

# ACT ON PROTECTION OF NEW PLANT VARIETIES AND ANIMAL BREEDS

*Prom. SG. 84/4 Oct 1996, amend. SG. 27/10 Mar 1998, amend. SG. 81/14 Sep 1999, amend. SG. 86/20 Oct 2000, amend. SG. 18/5 Mar 2004, amend. SG. 30/11 Apr 2006, amend. SG. 109/20 Dec 2007, amend. SG. 36/4 Apr 2008, amend. SG. 26/6 Apr 2010, amend. SG. 58/18 Jul 2017, **amend. and suppl. SG. 98/13 Dec 2019***

## Chapter one. GENERAL PROVISIONS

### Scope

Art. 1. (1) This Act settles the relations, connected with the creation, protection and use of new plant varieties and animal breeds.

(2) The Act shall apply regarding:

1. created or discovered and cultivated plant varieties of each botanical variety and species, including branch, line, hybrid or pad, regardless of the method (artificial or natural) of their obtaining, called hereinafter "varieties";

2. created or discovered and cultivated breed, lines and hybrids of farm animals, regardless of the method of their obtaining, called hereinafter "breeds".

### Bodies participating in the procedure of providing legal protection

Art. 2. (amend. SG 86/00; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The bodies who participate in the procedure of providing legal protection of new plant varieties and animal breeds are the Executive agency for variety trial, approbation and seed control and the State Commission for animal breeds at the Ministry of Agriculture, Foods and Forestry and the Patent body.

### National regime

Art. 3. The provisions of the Act shall also apply regarding foreign persons from states, which participate in international treaties in this sphere, party to which is the Republic of Bulgaria, countries called hereinafter -"contractual states".

### Right of authorship

Art. 4. (1) (suppl. – SG 26/10) Authorship of a variety or a breed shall be established with their creation, discovery and cultivation. The local (autochthonous) livestock breeds and the established breeds within the state according to the Annex shall be ownership of the Bulgarian state.

(2) A person, who has created or discovered and cultivated a variety or a breed, is the author (creator) of this variety or breed.

(3) When several persons have created or discovered and cultivated a variety or a breed jointly, they are joint authors of the variety or breed.

(4) The right of ownership is personal, termless and cannot be transferred.

(5) The author or the joint authors of the variety or breed shall have the right to be quoted as such in the application, in the certificate and in the publications regarding the variety

or breed.

### **Representation**

Art. 5. (1) (amend. SG 86/00; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017, amend. - SG 98/19) The applicant, the holder of certificate, as well as their legal successors can act before the Patent body, the Executive agency for variety trial, approbation and seed control and the State Commission for the breeds, or through a representative of the intellectual property, registered in the Ministry of Agriculture, Foods and Forestry, by an order determined by the Minister.

(2) (amend. SG 86/00) Applicants with permanent residence or headquarters of the firm outside the country shall be obliged to act before the Patent body, the Executive agency for variety trial, approbation and seed control and the State Commission for the animal breeds through representatives of the intellectual property.

### **Register of certificates for new varieties of plants and animal breeds**

Art. 5a. (New - SG 98/19) (1) The Patent Office maintains a Register of certificates for new varieties of plants and animal breeds.

(2) The register under para. 1 contains:

1. number and date of submission of the application;
2. number of the certificate issued;
3. TAXON code;
4. number of the Patent Office Official Bulletin and date of publication of the application;
5. number of the Patent Office Official Bulletin and date of the Certificate Issued;
6. name of the plant variety/animal breed;
7. Latin name of the plant variety/animal breed;
8. name and address of the applicant;
9. name of the author;
10. start of validity of the certificate;
11. paid annual fees for maintaining the validity of the certificate - date of payment and the subsequent year to which it applies;
12. current status of the certificate;
13. the name and address of the Intellectual Property Representative when authorized.

### **Access to the registry**

Art. 5b. (New - SG 98/19) (1) The register under Art. 5a is electronic and public. It is published on the website of the Patent Office.

(2) The Patent Office collects, organizes, discloses publicly and stores the data subject to entry, including all personal data necessary for the purpose of maintaining the register and performing its activities under this Act.

(3) Any person may request a reference or extract from the contents of the register.

### **File**

Art. 5c. (New - SG 98/19) (1) The Patent Office maintains a paper and electronic file for each new plant variety and animal breed which includes all documentation for the issuance of the protection document and subsequent entries.

