

On the basis of article IV. 4. a) of the Constitution of Bosnia and Herzegovina, Parliamentary Assembly of Bosnia and Herzegovina at 42<sup>nd</sup> meeting of House of Representatives that was held on 27 July 2004 and on 28<sup>th</sup> meeting of House of Peoples held on 09. September 2004, has adopted

**LAW**  
**ON PROTECTION OF NEW PLANT VARIETIES IN BOSNIA AND**  
**HERZEGOVINA**

**I –GENERAL PROVISIONS**

Article 1.

**Contents of the Law**

1. This law sets procedure regarding protection of new plant varieties, and obtaining and protection of breeding right. In accordance with the provisions of this law, plant of all genus and varieties can be protected, including half-breed between genus and species.

Article 2.

**Meaning of separate expressions**

1. Expressions that are used in this law have the following meaning:
  - a) **Breeder** is a physical person, who is growing plant variety, discovers it or develops it himself/herself or together with other physical persons.
  - b) **Holder of right** is physical or legal entity who is entitled to submit application for protection of variety (in further text: application).
  - c) **Applicant** is physical or legal entity who has submitted an application.
  - d) **Owner of breeding right** is physical or legal entity who has gained breeding right with protection of variety.
  - e) **Breeding right** is common expression from article 15. of this law
  - f) **Variety** is a group of plants or parts of plants, if it is possible to get from them again complete plants, inside the lowest known botanical classification, which no matter if it fulfils other conditions for protection can be:
    - 1) it can be determined according to features that originate from certain genotype or combination of genotypes,
    - 2) ca be differentiated from any other group of plants according to at least one of these features, and
    - 3) can be considered as systematic unit if these characteristics do not change during reproduction.
  - g) **Protected variety** is variety for which document has been issued on protection of variety. It is determined by official description of variety, protection sample and it is called in a way which is determined by this law.
  - h) **Material of protected variety** is any seeding material or product of protected variety

which could be used for further reproduction of that variety.

- i) **Protection sample** is official sample of seeding material of protected variety.
- j) **Authorized bodies**, in reference to provisions of this law, are: Management of Bosnia and Herzegovina for protection of plant health (in further text: Management) and authorized bodies of entities and Brcko District of Bosnia and Herzegovina (in further text: authorized bodies of entities and Brcko District).

#### Article 3.

### **Commission for recognition of new variety of plants**

Procedure for protection of new variety, register of applications for protection of new variety (in further text: register of applications) and register of protected variety is managed by Commission for recognition of new variety of plants (in further text: Commission) as body within Management.

## II. CONDITIONS FOR PROTECTION OF VARIETY

#### Article 4.

### **Protection of varieties**

- 1. Variety is protected with obtaining of breeding right.
- 2. It is possible to protect any variety which is:
  - a) new,
  - b) recognizable,
  - c) equalized,
  - d) unchangeable and
  - e) named in accordance with the provisions of this law.

#### Article 5.

### **New variety**

- 1. I It is considered that variety is new on the day when application was submitted if it was sold or economically used with the permit from holder of right in BiH at least one year before the day when application was submitted and out of BiH maximum four years before the day when application was submitted in the case of long-lived perennial foliage plants and grapevine maximum six years before the day when application was submitted.
- 2. As sale or economic exploitation of the variety, in the sense of previous point are not considered:
  - a) use or selling of variety in profitable purposes without licence or knowledge of right holder
  - b) contracted transfer of right on variety;
  - c) contracted economic activity, reproduction, processing or storage of seeding material or product of variety for right holder provided that right holder keeps exclusive right of ownership over reproduced seeding material, or product variety or products from them;
  - d) testing of sort in the field and in laboratory, or in trial production with the purpose to determine usage value of the variety, if the testing is done by owner of right or person

- authorized by him;
- e) official testing of variety for the purpose of entering in list of varieties, or for estimation of risk with genetically changed varieties;
- f) sale of products which were produced as secondary products or as excess in the production of new variety provided that those products are intended for final use and that variety is not stated.

Article 6.  
**Known variety**

1. Variety is recognizable if it can be clearly differentiated from any other until that time generally known variety on the day when application was submitted.
2. Variety is considered to be generally known especially if:
  - a) variety was protected or entered in the list of varieties until that day in any state;
  - b) if until that day an application was submitted for protection of variety or for entering of variety in the list of varieties in any state and procedure is finalized with protection of variety or with entering of variety in the list of varieties;
  - c) if seeding material of that variety or product of variety until that day was already in distribution or if it was used for profitable purposes.

