be subject to customs import tax, or to a quota system, licensing, certification or State sanitary and hygiene inspection; the quarantine inspection of these models shall be performed free of charge. The customs clearance of such models shall be effected without certification of compliance on the basis of documentary evidence from the Office that these models are being imported for State testing purposes.

5. The Office shall inform an applicant, on an annual basis, of the results of testing of a variety and shall also submit comments to him on those results.

6. Where the Office considers the testing results to be insufficient for the purposes of compiling an expert report on an application, it may, following consultations with the applicant, carry out additional testing.

7. Where State testing has been conducted, at the request of the Office, by another legal entity, the results thereof shall be forwarded solely to the Office, and any other use thereof by this entity shall be possible only with the Office's authorization.

Article 30. Objections raised by third parties to the registration of a variety

1. Any person may submit to the Office a reasoned objection to the registration of a variety, based on the fact that this does not comply with the relevant requirements established by this Law, within three months of the information on the application being officially published.

The Office shall send a copy of the objection raised to the applicant.

2. An applicant shall inform the Office of his position in relation to an objection within three months of receiving it. He may refute the objection, and leave the application unchanged, amend it or withdraw it.

The period in question shall be extended by six months, provided that the corresponding fee has been paid. In the opposite case, the application shall be considered to have been withdrawn, and the applicant shall be notified accordingly.

A deadline missed for justifiable reasons shall be renewed, provided that a request is submitted by the applicant within twelve months of its expiry and that the corresponding fee has been paid.

3. The applicant's response whereby the application is left unchanged or amended shall be made known to the person submitting the objection. That person shall be given one month to inform the Office that he wishes to maintain the objection or to withdraw it.

4. Where notification is received that an objection is being maintained, the objection shall be considered by the Office. That body shall be entitled to request, from the person submitting the objection, the requisite materials, information, documents, samples and so on.

5. The results of the consideration of an objection shall be made known to the person submitting the objection and to the applicant.

Article 31. Decision on an application

1. Where, according to the results of an expert report, a claimed variety complies with the requirements of this Law, the Office shall take a decision on the State registration of the rights to the variety in the Register of Patents and/or State registration of the variety in the Register of Varieties. If the claimed variety does not meet the requirements of this Law, a decision shall be taken to refuse to grant State registration for the variety and the rights thereto.

The decision taken shall be communicated to the applicant.

2. A decision on the State registration of the rights to a variety shall enter into force from the date of payment of the State fee for registration of those rights.

3. A decision on the State registration of a variety shall enter into force from the date of payment of the corresponding fee for registration of the variety.

4. The State fee for registration of the rights to a variety and the fee for registration of the variety shall be paid within three months of the date on which the applicant receives the decision on State registration. This period may be extended by six months, provided that the corresponding fee has been paid. In the opposite case, the application shall be considered to have been withdrawn, and the applicant shall be notified accordingly.

A deadline missed for justifiable reasons shall be renewed, provided that the applicant submits a request within twelve months of the day on which the deadline expires and that the corresponding fee has been paid.

Article 32. Temporary legal protection

1. The information entered in the Register of Applications concerning a variety claimed with a view to acquiring the proprietary right of ownership of the variety shall entitle the applicant to temporary legal protection within the limits of the description of the variety submitted with the application, as of the application filing date.

2. Temporary legal protection shall consist in the applicant being entitled to receive compensation for the losses he has suffered following the publication of information on the application, from the person who was actually aware or who received written notification in Ukrainian, including the application number, that the information on the application had been entered in the Register of Applications. The compensation in question may be obtained by the applicant only once he has been granted a patent.

3. The effect of temporary legal protection shall not extend to varieties of those genera and species of plants which are not subject to State testing in Ukraine.

4. The effect of temporary legal protection shall cease from the day following the date of State registration of the right of ownership of a variety or from the date on which information is entered in the Register of Applications concerning the withdrawal of an

application or the adoption of a decision to refuse State registration of the right of ownership of the variety.

Article 33. State registration of a variety and rights to the variety

1. State registration of a variety shall be carried out, on the basis of a decision taken on such registration, through inclusion in the Register of Varieties of the information specified by this Law and the Regulations on the Register of Varieties, and provided that the corresponding fee has been paid according to Article 31(3) of this Law.