(2) The right of access to the file of the new plant variety and animal breed have the applicant, the holder, the industrial property representative, legal adviser from the administration of the applicant or holder, as well as a lawyer authorized in writing by the applicant or holder. Access to the file is also available to a person who is expressly authorized

by a notarized power of attorney from the applicant or holder.

(3) Right of access to the administrative file in proceedings in disputes have the parties involved therein, industrial property representatives, legal adviser from their administration, the lawyer authorized in writing by the applicant, the holder or the claimant, , as well as a person expressly authorized by a notarized power of attorney from them.

(4) After the publication under Art. 41 everyone has the right to access the application for a new plant variety or animal breed as submitted.

(5) Everyone has the right to be informed of the data contained in the file of the plant variety or animal breed, subject to enter.

(6) Third parties, in respect of whom circumstances admissible by law have been entered, have the right of access only to the documentation on the basis of which the entry was made.

(7) The right of access to a file for a new plant variety or animal breed includes the right of persons authorized under this Act to familiarize themselves with and to obtain copies of all material and documents entered in the relevant file with the exception of internal documents within the meaning of § 1, item 1 of the additional provisions of the Trademarks and Geographical Indications Act.

(8) The procedure for granting access to files of the plant variety or animal breed and for obtaining references or extracts from register shall be determined by an instruction of the President of the Patent Office.

#### **Transfer of rights**

Art. 6. (1) All rights, settled by this Act, inasmuch as it is not provided otherwise, can be transferred.

(2) The transfer of rights under para 1 shall be registered in the Patent body and shall be published in the official bulletin of the body.

### **Chapter two.**

## **LEGAL PROTECTION OF THE VARIETIES**

### **Section I.**

#### **Conditions for providing legal protection**

#### **Requirements (criteria)**

Art. 7. (1) Legal protection of a variety shall be provided if it is:

1. new;
2. discernible;
3. homogeneous;
4. stable.

(2) The variety must have a variety name, which shall relate to its generic indication, according to Art. 12.

#### **Novelty**

Art. 8. (1) The variety shall be considered new when, by the day of presentation of the application for certificate, it or a generative material or a crop of it have not been offered for sale, sold, subjected to other kind of trade or offered with the consent of the selectionist:

1. on the territory of the country, for no longer than one year;
2. on the territory of any other country, for no longer than:
  - a) six years, when it regards trees and vine;
  - b) four years, when it regards any other vegetal kind.

(2) No variety testing shall affect the novelty of the variety and it cannot be used to the detriment of the right of the selectionist.

### **Discernibility**

Art. 9. (1) The variety shall be considered discernible if it is clearly distinguishable from any other variety, which is commonly known by the day of presentation of the application at the Patent body.

(2) Another variety shall be considered commonly known if, by the day of presentation of the application, it has been materialised through cultivation, it is a subject of marketing, trade or other type of realisation or subject to the right of the selectionist, it has been entered in the registers of the varieties, it has been included in reference collection, its exact description has been presented for publication or it has become known in any other way.

(3) Application for granting right to the selectionist or for entering another variety in an official register of the varieties in any country shall be considered as attaching common knowledge for this variety from the date of presentation of the application, on condition that the application has led to granting right to the selectionist or to entering the variety in the official register of the varieties.

(4) The indications, allowing the determination of the characteristics and the distinctive features of the variety, must be precise for the purposes of description.

### **Homogeneity**

Art. 10. (1) The variety shall be considered homogeneous if, regardless of the presence of small deviations, the plants are identical in their essential qualities, including regarding the particularities of their sexual or vegetal reproduction.

(2) (amend. SG 86/00) The deviations from each kind shall be determined by methodology, adopted by the Executive agency for variety trial, approbation and seed control.

### **Stability**

Art. 11. The variety shall be considered stable if it remains unchanged regarding its essential qualities after repeated reproduction, or if the selectionist has determined for the created variety a particular cycle of reproduction, whereas at the end of each cycle the variety has retained the compliance with its description.

### **Name**

Art. 12. (1) Each new variety shall be given name, related to its origin or kind, serving the purposes of its identification. The name can consist of one or two words or a combination of words, letters and a figure, not larger than four digits.

(2) The name of the variety shall meet the following requirements:

1. to differ from any other name, used in the country, for this kind or kinds similar to it, or from a name of an existing variety in any contractual state, including after the expiration of the term of the certificate;

2. not to enable misleading or obscurity regarding the qualities, the essence or the identity of the variety or the personality of the selectionist;

3. not to violate rights, acquired earlier by third persons, who have acquired the right for such name, if according to item 4 the selectionist can be given the right for the same name. In this case the Patent body shall require from the selectionist to propose another variety name;

4. every person, offering in any contractual country, for sale and trade, reproduction material from protected variety or a variety in the process of expertise, shall be obliged to use the variety name even upon discontinuation of the protection of this variety, inasmuch as it does not contradict previously acquired rights of this use, according to item 3.