Article 7.  
**Equalized variety**

Variety is equalized if it has sufficiently and homogeneity of those features which are of important significance for differentiation from other varieties in spite of variation that can be expected due to specific way of its reproduction.

Article 8.  
**Unchangeable variety**

Variety is unchangeable if its features which are very important for differentiation after more successive multiplications, or in the case of special cycle of reproduction at the end of each such a cycle do not change.

Article 9.  
**Protected variety**

Protected variety must be marked with name which is her sign of differentiation.

Article 10.  
**Registration of name**

1. Any mark can be registered as a name of protected variety, which enables to differentiate variety and it can be a word, combination of words, combination of words and numbers or combination of letters and numbers, except if this law regulates different.
2. As a name of protected variety it is not allowed to register mark which:
  - a) is inappropriate due to language reasons;
  - b) disables identification of variety;

- c) consists of numbers only, with the exception of cases when this is a usual practice for marking;
  - d) is equal or similar to name of any other type of generally known variety of the same type or allied varieties of plants while it is in use; exceptionally this provision is valid after the variety is no longer in use, if the name of the variety had a special meaning;
  - e) if it causes confusion in regards to sources, features, values, usage, recognizability or geographical origin;
  - f) it consists from botanical or general name of genus or variety or includes such a name which can lead to confusion;
  - g) includes words such as “variety, cultivated variety, form, hybrid, half-breed” or translation of these words;
  - h) if it causes confusion in regards to breeder or owner of right;
  - i) if it is contrary to public order or moral;
  - j) if it is different, contrary to the regulations on industrial ownership.
3. If a certain variety is already protected or registered in list of varieties, or if an application for protection or registration of variety was submitted in any state, signatory of international contracts, or conventions which BiH has signed or joined. In Bosnia and Herzegovina it is possible to register only name of variety which was registered, entered in the list of varieties or mentioned in application in another state.
  4. Exceptionally, certain variety can be registered in Bosnia and Herzegovina under another name only if the use of original name would not be appropriate due to language reasons or because it was opposed to public order and moral.
  5. Management, at the proposal of Commission, determines allied types from deed 2.d) of this article and detailed conditions concerning registration of the name of variety.

#### Article 11.

#### **Name of protected variety**

1. Use of name of protected variety is obligatory. Seeding material of protected variety may be sold only if the name of protected variety is stated. This provision is also valid when the protection of variety stops.
2. Provisions from deed 1. are not valid, if seeding material for protected variety is being used for non-commercial services in the private sector.
3. Protected variety must be marked with the same registration name in all states, except in the case of exceptions from the article 10. deed 4. of this law.
4. In sale of seeding material of protected variety besides registered name it is also allowed to use brand mark, or other mark provided that registered name is clearly visible and recognizable.
5. Name of protected variety or name which is possible to replace with that name must not be used for some other variety for the same or allied species of plants.

### III –HOLDERS OF RIGHT ON PROTECTION OF VARIETY AND FOR GRANTING OF BREEDING RIGHT

#### Article 12.

### **Holders of right on protection of variety**

1. Holder of right on protection of variety and gaining of breeding right is breeder of variety or his legal successor.
2. If more people have together created, grown, discovered or developed a variety joint right for protection of variety and obtaining of breeding right belongs to them or to their legal successors.
3. If more people have separately created, grown, discovered or developed variety, breeding right belong to the person who first submitted an application.
4. If breeder is employed with legal entity, where mutual rights and obligations are regulated by contract, then right for obtaining is regulated in accordance with that contract. In contrary provision are applied from regulations on rights of industrial ownership from working relationship that are related to patent.

#### Article 13.

### **Conditions for granting of breeding right**

1. Breeding right can be realized by holder of right from previous article, who is citizen of Bosnia and Herzegovina, other physical entity with permanent residence in Bosnia and Herzegovina and legal entity with headquarters in Bosnia and Herzegovina.
2. Foreign legal, or physical person enjoys the same rights like domestic legal or physical entity regarding protection of breeding right in Bosnia and Herzegovina if it results from international contracts and conventions, to which Bosnia and Herzegovina joined or signed, under condition of real reciprocity and reciprocity is proved by the person who is referring to it.
3. In the procedure in front of Management foreign legal or physical entity realizes rights from this law per legal successor who is physical person with permanent residence in Bosnia and Herzegovina.

## **IV-BREEDING RIGHT**

#### Article 14.

### **Breeding right**

Breeder is granted with breeding right with protection of sort.