State registration of the rights to a variety shall be carried out, on the basis of a decision taken on such registration, through inclusion in the Register of Patents of the information specified by this Law and the Regulations on the Register of Patents, and provided that the State fee has been paid according to Article 31(2) of this Law.

2. The Register of Varieties shall contain information on a variety, on the rights to the variety, the breeder, and also on recognition of the variety as suitable for dissemination in Ukraine. Such information shall, in particular, include:

- (a) an indication of the botanical taxon (in Latin and Ukrainian);
- (b) the name of the variety;
- (c) the name of the breeder(s);
- (d) the application number and filing date;
- (e) the priority date;
- (f) a description of the variety;
- (g) an indication of the features of the suitability of the variety for dissemination in Ukraine;
- (h) geographical and area recommendations for use of the variety.

3. The Register of Patents shall contain information on the proprietary right of ownership to a variety and on the rights related thereto. Such information shall, in particular, include:

- (a) the number and date of registration of the rights to the variety;
- (b) an indication of the botanical taxon (in Latin and Ukrainian);
- (c) the name of the variety;
- (d) the application number and filing date;
- (e) the priority date;

- (f) a description of the variety;
 - (g) the publication date of information on the registration of the rights to the variety;
 - (h) the name of the breeder(s); the name (title) of the person who owns and preserves the variety;
 - (i) information on the licensing agreements for using a variety;
 - (j) information on the assignment of rights to a variety.
4. The information entered in the registers shall be available for general consultation.
5. The information entered in the registers may be amended. Changes made on the initiative of the person to whom the rights belong shall be entered in the register, provided that the corresponding fee has been paid.
6. If an application filed according to Article 20 of this Law contains a request only for the registration of a variety, the variety shall, from the registration date, become public property and may be freely used by any person, pursuant to Article 38 of this Law.

Article 34. Publication of information entered in the registers

The information entered in the Register of Varieties and the Register of Patents shall be published in the Office's official journal.

Article 35. Issue of documents on the rights to a variety

1. Within one month of the date of State registration of the rights to a variety, and in accordance with the requirements indicated in the application by the central executive authority for agriculture and food, the breeder(s) shall be issued with a certificate of authorship for the variety and the applicant shall be granted a patent.
2. If an application contains a request only for the registration of a variety, within one month of information on the variety being entered in the Register of Varieties the breeder(s) shall be issued with a certificate of authorship for the variety.
3. If there is more than one breeder of a variety, a certificate of authorship for the variety shall be issued to each breeder.
4. If the proprietary right to a variety is held by more than one person, a patent for the plant variety shall be granted to the person indicated first in the application, unless otherwise agreed by the applicants.
5. The patents to varieties not subject to State testing shall be granted and the applicants therefor shall be responsible for ensuring that the varieties meet the criteria defined by this Law. Such patents shall contain a statement to the effect that they are declaratory.

Article 36. Appeal against a decision on an application

An applicant shall have the right to appeal any decision taken by the Office by applying to the courts.

Section IV
RIGHTS AND OBLIGATIONS RELATING TO A PLANT VARIETY

Article 37. Personal non-proprietary right of authorship of a variety

1. A person creating a variety shall be recognized as the breeder thereof. That person shall acquire the personal non-proprietary right of authorship from the date of State registration of the variety.

2. Natural persons who have not made a personal creative contribution to the creation of a variety, but have only provided the breeder(s) with technical, organizational or financial assistance during the creation of the variety and/or formulation of the application, shall not be recognized as breeders of the variety.

3. The right of authorship shall not be alienated or assigned, and shall be valid indefinitely.

4. The breeder of a variety shall have the right, at his own request, to obtain a certificate of authorship for a plant variety.

5. The breeder of a variety shall be entitled to propose a name for a variety he has created and to include his own name in the name of the variety.

6. The breeders of a variety, which is the result of their joint creative work, shall have equal rights according to this Law, unless otherwise agreed by them in writing.

7. A person recognized as the breeder of a variety shall be entitled to:

- (a) prevent other persons from acquiring and distorting his authorship;
- (b) request that his name should not be publicized as the breeder of the variety and not indicated as such in publications;
- (c) request that his name be indicated when the variety is used, if this is possible in practical terms.

This list of personal non-proprietary breeder's rights shall not be exhaustive.