(3) (Amend., SG 81/99) When a variety is offered for sale or commercial use, to the registered variety name of the protected variety can be added mark, geographic name or other indication. Upon adding such indication the variety name should be easily and clearly distinguishable.

## **Section II. Protective document**

### **Certificate**

Art. 13. (1) The legal protection of a variety shall be provided by a certificate.

(2) The certificate shall prove the presence of a registered vegetal variety, the priority, the right of authorship and the exclusive right of its owner over the variety.

(3) The certificate shall be issued by the Patent body upon expert inspection of the variety - subject of the application.

(4) The certificate shall be in effect from the date of its issuance:

1. thirty years for trees and vines;
2. twenty five years for all other varieties.

### **Right of applying**

Art. 14. (1) The right of applying belongs to the author or his legal successor.

(2) It shall be considered that the applicant has a right of applying, unless established otherwise by a court order.

(3) If several authors have created or discovered and cultivated a variety, the right of applying shall belong jointly to them. The refusal of one or several of them to participate in applying or in the procedure of the issuance of the certificate, it shall not be an obstacle for the others to carry out the activities, stipulated by the law, or to exercise their rights.

(4) The right of applying for a variety, created under the conditions of Art. 16, shall belong to the employer, if he applies within three months from receipt of a written notification by the author about the creation of the variety. Otherwise, the right of applying shall be passed over to the author.

(5) When a variety is created on the grounds of a contract, the right of applying shall belong to the assigning party, unless the contract stipulates otherwise. If the assigning party does not exercise this right within the period under para 4, the right of applying shall be passed over to the author of the variety.

(6) (amend. SG 86/00) Employees of the Patent body and of the Executive agency for variety trial, approbation and seed control shall not have the right to apply for a variety or to be presented as joint authors, while they are employed by these state bodies, as well as up to three years from discontinuation of the legal terms of employment, with the exception of the cases when the variety is a result of natural mutation, established during the essential expertise, according to Art.38, para 1 and 2.

### **Right to certificate**

Art. 15. (1) The right to certificate shall belong to the person who has the right of applying according to Art. 14.

(2) When several person have created a variety, independently from each other, the right to certificate shall belong to the person who has applied first for this variety at the Patent body.

(3) (new – SG 26/10, amend. – SG 58/17, in force from 18.07.2017) The right to certificate for the animal breeds according to Annex to Art. 4. para 1 belongs to the Bulgarian state. Owner of the certificates for the respective animal breeds shall be the Ministry of Agriculture, Foods and Forestry.

### **Variety created ex-officio**

Art. 16. (1) A variety created ex-officio is a variety created or discovered and cultivated in fulfilment of obligations ensuing from legal terms of employment or other legal terms of the author of the variety, except in the cases, when a contract stipulates otherwise.

(2) The variety shall be considered created ex-officio according to para 1, when during its creation the author:

1. has been performing his official duties, inherent to his occupation;
2. has been performing duties, besides the ones under item 1, but they have been specifically assigned to him, and by this act the selection of a new variety has been expected;
3. has used material or financial resources, provided by the employer or the assigning party.

(3) When the variety has been created ex-officio only regarding one or several of the authors, respectively the executors, the provisions of para 1 and 2 and of Art. 14 shall only apply regarding these authors, their employers or assigning parties.

(4) The author shall be obliged, within three months from the creation of the variety, to inform the employers, respectively the assigning party, about that in writing.

(5) The person, who has created the variety ex-officio, shall have the right of authorship according to Art.4,para 2 and 3 and 4 and the right of fair remuneration, but not less than 4 percent, if such remuneration has not been stipulated by the respective contract. In determining the remuneration the main considerations shall be:

1. the profit, determined by all types of realisation of the variety for the time of validity of the certificate;
2. the worth of the variety;
3. the contribution of the employer and/or the assigning party, expressed in invested resources for the creation of the variety, the submitted materials, equipment, knowledge, experience, personnel and other assistance;
4. the conditions under which the author of the variety is hired.

(6) When the interests of the employer require applying for the variety after the three-month period under Art.14, para 4 the author shall be entitled to a fair remuneration for the time of postponement of applying and all rights, ensuing from the postponed issuance of certificate for this variety. These relations between the employer and the author shall be settled by a contract before the expiration of the three-month period.