#### Article 15.

### **Licence**

1. Licence of holder of breeding right is necessary for the following actions in relation to seeding material of protected variety:
  - a) production or reproduction;
  - b) preparation of material of protected variety for reproduction;
  - c) sale or other forms of distribution
  - d) export and import, and
  - e) keeping of material of protected variety for the purposes which are mentioned in previous paragraph indention
2. For activities, mentioned under point 1., licence of holder of right is necessary also in case of product of protected variety, only if:

- a) product is consequence of unauthorized use of seeding material of protected variety and
  - b) if holder of right did not have a proper opportunity to realize breeding right with seeding material of protected variety.
3. Licence from holder of right for actions from point 1. is necessary also in the cases if:
- a) varieties are derived from protected variety, unless protected variety is derived variety;
  - b) varieties which can not be easily differentiated from protected variety;
  - c) varieties, or hybrids whose growing requires constant use of protected variety.
4. It is considered that certain variety is derived variety if:
- a) it originates mostly from original variety or variety which is itself mostly derived from original variety,
  - b) it can be differentiated from original variety, and
  - c) it is per expressed important characteristics, which are determined by genotype or combination of genotypes of original variety, similar to original variety, except in differences which are consequence of performing.

#### Article 16.

1. It is considered that breeding right was not breached if:
  - a) protected variety is used or disposed with:
    - 1) in private non-profitable purposes;
    - 2) in trial or testing purposes;
    - 3) for breeding of new variety.
  - b) If new variety is economically utilized from third paragraph indention of point a) of this article unless this new sort is derived sort.
  - c) product of protected variety of certain species of plants, which producers produce at their agricultural property, is used for further seeding on that agricultural property and producer who uses that possibility pays to holder of breeding right appropriate compensation. Compensation is appropriate if it is much lower from the amount which is calculated for manufacturing of seeding material of that variety in the same area according to licence.
2. Producers who utilize possibility of further seeding and are paying to the holder of breeding right appropriate compensation in accordance with point c) 1. of this article must provide to holder of breeding right at his request all data on volume of further harvesting.
3. Small land-owners are free of payment of appropriate compensation to the holder of breeding right in accordance to point c) 1. of this article.
4. Management is determining plant varieties for which appropriate compensation is paid to the holder of breeding right from point 1. c) of this article as well as criteria for small land-owners.

#### Article 17. **Exceptions**

1. For actions from article 15. point 1. of this law that are related to plants, parts of plants or production of protected variety, or variety derived from protected variety, licence from holder of breeding right is not needed if seeding material of that variety was put into sale by holder or someone else with his authorization, unless these actions include:
  - a) further reproduction of protected or derived variety, and
  - b) export of material of protected variety or derived variety that can be used for further reproduction in the state in which plant genus or variety to which it belongs can not be protected. This provision is not valid if exported material is intended for final use.

#### Article 18.

##### **The duration of breeding right**

1. If this law does not specify otherwise breeding right lasts one year from the day of obtaining until the end of twentieth calendar year and regarding black medic, wine grape and trees until the end of twenty-fifth calendar year which follows to the year of getting of that right.
2. Regardless of provisions of article 1., holder of right from article 12. of this law who has already submitted complete application belongs suitable compensation if during the duration of process for protection of variety anyone has contrary to article 15. of this law economically utilized or disposed with variety, for which an application was submitted. Holder of right may require compensation only for the period from the day of publishing of application in "Official Gazette of the Management of Bosnia and Herzegovina for protection of plant health" until the day when breeding right was received.
3. Breeding right stops:
  - a) with cancellation of holder of breeding right;
  - b) with expiration of deadline that is determined in point 1. of this article;
  - c) with cancellation or deleting of document on gaining of right.

## V-PROCEDURE FOR PROTECTION OF VARIETY

### 1. Bodies

#### Article 19.

##### **Jurisdictions and tasks of the Management**

1. Management has the following jurisdictions and tasks:
  - a) manages management procedure for protection of new variety and registration of name of new variety in accordance with this law and law on general management procedure,
  - b) manages register of applications and register of protected varieties,
  - c) publishes in official newspaper data about applications including proposal for the name of variety,
  - d) negative resolving of an application, entering and eventual changes of entries in register of applications, withdrawing of applications, documents on protection of variety and its eventual change, and other official notifications,

- e) cooperates with international organizations and associations, and state bodies and Non-Governmental Organizations in reference to protection of new varieties,
  - f) in technical and professional sense participates with authorized offices of foreign states in the area of examining of varieties and testing of maintenance of varieties,
  - g) exchanges results from testing of varieties and other information from its jurisdiction with authorized bodies in other states,
  - h) checking fulfilment of obligations of holder of protection and
  - i) performs other tasks from the area of protection of variety.
2. Data from point 1. of this article Management publishes in official newspaper of Management.