8. In cases where the composition of breeders is reviewed, at the joint request of the persons indicated in the application as breeders, and also of the persons not indicated in the application as breeders, changes shall be made to the corresponding documents in accordance with the established procedure.

Article 38. Right to dissemination of a variety in Ukraine

1. The right to dissemination of a variety in Ukraine shall arise from the date on which a decision is taken to enter it in the Register of Varieties.

2. The right to dissemination in Ukraine of a variety to which an exclusive right of ownership does not extend, shall be acquired by any person, provided that the person concerned supports the economic circulation of the variety in accordance with the procedure defined by the Office.

3. Varieties not entered in the Register of Varieties shall not be disseminated in Ukraine.

Article 39. **Proprietary right of ownership of a variety**

1. The proprietary right of ownership of a variety shall be the owner's exclusive right to use his own variety, and to authorize or prohibit the use of the variety by other persons.

2. The exclusive right of the owner of a variety to authorize or prohibit the use of the variety shall be such that no one may, without the owner's authorization, carry out the following actions in relation to the material of the variety:

- (a) production or reproduction (for propagation purposes);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or marketing;
- (e) exporting outside the customs territory of Ukraine;
- (f) importing into the customs territory of Ukraine;
- (g) stocking for any of the purposes indicated in points (a) to (e) of this paragraph.

3. The provisions of paragraph (2) of this Article shall also be applied to a variety:

(a) which is essentially derived from a variety for the owner (essentially inherits the characteristics of the owner's variety), provided that the owner's variety is not essentially derived from another variety;

(b) which is not clearly distinguished from the owner's variety;

(c) the production of which requires repeated use of the owner's variety.

4. A variety shall be considered to be essentially derived from another (an initial) variety, if it is at least clearly distinguished from the initial variety, but:

(a) retains the basic features displayed by the genotype or a specific combination of genotypes of the initial variety;

(b) corresponds to the genotype or combination of genotypes of the initial variety, excluding the differences dictated by such methods used for its creation as the selection of a

natural or induced mutant, selection of a separate mutant from plants of the initial variety, backcross, or modification of the variety by genetic engineering methods.

5. The proprietary right of the owner of a variety may be the subject of a security and may be used in joint activities, in particular it may serve as a contribution to the business capital or property of a legal entity, as well as being the subject of other commercial circulation authorized by law.

6. The owner of a variety shall sell his proprietary right at his own discretion but, in that regard, the proprietary rights of owners of other varieties shall not be infringed.

7. Relations in the enforcement of a proprietary right of ownership to a variety, the patent for which belongs jointly to several persons, shall be determined by agreement between those persons, concluded in writing and signed by the parties. Where such an agreement does not exist, each co-owner of a patent may enforce the right granted by the patent at his own discretion, but none of the owners shall be entitled to give permission to use the variety or to assign the right of ownership to the variety to another person, without the agreement thereto of the remaining rights owners.

Article 40. Assignment (alienation) of the proprietary right to a variety and assignment of the right to use the variety

1. The owner of a variety shall have the right to assign his proprietary right to the variety, on the basis of an agreement, to any person who shall become his legal successor.

2. The owner of a variety shall be entitled to bequeath his proprietary right to the variety.

3. The owner of a variety may grant any person authorization (a license) to use the variety on the basis of a licensing agreement. According to the licensing agreement, the owner of the variety (licensor) shall assign the right to use the variety to another person (licensee) who shall assume the obligations to make to the licensor the payments and carry out other activities specified by an agreement on an exclusive or non-exclusive license.

According to an exclusive licensing agreement, a licensor shall assign the right to use a variety to the licensee to a specific extent, on a particular territory and within a prescribed period, and shall retain the right to use the variety insofar as it shall not be assigned to the licensee. In that connection, the licensor shall not be entitled to grant a license for the use of a variety to another person on the same territory, to the extent of the rights granted to the licensee.

According to a non-exclusive licensing agreement, a licensor shall assign the right to use a variety to a licensee, and shall retain the right to use the variety and to grant licenses to other persons.

4. During the period of validity of a patent, the owner of a variety shall be entitled, in accordance with the established procedure, to submit to the Office for official publication a statement of willingness to grant authorization to any person to use the variety (open license). In this case, the fee for maintaining the validity of the exclusive right of the owner of a variety

shall be reduced by 50 per cent, beginning from the year following the year of publication of such a statement.