(7) When the application for certificate for a variety has been presented by the author, within three years from discontinuation of the employment contract or of other legal relations under para 1, the employer, respectively the assigning party, can claim the right to receive the certificate, except in case when he has been informed by the author about the created variety and he has not exercised the right under Art. 14, para 4. This right can be exercised within one year from the publication of the application under Art. 36.

(8) The remuneration of the author shall be due by the employer and, when he is not the holder of the certificate - by the holder of the certificate.

(9) When the remuneration under para 5, 6 and 8, regardless of whether it is stipulated

by the contract or has been determined according to the stipulated rules, is unfair, considering the actual profit and worth of the variety, it can be increased at the request of the author. In case of refusal on part of the employer the dispute shall be settled by court order.

(10) When the variety is created abroad the rights of the author, if any, shall be settled according to the norms, settling the relations with the employer.

### **Temporary protection**

Art. 17. (1) For the period from the publication of the application by the Patent body for issuance of certificate for a variety, until its issuance, the applicant shall be provided with temporary protection against illegal activities of other persons.

(2) The range of the temporary protection shall be determined by the description and the form, inasmuch as the issued certificate does not expand it.

(3) The applicant shall have the right to fair remuneration, obtained from the person who, during the period under para 1 has carried out activities for which, upon the issuance of the certificate, the consent of the holder of the certificate shall be required, according to Art. 18.

## **Section III.**

### **Rights of the selectionist**

#### **Range of the exclusive right of the holder of certificate**

Art. 18. (1) The exclusive right of the holder of certificate regarding reproductive or vegetative reproduction material from a variety, protected by a certificate, comprises the right of use, disposal of the certificate and the right of prohibiting other persons to use it without his consent. The right of use includes the following:

1. production or reproduction;
2. preparation for the purposes of reproduction;
3. offering for sale;
4. sale or other type of trade;
5. export;
6. import;
7. storing for some of the purposes under item 1 - 6.

(2) The activities of third persons, according to para 1, item 1 - 7, carried out regarding the reproductive or vegetative material of a variety protected by a certificate, require a permit by the holder of the certificate. He can give his consent depending on the conditions and restrictions under Art. 19, 20 and 21.

(3) The provisions of para 2 shall apply regarding the crop from unauthorised use of reproductive or vegetative reproducing material from the protected variety also in cases when the holder of certificate has not had a justified ability to exercise his rights regarding the same reproductive or vegetative reproducing material from the variety.

(4) The provisions of para 2 shall apply in separate cases regarding the products, directly obtained from the material of the protected variety, according to ordinances or instructions under §9. They can be applied only if these products have been obtained by unauthorised use of the protected variety and if the holder of certificate has been justifiably unable to exercise his right regarding this material. In the context of para 2 "material" are directly obtained products.

(5) The provisions of para 1 - 4 shall apply regarding:

1. varieties which, in essence, have been obtained from the variety, for which a certificate is issued, and when this variety, in its essence, is not an obtained variety;

2. varieties, which are indistinguishable, according to the provisions of Art. 9 of the protected variety;

3. varieties, whose production require repeated use of the protected variety.

(6) For the purposes under para 5, item 1 the variety shall be considered a derivative, in essence, of another variety, called hereinafter "initial variety" when:

1. originates mainly from the initial variety or from a variety which in itself is a derivative, in essence, of the initial variety;

2. it is clearly distinguishable from the initial variety according to the provisions of Art. 9;

3. regardless of the differences it corresponds to the initial variety in its substantial characteristics, which are result from a genotype or a combination of genotypes of the initial variety.

(7) The ordinances and instructions under §9 can determine possible activities for obtaining derivative varieties at least under the conditions of para 6.

### **Restrictions of the rights of the selectionist**

Art. 19. (1) Regardless of the provisions of Art. 18, para 1, for the purposes of promotion of the agricultural production, the farmers shall have the right to use, for their own needs, with the purpose of reproduction in their own farms, product of a crop, which they have obtained by planting in their own farm, reproductive material from a variety, different from the hybrid or artificially obtained variety, protected by a certificate.

(2) (amend. SG 86/00; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The provisions of para 1 shall only apply for vegetal kinds, according to a list, approved by the Minister of Agriculture, Foods and Forestry.

### **Exceptions from the right of the selectionist**

Art. 20. The right of the selectionist shall not cover:

1. activities, carried out by farmers for their own needs, without commercial purpose;

2. activities carried out for experimental purposes;

3. activities carried out with the purpose of creating other varieties, except when the provisions of Art. 18, para 3 and the activities under item 2 apply.