#### Article 20.

#### **Commission**

1. Council of Ministers of Bosnia and Herzegovina (hereinafter referred to as: Council of Ministers) is nominating Commission which has nine members, where authorized bodies from entities propose three members of the commission each, Management proposes two members and Brcko District one member.
2. Commission has position of expert in the procedure of protection of variety, so that on the basis of studying of application and attached documentation it proposes to Management decisions regarding protection of variety.

## **2. Registers**

#### Article 21.

#### **Contents of register**

1. Management is keeping register of applications and register of protected varieties in accordance with regulations.
2. Register contains data from documents based on which entering in both registers is done. These documents are taken into collection which is attachment to both registers.
3. Register of applications contains in particular:
  - a) data about applicant, breeder, and eventual representative,
  - b) date of complete application
  - c) plant variety
  - d) proposal for temporary mark of variety or proposal for the name of variety,
  - e) in the case of request for priority right in state in which the application has already been submitted and date when complete application was received in that state,
  - f) proposal for stay of proceedings,
  - g) notes on decisions of courts in relation to right to submission of application.
4. Register of insured varieties contains in particular:
  - a) plant variety and registered name of variety and besides name to write in all synonyms,
  - b) official description of variety or reference to documents, which contain official description of variety and are part of the register,

- c) in the case of varieties, whose production requires constant use of certain ingredients for production of seeding material of protected variety it is needed to mention these ingredients,
  - d) name and family name of owner of breeding right, breeder and any representative in procedure,
  - e) date of getting and termination of protection of variety together with reasons for termination,
  - f) name and address of person to which according to contract on licence right was transferred on economic utilization of variety,
  - g) name and address of person to whom forced licence was granted with explanation of conditions under which it was granted and date when that right cased;
  - h) notes on decisions of courts in reference to breeding right.
5. Management must keep collection of documents on separate subjects in original or copy for at least five more years after withdrawal or negative decision of management or five years after cessation of breeding right.
  6. Management is determining in details contents and way of managing with register.

#### Article 22.

#### **Publicity of data**

1. Register of applications and register of protected varieties are public.
2. Management is obliged to enable to everyone who proves legal interest to have insight into following documents from the collection of documents:
  - a) documentation which is related to applications,
  - b) documentation which are related to gained breeding rights,
  - c) documentation of official testing of varieties.
3. Exceptionally from provisions of point 2. of this article applicant in the case of hybrids may request that documentation on ingredients of variety which is in a procedure of protection or is protected is not accessible to public.

### **3. Costs of procedure**

#### Article 23.

#### **Costs**

1. In the procedure for protection of new variety and for keeping of breeding right, applicants or owners of breeding right are paying regulated taxes, costs of technical and expert check if application is justified, costs for testing of variety, and costs in relation to publishing and other jobs.
2. Council of Ministers of Bosnia and Herzegovina regulates the type and amount of tax and costs from point 1. of this article and amount of tax from article 39. of this law.

### **4. Flow of procedure for protection of variety**

#### Article 24.

#### **Application**

1. Procedure for protection of variety starts based on application which applicant has submitted to the Management.
2. Management decides about application in management procedure.
3. Appeal is allowed against management enactments. Appeal is submitted within 30 days from delivering of enactment from the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina.

Article 25.  
**Contents of application**

1. Application is submitted in regulated form and must contain the following data:
  - a) data on applicant or his representative or authorized person;
  - b) data on breeder if he is not applicant at the same time;
  - c) Latin and national name of variety to which it belongs;
  - d) proposal of name of variety or temporary mark of the variety;
  - e) state in which the application was already submitted and date when it was received in that state, if priority right is requested in application;
  - f) technical description of variety that can be attached to application and
  - g) if variety was produced with the help of genetic technology in which case with application it is necessary to attach previous agreement for testing of that variety in accordance with regulations on genetically changed organisms.
3. Detailed form and contents of application and documentation which must be enclosed with application are regulated by Management.

Article 26.  
**Accuracy of application**

1. Management is checking if application is complete and if it is correctly filed and if application includes attached proof on paid tax.
2. If application is not complete or is not filled correctly or if regulated tax was not paid, Management calls applicant to make additions to it within 30 days from the day when it was received. If applicant within mentioned deadline does not fulfil request such application is considered as if it was not submitted.
3. Applicant will receive confirmation in writing for complete application. Complete application is entered into register of applications and it is published in official newspaper of Management. Date which is entered as a date of receiving of complete application is date when application was received or the date when additions to application were received when application has become complete.
4. Excerpt from complete application is published in official newspaper after expiration of three months since it was submitted.