If no individual has declared to the owner of a variety his intentions regarding the use of the variety and has not expressed a desire to conclude a licensing agreement, he may submit a written request withdrawing his statement. In such a case, the fee for maintaining the validity of the exclusive right of the owner of a variety shall be paid in full, beginning from the year following the year of publication of such a request.

5. A licensing agreement and an agreement to assign the exclusive right of the owner of a variety shall be considered valid, if they are concluded in writing and signed by the parties.

6. The grant of a license to use a variety and the assignment of the exclusive right of the owner of a variety shall be considered valid for third parties from the date on which the relevant information is officially published, based on the inclusion of that information in the Register of Patents.

Fees shall be paid for the inclusion of the information in question in the Register of Patents and amendments thereto, made at the initiative of the parties to an agreement.

7. The proprietary right to a variety, which belongs to a legal entity in liquidation, may be assigned (alienated) to another legal entity, in accordance with established legal procedure.

Article 41. Period of validity of a patent and of the proprietary right of the owner of a variety

1. The validity of a patent and of the proprietary right of the owner of a variety certifiable thereby shall be limited to a period established by this Law and shall be maintained, provided that the appropriate fee has been paid for the maintenance of patent validity.

2. The period of validity of a patent and the right of ownership of a variety certifiable thereby shall begin on the day following the date of State registration of the right and shall expire on the last day of the:

(a) thirty-fifth calendar year, calculated from the year following the year of State registration of a variety, for varieties of trees, shrubs and vines;

(b) thirty calendar year, calculated from the year following the year of State registration of a variety, for all other varieties.

3. When the period of validity of a patent and of the right of ownership of a variety certifiable thereby expires, or in the case of its early termination or refusal thereof, in accordance with Articles 50 and 51 of this Law, this variety shall enter the public domain and may be freely used by any person, pursuant to Article 38(2) and (3) of this Law.

Article 42. Fee for maintaining the validity of the rights to a variety

1. A fee for maintaining the validity of the proprietary right of the owner of a variety shall be paid for each year, beginning from the calendar year following the year of State

registration of the right. The fee for the following year shall be paid during the last four months of the current calendar year. A fee for maintaining the validity of the right in the first calendar year following the year of State registration of the right may also be paid during the first four months of that year.

2. The validity of a right shall cease from the first day of the year for which a fee has not been paid.

3. The fee for maintaining the validity of a right may be paid within twelve months of the expiry of the prescribed period. In this case, the amount of the fee shall be increased by fifty per cent. When the fee is paid, the validity of the right shall be re-established from the day following the entry of the relevant information in the Register of Patents.

4. If the established fee is not paid within the twelve months in question, information shall be officially published to the effect that the validity of the right to a variety has ceased.

Article 43. **Compulsory license for using a variety**

1. A compulsory license for using a variety shall provide the person obtaining it with the right to use the variety, without the permission of the owner of the variety. Compulsory licenses for the use of varieties may be granted by the Cabinet of Ministers of Ukraine and by the courts.

2. A compulsory license may be only exclusive and shall define the scope of use of the variety, the period of validity of authorization, and the amount of and procedure for paying remuneration to the owner of the variety.

3. The Cabinet of Ministers of Ukraine may grant, for a period of up to four years, a compulsory license to the person designated by the license, on the grounds of emergency public need and, in the event of a military or emergency situation, provided that appropriate compensation is paid to the owner of the variety. In that regard, the Cabinet of Ministers of Ukraine may request the owner of a variety to make available, subject to acceptable financial conditions, to the licensee, material for propagating a variety, to an extent sufficient for appropriate enforcement of the rights provided by the compulsory license.

The grant of a compulsory license by the Cabinet of Ministers of Ukraine may be appealed in the courts.

4. If after three years from the date of State registration or from the date when the use of a variety was terminated, a variety in Ukraine is not used or is used to an insignificant extent and if any person may refer to the owner of the variety with a proposal to conclude a licensing agreement and the owner of the variety refuses so to do without good reason, that person may refer the matter to the courts and may claim the grant of a compulsory license allowing him to use the variety.

If the owner of a variety does not prove the fact that a variety has not been used or that the refusal to grant a license for it is based on good reasons, and the claimant proves that, in a financial and all other senses, he is able to enforce the rights granted by the license in a competent and effective manner, a compulsory license may be granted on a decision by the courts for a period of up to four years.

5. A licensee shall pay a State fee for obtaining a compulsory license.

Article 44. Actions not recognized as infringing the proprietary right of the owner of a variety

The use of a variety without the consent (authorization) of the owner shall not be recognized as an infringement of the proprietary right of the owner of the variety in cases to which the following extend:

- (a) exhaustion of the exclusive right of the owner of the variety;
- (b) the right of prior use and the right of re-establishment of the rights to a variety;
- (c) limitation of the validity of the exclusive right of the owner of the variety.

Article 45. Exhaustion of the exclusive right of the owner of a variety

The exclusive right of the owner of a variety shall be exhausted in relation to any material of a variety, the right to which is entered in the Register of Patents, and of a variety to which the provisions of Article 39(3) of this Law are applied, as well as of a product obtained directly therefrom, in the case of their sale on the territory of Ukraine by the owner of the variety or with his consent, apart from actions which are:

- (a) aimed at propagating the variety in question, if the owner of the variety has not given permission for this at the time of sale;
- (b) connected with the export of planting material of a variety to a country in which the intellectual property proprietary rights are not protected for varieties of a genera or species, to which the variety in question relates, apart from the export of material intended solely for consumption purposes.

Article 46. Right of prior use and the right to re-establish the rights to a variety

1. Any person who, up to the date on which an application from another person for the registration of the right of ownership of a variety is considered to have been filed, conscientiously used this gradually claimed variety in Ukraine, or another variety covered by Article 39(3) of this Law, in the interests of his industry or business practice, or undertook effective and serious preparation for this purpose, shall be entitled to continue such use of the variety free of charge, as envisaged by the preparation in question, and following registration of the rights to this variety and the grant of a patent.

2. Any person who, during the period between the loss of the rights to a variety by an applicant or the owner of a variety and their re-establishment, began conscientiously to use the variety of the applicant or owner, or another variety covered by Article 39(3) of this Law, or undertook effective and serious preparation for this purpose, shall be entitled to continue such use free of charge or to use the variety as envisaged by the preparation, and following re-establishment of the right of the legal owner.

3. The rights envisaged by paragraphs (1) and (2) of this Article may be assigned or transferred to another person, only together with the industry or business practice, or the part thereof in which they were enforced.

Article 47. Limitation of the exclusive right of the owner of a variety

1. The exclusive right of the owner of a variety shall not be extended to the actions of any person with the materials of a protected variety, if they are undertaken:

(a) for private non-commercial purposes;

(b) for experimental purposes;

(c) with the aim of creating other varieties on the basis of the protected variety, apart from the cases provided for by Article 39 of this Law.

2. Any person shall have the right to propagate, on his own farm and without this being considered an infringement of the proprietary rights of the owner of the variety, and for his own consumption, the product of the harvest he has obtained on his own farm by cultivating a protected variety or a variety to which Article 39(3) of this Law applies, provided that the variety belongs to one of the following botanical genera and species:

- beans (*Vicia faba*);
- common vetch (*Vicia saliva L.*);
- garden pea (*Pisum sativum L.*);
- rye (*Secale cereale L.*);
- potatoes (*Solanum tuberosum*);
- alexandrine clover (*Trifolium alexandrinum L.*);
- persian clover (*Trifolium resupinatum L.*);
- yellow lupine (*Lupinus luteus L.*);
- alfalfa (*Medicago saliva*);
- oleaginous flax, including long-stalked flax (*Linum usilalissimum L.*);
- garbanzo bean (*Cicer arietinum*);
- oat (*Avena saliva L.*);
- canary grass (*Phalaris canariensis L.*);
- soft wheat (*Triticum aestivum L. Emend. Fiori et Paol.*);

- durum wheat (*Triticum durum* Desf.);
- ryegrass (*Lolium multiflorum* Lam.);
- rape (*Brassica napus* L.);
- radish (*Brassica rapa* L.);
- rice (*Oriza saliva* L.);
- spelt (*Trilicum spella* L.);
- triticale (*X Trilicosecale* Witlm.);
- barley (*Hordeum vulgare* L.).