Article 27.  
**Right of priority**

1. Applicant who submitted an application for protection of new variety in any state which is signatory of international contracts or conventions which has signed or joined Bosnia and Herzegovina may then, after submission of proof on submitted complete application for the same variety in another state realize right of priority. In that case it is considered that

application was submitted in Bosnia and Herzegovina on the day when complete application was submitted in foreign state.

2. Right of priority from the previous point must be requested explicitly in application by an applicant.

3. Applicant may realize right of priority in Bosnia and Herzegovina latest within 12 months from submission of first complete application abroad.

#### Article 28.

##### **Objection**

1. Against application which is published in official newspapers based on article 26. point 4. of this law anyone who has legal interest may submit objection to Management while procedure for protection of variety lasts.

2. Objection may be related only to fulfilling of conditions from article 5,6,7,8 and 10. of this law or to right on protection in accordance with article 12. of this law.

3. Objection must be in written form with explanation. Appropriate evidence must be attached to objection and regulated tax must be paid.

4. Management immediately delivers received objection to applicant and invites him to provide answers to objection latest within 30 days from the day when objection was received.

5. Management informs persons who submitted objection on its attitude towards those objections latest within three months after its submission.

#### Article 29.

##### **Analysis of application**

Management checks if the content of application is appropriate so that based on data mentioned in the application it can check if the variety is new and if applicant is entitled to gain breeding right. When checking the contents of application if it is determined that all conditions are not met for gaining of breeding right from article 5. and 12. of this law, such application is rejected.

#### Article 30.

##### **Name of variety**

1. Management also makes judgment if proposed name of variety is suitable. In the case that proposed name of variety is contradictory to provisions of article 10. of this law, Management invites applicant to propose new name for variety. Proposal must be given latest within 3 months from the day when invitation was received.

2. Management is obliged in procedure for protection of variety to use strictly name of variety which is entered in registry of applications for protection of new variety.

#### Article 31.

##### **Professional assessment**

1. For each variety which meets conditions from article 26. and 29. of this law, professional assessment is conducted in order to:

a) check if variety belongs to systematic unit or plant genus rod or kind that is stated in application,

b) determine if variety is different, equalized and unchangeable (article 6,7 and 8 of this law) and

c) prepare official description of variety, if variety meets conditions from point a) and b) of this article.

2. Professional assessment is conducted based on results of testing of variety in the field and in laboratory.
3. Testing of variety may be executed by:
  - a) management, or professional institution in Bosnia and Herzegovina or abroad that is recognized by management if testing is done in comparable agro-ecologic conditions in accordance with regulated procedures and methods;
  - b) applicant at the request of management;
4. In the case that Management does not perform the testing itself there must be official supervision ensured over testing of variety.
5. While conducting professional assessment of variety Management can use results of testing of that variety from another state which has comparable agro-ecological conditions if the testing was conducted within international systems of testing and if proof about results were issued based on international agreements which Bosnia and Herzegovina has signed or joined.
6. Council of Ministers, at the proposal of Management and in cooperation with authorized bodies from entities and Brcko District is issuing detailed conditions, procedure and methods for testing of variety.

#### Article 32.

#### **Professional assessment of variety**

1. Applicant is obliged to deliver to the office in a certain deadline necessary data, documents, or seeding material for conducting of professional assessment of variety for purposes from article 31. point 1. of this law.
2. If applicant does not fulfil the request from point 1. of this article without justification application is rejected.

#### Article 33.

#### **Certificate**

1. If based on conducted professional assessment from article 31. of this law, it is determined that variety is compliant to all regulated conditions and that applicant has fulfilled all regulated requests, Management is issuing certificate on protection of variety and publishes it in official newspaper of Management.
2. Data from certificate which is legally valid on protection of variety or on rejection of application are entered in the register of applications.
3. Regarding legal validity of certificate on insurance of variety owner will receive certificate confirming that he has received breeding right which enters into force from the day when document becomes legally valid.
4. Based on legally valid document on protection of variety suitable data are also entered in register of protected variety.
5. Council of Ministers, at the proposal of Management issues the form and contents of certificate on gaining of breeding right.

#### **5. Termination of breeding right**

#### Article 34.

#### **Certificate on termination of breeding right**

1. At the request of owner of breeding right from article 18. point 3. a) of this law, Management in management procedure is issuing a certificate which determines that breeding right has been terminated at the request of owner. Breeding right is terminated on the following day after receiving of written statement from owner.

2. Based on legally valid certificate from the previous article termination of breeding right is published in official newspaper of the Management.