3. The requirements for respecting the legal interests of the owner of a variety as regards the botanical genera and species indicated in paragraph (2) of this Article shall be determined by the Cabinet of Ministers of Ukraine according to the following principles:

- (a) the dimensions of land plots shall not be limited;
- (b) the product of the harvest may be conditioned for the purpose of propagation with a view to propagation by the owner of a farm or through the provision of services;
- (c) the owner of a small farm shall not pay remuneration to the owner of a variety (small farm owner shall be understood here as the owner of a small farm producing in an area not exceeding the area required for producing 92 tonnes of grain);
- (d) other farm owners using a variety shall pay the owner of the variety, by mutual agreement, remuneration which shall be lower than that paid according to a licensing agreement for propagation of the same variety in the same region.

4. Verification of compliance with this Article and the rules issued in accordance therewith may be carried out only by the owner of a variety, while the owners of the businesses indicated in this section of the article and persons providing services for them shall supply the owner of the variety, at his request, with appropriate information on the use of the variety. Such information may be provided also by officials, if it is obtained in the course of their duties.

Article 48. **Obligations of the owner of a variety**

1. The owner of a variety shall use his proprietary right to the variety conscientiously.
2. The owner of a variety shall preserve the variety or its initial components for the whole period of validity of a patent.
3. At the request of the Office, the owner of a variety shall, within the prescribed period, provide the Office or body designated thereby with information, documents, material and samples of the preserved variety, or their initial components, in order to:

- (a) verify the preservation of the variety;
 - (b) define and renew the official samples of the variety;
 - (c) carry out a comparative examination of different varieties.
4. The Office may oblige the owner of a variety to preserve the official samples.

Article 49. Obligations relating to the use of the name of a variety

1. A person using a variety shall use the name of the variety during the period of validity of the rights to the variety and after the expiration of the right, unless this is prevented by rights previously acquired by other persons.

2. If the materials of a variety are sold, offered for sale or sold by another method, it shall be permitted to combine, with the name of the variety, a sign for goods and services, trade name or other similar designation, provided that this does not create obstacles to the easy recognition of the variety.

Section V

TERMINATION OF THE VALIDITY OF THE PROPRIETARY RIGHT TO A VARIETY AND RECOGNITION THEREOF AS INVALID

Article 50. Early termination of the validity of the proprietary right to a variety

1. The validity of the proprietary right of the owner of a variety and of the patent certifying that right shall, in the case of a refusal thereof by the owner of the variety, be subject to early termination in accordance with the procedure defined by Article 51 of this Law.

2. The validity of the proprietary right to a variety may be terminated early where the fee for maintaining its validity has not been paid, in accordance with Article 42 of this Law.

3. The validity of the proprietary right to a variety may be terminated early by the central executive authority for agriculture and food:

(a) at the request of any person concerning the loss of uniformity or stability of the variety as a result of the failure of the owner of the variety to preserve it and to confirm that the loss has occurred in accordance with the established procedure;

(b) where the owner of the variety does not provide in good time, in accordance with a request by the Office, the information, documents, materials and variety samples required for verifying the uniformity or stability of the variety;

(c) where a proposal for a new name of the variety is not provided in good time, contrary to a request by the examining authority.

4. The validity of the right to a variety shall be terminated on the grounds indicated in paragraph (3) of this Article, on the day following the entry in the Register of Patents of the corresponding information.

5. Where the grounds indicated in paragraph (3) of this Article, on which the validity of the right to a variety has been terminated, have been eliminated, the validity shall be renewed on the day following the entry in the Register of Patents of the corresponding information.

6. Early termination of the validity of the rights to a variety, in accordance with paragraph (3) of this Article, may be appealed in the courts.

Article 51. Renunciation of the proprietary right to a variety

1. The owner of a variety shall be entitled to renounce the proprietary right to the variety offered to him and the patent certifying this right, by submitting written notification to the Office.

2. The renunciation of a proprietary right and of a patent by one of the co-owners of a variety shall not lead to termination of the validity of the right and the patent, which shall remain the property of the other co-owners of the variety.

3. The renunciation of a right and of a patent shall enter into force from the date on which the Office receives written notification, on the basis of which changes shall be entered in the Register of Patents and officially published by the Office.

4. The owner of a variety, who intends to renounce the proprietary right to the variety and to a patent, and at the same time is not the breeder of the variety, shall inform the breeder accordingly. In that case, the breeder of the variety shall have the preferential right to obtain the proprietary right and the patent, within three months of the date on which he receives notification to that effect.

5. If any licensing agreement with the owner of a variety is valid, it is possible to renounce the proprietary right and the patent only with the licensee's consent, unless agreed otherwise.

Article 52. Recognition of the right to a variety as invalid

1. The proprietary right of the owner of a variety may be recognized as completely or partially invalid in accordance with judicial procedure, where:

(a) the variety did not exist by the date on which the application is considered to have been filed;

(b) the variety was not novel by the date on which the application is considered to have been filed;

(c) provided that the right of the owner of the variety has been acquired mainly on the basis of information and documents supplied by the applicant, the variety was not uniform or stable by the date on which the application is considered to have been filed;

(d) the right of the owner of a variety has been provided for a person not entitled thereto, provided that it is not assigned to a person who is entitled to such a right.

2. In addition to the recognition of the proprietary right of the owner of a variety as invalid, State registration of this right and the patent certifying it shall be recognized as invalid to the same extent.

Section VI **PROTECTION OF THE RIGHTS TO A VARIETY**

Article 53. Infringement of the rights to a variety

1. The assignment of authorship shall constitute an infringement of the personal non-proprietary right of authorship of a variety.

2. The performance, without the authorization of the person holding the proprietary right to a variety, of any actions in relation to the variety, which require authorization according to Article 39 of this Law, shall be considered to infringe the proprietary right to the variety.

3. Infringements of the rights to a variety shall be subject to liability, in accordance with the legislation in force.

4. A person whose rights to a variety have been infringed may request the:

(a) termination of the actions infringing or creating a threat of infringement of the right relating to the situation existing prior to the right being infringed;

(b) compensation for the losses caused, including income not received;

(c) compensation for moral damage;

(d) adoption of other measures envisaged by legislation and connected with the protection of the rights to a variety.

The re-establishment of the infringed rights of the owner of a variety may also be requested by a person entitled to use the variety according to a licensing agreement, unless otherwise stipulated by the agreement.

5. A person infringing the rights to a variety shall, at the request of the person to whom these rights belong, cease to infringe the rights and shall provide compensation for the losses caused.

Article 54. Disputes settled by the courts

1. A person whose right to a variety has been infringed may apply to the courts for protection for such a right.

2. Disputes on any matters regarding relations governed by this Law may be settled by the courts.

3. In accordance with their jurisdiction, the courts shall examine disputes relating to the:

- (a) provision of rights to a variety and their State registration;
- (b) varieties created in connection with the performance of professional duties or as requested by an employer;
- (c) authorship of a variety;
- (d) remuneration for breeders;
- (e) conclusion and enforcement of licensing agreements;
- (f) determination of the owner of a variety;
- (g) recognition of the rights to a variety as invalid;
- (h) early termination of rights;
- (i) infringement of personal non-proprietary and proprietary rights to a variety;
- (j) recognition of a variety as suitable for use in Ukraine and so on.

Article 55. Liability for infringement of the rights to varieties

1. The courts shall be entitled to decide on:

- (a) compensation for moral (non-proprietary) damage caused by the infringement of rights to a variety, and to determine the level of compensation;
- (b) compensation for losses caused by the infringement of the proprietary right to a variety;
- (c) recovery from the infringing party of the income received as a result of the infringement of the rights to a variety, including the profits already spent by the owner of the variety;
- (d) recovery of compensation set by the court at between ten and 50,000 minimum wages, taking into account whether the infringement was committed with forethought or intentionally, as opposed to compensation for losses or the recovery of income;
- (e) termination of an action creating the threat of infringement of the right to a variety.

2. The courts may decide to impose on an infringing party a fine equal to ten per cent of the sum awarded by the courts to a claimant. The sum of the fines shall be transferred, in accordance with established procedure, to the State Budget of Ukraine.

3. The courts may decide to:

(a) remove from commercial circulation or confiscate any material of a variety or of a product obtained directly therefrom, unlawfully obtained by the respondent (the material and product of a variety, honestly acquired by other persons shall not be confiscated);

(b) remove or confiscate materials and/or equipment which were used to a significant extent for the unlawful production of the material of a variety.