#### Article 35.

#### **Announcing that certificate is void**

1. Management in the management procedure is announcing that certificate on protection of variety is void only in the cases if it is additionally determined:

a) if on the day when complete application was received variety was not new (article 5. of this law) or if it could not be differentiated (article 6.);

b) if variety was not equalized on the day when complete application was received (article 7. of this law) and unchangeable (article 8. of this law), and variety was protected firstly based on data and documentation that was delivered by applicant;

c) that breeding right was granted to the person who was not entitled to get it and owner has not requested forced transfer of breeding right in accordance with article 37. of this law;

d) that owner does not fulfil obligations from article 44. of this law or if it is determined that variety is no longer equalized (article 7. of this law) or unchangeable (article 8. of this law);

e) that applicant at written request from management in set deadline does not deliver seeding material for testing or documentation on selection for maintenance of variety in accordance with article 44. of this law;

f) that applicant at the written request by Management and in accordance with article 38. point 1. of this law does not have proposal for new name of variety in set deadline;

g) that owner does not pay regulated annual tax in timely manner for maintenance of validity of breeding right according to article 43. of this law.

#### Article 36.

#### **Forced transfer of right**

1. If an application for protection of new variety was submitted by person who is not entitled to do that and was granted breeding right owner of right can start the procedure for forced transfer of right with Management.

2. Request for forced transfer of right from point 1. may be submitted from the day when application for protection of new variety was published in official newspaper of the Management, latest within five years after publishing of application.

3. If the rights which were granted without justification were transferred to the third person in the case of point 1. of this article transfer of these rights is cancelled.

4. Exceptionally from provisions of point 3. of this article, owner of any right to use of variety may continue using that variety if he was granted that right in a good faith, before starting of procedure from point 1. of this article, provided that owner of right gets payment of appropriate compensation.

#### **5. Deletion of the name of variety**

#### Article 37.

#### **Deletion from the registry**

1. Registered name of the variety is deleted from the register of applications and register of protected variety under following conditions:

- a) if it is requested by applicant or owner of breeding right and if he proves that for that actions he is entitled according to law; in the request there must be explanation of reasons for deletion and new name must be proposed;
- b) if it is additionally determined that name of variety was registered in spite of fact that there were reasons for rejection according to article 10. of this law;
- c) or of owner or any other person is officially forbidden to use that name.

2. Management is immediately informing applicant or owner of breeding right, in writing about proposal or request for deletion of name and management requests that, latest within three months after receiving of invitation, new name of variety is proposed. Proposed new name is registered after performing of procedure from article 30. of this law in suitable register and it is published in official newspaper of the management if all regulated conditions are fulfilled. At the same time previous name is deleted from the register.

## **7. Returning to the previous situation**

Article 38.

### **Returning to the previous situation**

1. In the procedure for protection of sort it may be requested to return to previous situation also in the case if owner of breeding right or any other party in procedure for justified reasons could not in set time pay tax or fulfil other obligations towards Management and due to that would loose right to protection of sort according to article 36. of this law.

2. Request for returning to previous situation is submitted within 8 days from the day when the reason which has caused omission has stopped and if party only later found out about omission then from the day when party found out and latest within three months after the cause why obligation was not fulfilled and not later then one year from expiration of deadline when an obligation must be fulfilled. With request there must be explanation enclosed and proof on paid regulated tax.
3. If the request is not met Management is setting new deadline for person who submitted request in which he must fulfil obligations. Deadline for fulfilment must not be longer then the deadline which was not respected and it is calculated from the day when notification on fulfilling of request was received.
4. Applicant who is requesting to return to previous situation is not entitled to indemnification if in the period from loss to regaining of right anyone in good faith has used or signed contract for use of protected sort.

## **VI-TRANSFER OF BREEDING RIGHT AND ASSIGNMENT OF USE OF BREEDING RIGHT**

Article 39.

### **Transfer of breeding right**

1. Owner of breeding right may transfer with contract completely or partially breeding right to another person.

2. Owner of right or applicant may transfer right to submission of application for protection of new variety or rights that result from application.
3. Contract on transfer of rights from point 1. and 2. of this article must be done in writing otherwise its void.
4. Transfer of right from point 1. and 2. of this article must not have impact on previous rights of third persons.
5. Transfer of breeding right does not have a legal impact to third persons until contract is not entered in suitable register.
6. Proposal for entering of contract on transfer of right in the register may be given by any of contractual parties.

Article 40.