Section VII **FINAL PROVISIONS**

Article 56. State fee and charges

1. The level of and procedure for paying the State fee envisaged by this Law shall be established by legislation. The funds received from the payment of the State fee shall be included in the State Budget of Ukraine and shall be devoted to the measures designed to implement State policy in the sphere of protection of the plant variety rights, in particular to the payment of Ukraine's member contributions to the budget of the International Union for the Protection of New Varieties of Plants.

2. The level of the fees envisaged by this Law and the procedure for their payment shall be fixed by the Cabinet of Ministers of Ukraine.

3. The fees shall be paid into the payment accounts of the examining authorities and other bodies carrying out the specific tasks defined by this Law, in accordance with their specialization.

4. Revenues from the fees envisaged by this Law shall have a special purpose and shall be used exclusively for measures designed to implement State policy in the sphere of protection of the plant variety rights, in particular for the fulfillment of the tasks defined by this Law.

Article 57. State stimulation of the creation and use of new varieties

1. The State shall stimulate the creation of new varieties of plants, establish for breeders of varieties preferential taxation and credit conditions, and shall provide them with other privileges in accordance with the legislation in force.

2. The honorary title of "Honored Breeder of Ukraine" shall be awarded to breeders of highly effective varieties widely disseminated in Ukraine.

Section VIII **TRANSITIONAL PROVISIONS**

Article 58. Legal status of patents granted prior to the entry into force of this Law

Valid patents of Ukraine for plant varieties, granted in accordance with the legislation effective prior to the entry into force of this Law, shall have equal legal status with the patents granted pursuant to this Law.

Article 59. Effect of breeder's certificates issued prior to the entry into force of this Law

USSR breeder's certificates for plant varieties and also breeder's certificates of Ukraine for such varieties, issued prior to the entry into force of this Law on the basis of Statute No. 935 of the Cabinet of Ministers of Ukraine, of November 22, 1993, shall be valid. The breeder's certificates in question may be exchanged free of charge for certificates of authorship of a variety, as defined by this Law.

Article 60. Features of the examination of an application for the grant of a patent for a plant variety, not completed prior to the entry into force of this Law

The examination of an application for the grant of a patent for a plant variety, not completed prior to the entry into force of this Law, shall henceforth be conducted in accordance with the procedure established by this Law. In such a case, the compliance of the variety with the patentability conditions established by the law in force on the date the application is filed shall be determined.

Section IX
RESULTING PROVISIONS

1. This Law shall enter into force as of July 1, 2002.
2. Within five years of the day on which this Law enters into force, the genera and species of plant varieties to which the right of the owner of a variety extends may be restricted by the Cabinet of Ministers of Ukraine, in accordance with the International Convention for the Protection of New Varieties of Plants, to which Ukraine is a party.
3. The Cabinet of Ministers of Ukraine shall, within three months of the day on which this Law enters into force:
 - prepare and submit for examination by the Verkhovna Rada of Ukraine proposals on bringing the laws of Ukraine into compliance with this Law;
 - bring its standard-setting instruments into compliance with this Law;
 - ensure that the executive authorities review and repeal the regulations which they have adopted and that contravene this Law;
 - ensure that the regulations required for enforcing this Law are adopted.
4. Prior to the legislation of Ukraine being brought into compliance with this Law, laws and other regulations shall be implemented insofar as they do not contravene this Law.
5. The following amendments shall be made to Article 6(3)(xxi) of Decree No. 7-93 on State Fees of the Cabinet of Ministers of Ukraine of January 21, 1993 (*Vedomosti of the Verkhovna Rada of Ukraine*, No.13, p.113; 2002, No. 6, p.43):
 - in paragraph (1), the words "and for actions relating to the maintenance of the validity of patents for plant varieties" shall be deleted;

- paragraphs (14) to (33) shall be replaced by two paragraphs with the following content:

“for the registration of the right to a variety – 1.0 gross minimum citizen’s incomes;
for the grant of a compulsory license for the right to use a variety – 3.0 gross minimum citizen’s incomes.”

President of Ukraine L. KUCHMA

Kyiv, January 17, 2002
No. 2986-III