**Economic utilization of protected variety**

1. Owner of breeding right may according to contract on licence partially or completely transfer right on economic utilization of protected variety to third person.
2. Contract on licence is entered in a suitable register at the request of one of contractual parties.
3. Contract on licence which is not entered in a suitable register from point 2. of this article does not have a legal impact on third persons.
4. Regarding form, way of contracting and contents of the contract on licence, and legal protection regulations on bond relationship are applied.

Article 41.

**Forced licence**

1. If there is a public interest and if owner of breeding right himself or someone else with his authorization does not economically utilize protected variety or does not utilize it in sufficient volume, and at the same time will not cede to someone else right to utilization or for ceding of that right is setting unjustified reasons, some else can be granted forced licence.
2. Forced licence may be granted only to person who proves that posses technological and production possibilities that are necessary for efficient utilization of protected variety and needed material assets.
3. Forced licence can not be granted if owner of breeding right proves that there are justified reasons for not utilizing or not sufficient utilizing of protected variety.
4. Forced licence can not be granted if from the day when breeding right was granted until the day when request for granting of obligatory licence was submitted less then 3 years has passed.
5. With forced licence owner of licence gains right for execution of actions from article 15. of this law partially or completely with the purpose of supplying of domestic market.
6. Forced licence can be granted for a period of at least two years and four years at maximum. Forced licence can be renewed if after additional studying of conditions from point 1. it is determined that reasons for granting of forced licence still exist.
7. Management decides in management procedure about request for granting or extension of forced licence. Before making of decision in regards to granting, or extension of forced licence Management must get the opinion of interested parties.
8. In the case that forced licence is granted, owner of breeding right is entitled to suitable compensation.

9. The amount of compensation from point 8. is agreed between owner of breeding right and person to which forced licence was granted. If agreement was not achieved amount of compensation will be determined by Management.

10. Management may request from the owner of breeding right to supply owner of forced licence with starting quantity of seeding material for use of variety based on forced licence. For seeding material owner is entitled to suitable compensation.

11. In the case of granting of forced licence owner of breeding right may request from professional institutions authorized for execution of professional control over production of seeds, data about production of seeding material of protected variety.

## **VII-OBLIGATIONS OF OWNER OF BREEDING RIGHT AND THIRD PERSONS**

### Article 42.

#### **Tax**

1. For keeping of breeding right owner is obliged to pay regularly annual tax to keep validation of breeding right.
2. Tax is paid at the beginning of calendar year for the current year of protection, and latest until 31<sup>st</sup> January.
3. If tax for keeping of breeding right has not been paid also during additional deadline which is determined by office and which can not be longer than 6 months after receiving of warning, that right is no longer valid.

### Article 43.

#### **Maintaining of protected sort**

1. While protection lasts, owner must maintain protected sort or its inherited features unchangeable.
2. At the request of management, owner must in certain deadline deliver to the Management or authorized institutions data, documentation or seeding material which is needed for testing of variety.
3. If testing determines that owner of right does not maintain variety, Management starts procedure for cancellation of breeding right.

### Article 44.

#### **Sample of seeding material**

1. At the request of management, or authorized institution owner must in certain deadline provide suitable sample of seeding material of protected variety or its inherited parts for:
  - a) protected sample or renovation of protected sample;
  - b) performing of parallel testing of other varieties which are in procedure of protection.
2. Management can authorize owner of breeding right to keep and renew protection sample of seeding material himself.

### Article 45.

#### **Data**

1. If someone is without agreement, or contrary to agreement with owner of breeding right economically utilizing or disposes of seeding material of protected variety, must provide to owner at his request all data in relation to that.
2. If data are not provided voluntarily, owner of breeding right may request that Management issues a certificate to order to violator delivering of data.

## VIII-COURT PROTECTION

### Article 46.

#### **Breaching of rights**

1. Whoever breaches right from protected new variety is responsible for damage in accordance with general regulations to pay for damage.
2. Person whose right was breached may besides compensation request to forbid further breaching of the right by person who did it.
3. Breaching of breeding right is every unauthorized economic utilization of protected variety.

### Article 47.

#### **Accusation**

1. Accusation for breaching of breeding right may be submitted within three years from the days when prosecutor has found out about violator, or for breaching. After expiration of five years from the day of breaching, accusation can not be submitted.
2. Accusation is submitted to regular court.

## IX-SUPERVISION

### Article 48.

#### **Supervision**

1. Supervision over performing of provisions of article 11, 15, 16 and 46. of this law is performed by agricultural and forestry inspectors.
2. When agricultural or forestry inspector while conducting supervision have reasonable doubt that breach has occurred, they temporarily seizure objects that were used or intended for breach or were created by breach.
3. Agricultural or forestry inspector is giving temporarily seizure object to authorized body for managing of procedure on breaching with proposal for managing of procedure.

### Article 49.

#### **Breaching of breeding right**

1. If owner of breeding right proves probable that export of certain material of protected variety from Bosnia and Herzegovina or import in Bosnia and Herzegovina would breach his breeding right phyto sanitary experts at the border may at his proposal determine:
  - a) that owner or his representative may check that material;
  - b) that material is confiscated, excluded from sale and kept at safe place.
2. In the proposal from point 1. owner of right must submit to phyto sanitary inspector detailed description of material of protected variety, satisfying proof on breeding right and its probable breaching. At the request of phyto sanitary inspection, owner must put bail for eventual damage that would be caused with those measures.

3. Phyto sanitary inspector must immediately inform about these measures exporter or importer and person who receives material of protected sort, if material of protected variety is imported to Bosnia and Herzegovina. Phyto sanitary inspector cancels measures, if owner of right within seven days does not submit accusation or does not start other procedure for justification of measures.

## X-CRIMINAL PROVISIONS

### Article 50.

1. Legal person will be punished for breach with fine in the amount of 5.000 KM, if without permit from owner of breeding right is producing or reproducing seeding material according to this law of protected variety, if he is preparing material of protected sort for reproduction, if he is selling, importing, or exporting seeding material of protected sort or if he keeps material of protected variety for above mentioned purposes (article 15. of this law).
2. Responsible legal person is punished with fine in the amount of at least 1.000 KM for breach from point 1.
3. Individual is punished with fine in the amount of at least 5.000 KM for breach from point 1. of this article who commits the breach in relation to independent performing of activities.
4. Physical person is punished with fine in the amount of at least 1.000 KM who commits breach from point 1. of this article.

### Article 51.

1. Legal person will be punished with fine in the amount of at least 3.500 KM if:
  - a) contrary to the first point of article 11. of this law is selling material of protected variety, if registered name of sort is not stated or if name is not stated correctly;
  - b) if, contrary to point five of article 11. of this law, uses name of the variety protected according to this law, or name which is possible to replace with this name, for some other variety of the same or allied species;
  - c) if, in contrary to the second point of article 16. or article 46. of this law does not provide requested data to owner.
2. Responsible legal person is punished with fine in the amount of minimum 700 KM for breach from the previous point.
3. Individual is punished with fine in the amount of minimum 500 KM for breach from the first point of this article if he commits that breach in relation to independent performing of activities.
4. Physical person will be punished with fine in the amount of minimum 500 KM for breach from the point 1. of this article.

## XI-TRANSITIONAL AND FINAL PROVISIONS

### Article 52.

#### **Previously protected variety**

1. Variety which was protected until entering of this law into force according to regulations that were valid before, enjoys according to this law protection until expiration of granted breeding right.

2. Breeding right for variety from point 1. may be announced void and it is cancelled only if it is determined that in granting of breeding right all conditions were not fulfilled in regards to recognizability, equality, or not changing of sort.

Article 53.

**Procedures in process**

1. Procedure for insurance of variety that is in the process in the time when this law entered into force are continued as per this law.
2. Exceptionally from provision of point 1. of this article, it is possible to protect variety which on the day when this law came into force is not new, if:
  - a) an application for protection of variety was submitted before adoption of this law,
  - b) if variety fulfils other conditions for protection from article 4. of this law and
  - c) if variety is protected or if it is in process for protection in one of the states which are signatory of international contracts and conventions, which has signed or joined Bosnia and Herzegovina, so procedure is ending with protection of variety.
3. In the case that breeding right is granted according to point 2. of this article, breeding right lasts at maximum 20 or 25 years for ligneous plants from the day when breeding right was granted in the state member in which sort was firstly protected.

Article 54.

**Regulations that were passed based on this law and deadline for its passing**

Regulations on the basis of this law will be passed within 12 months from the day when this law entered into force.

Council of Ministers, at the proposal of Management, may besides regulations that are planned in separate articles of this law, also pass other regulations that are needed for implementation of this law.

Article 55.

**Regulations which are applied until new regulations are passed**

Until new regulations are passed based on this law existing regulations will be applied in this area, if they are not opposite to the provisions of this law.

Article 56.

**Entering of Law into force**

This law will enter into force on the eighth day from the day of publishing in "Official Gazette of BiH" and it will be published in official newspaper of entities and Brcko District of Bosnia and Herzegovina.

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Sarajevo

Chairman of the  
House of Representatives  
of Parliamentary Assembly BiH  
**Martin Raguz** s.r.

Chairman of  
House of Peoples  
of Parliamentary Assembly BiH  
**Goran Milojevic** s.r.