### **Using up the right of the selectionist**

Art. 21. The right of the selectionist shall not cover activities regarding the material from the protected variety or over a material produced from it, or over some of the varieties under Art. 18, para 5, which have been sold or offered on the market in any other way by the holder of the certificate, or by his consent - on the territory of the country, unless these activities include:

1. further reproduction of the variety;

2. export of material from the variety, allowing its reproduction in a country, which does not protect vegetal varieties of the origin or the kind to which the variety belongs, unless the exported material has been designated for end use.

### **Contractual licence**

Art. 22. (1) The applied or protected by certificate variety can be subject to a licence contract.



(2) Through the licence contract can be granted exclusive, non-exclusive, full or limited licence.

(3) The licence contracts shall be entered in the register of the Patent body and shall be valid from the date of their registration. Publication in the official bulletin shall be made for them.

### **Compulsory licence**

Art. 23. (1) (amend. SG 86/00; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The Ministry of Agriculture, Foods and Forestry can order a compulsory licence for a protected variety, in favour of any interested person at his request, when at least one of the following conditions is present:

1. the variety has not been used for a duration of five years from applying for certificate or three years from the issuance of the certificate and if the public interest requires the issuance of compulsory licence, applying the term, which expires later;

2. the variety has not been used to a degree, enough to meet the national needs or public needs, within the periods under item 1, except when the holder of certificate proves that he has not been in position to do that;

3. national state of emergency has been declared, for its duration, and the variety contributes to overcoming this state.

(2) The applicant under para 1 must prove that he is in position to use the variety within the frames of the requested compulsory licence.

(3) The compulsory licence can only be non-exclusive and non-transferrable.

(4) The compulsory licence can be discontinued if its holder, within one year from issuance of the licence, has not started the preparations for using the variety. In all cases the compulsory licence shall be discontinued if, within two years from its issuance, the holder has not started using the variety.

(5) The holder of the certificate can request revoking or change of the conditions for granting compulsory licence under para 1, upon expiration of one year, should the circumstances, at the time of taking the decision for compulsory licence, have changed in the meantime.

(6) For granted compulsory licence the selectionist shall receive fair compensation by the user. If an agreement is not present, the compensation shall be determined by court order.

(7) Compulsory licence shall not be issued in favour of an offender of the certificate.

### **Official certificate**

Art. 24. (1) (amend. SG 86/00; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The Ministry of Agriculture, Foods and Forestry can order, only in exceptional cases, for the needs of the defence and the security of the country, official licence for the use of a variety - subject of application or of issued certificate.

(2) (amend. and suppl. - SG 109/07, in force from 01.01.2008) The official licence shall be issued at the request by the Ministry of Defence, the Ministry of the Interior or the State Agency "National Security". The order shall determine all conditions of the official licence, as well as the conditions, regarding the fair compensation, related to the use of the variety.

(3) If there is no agreement regarding the fair compensation, which should be paid to the selectionist, it shall be determined by court order.

### **Special regime**

Art. 25. (1) (amend. SG 86/00; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The Minister of Agriculture, Foods and Forestry shall approve, only in exceptional cases, a list of a limited number of varieties, subject to applications for certificate and which cannot be circulated and used freely without special permit, if they are of interest to the defence and the security or to the public health care.

(2) The selectionist shall have a right to fair compensation. If there is no agreement the compensation shall be determined by court order.

### **Legal protection abroad**

Art. 26. (1) Bulgarian physical persons and corporate bodies shall have the right to chose any other contractual state under Art. 3, where they wish to apply for legal protection of the variety.

(2) The applicant can apply for legal protection in any other country, upon applying under para 1, without waiting for the issuance of a protective document by the country under para 1.

(3) The applicant under para 1 and 2 cannot seek legal protection abroad without a special permit, if his variety is included in the list under Art. 25, para 1.

### **Discontinuation of the effect of the certificate**

Art. 27. (1) The effect of the certificate shall be discontinued:

1. due to expiration of the period for which it has been issued;  
2. due to a refusal, in a written form, of its holder, considered from the date of presentation in the Patent body. The refusal by one of the co-owners of the certificate shall not discontinue its effect regarding the rest of them;

3. in the cases when the holder:

a) (amend. SG 86/00) is not in position to present within a period of one year, for the annual kinds, and two years for the perennial kinds, upon request of the Executive agency for variety trial, approbation and seed control, authentic planting material, which allows the reproduction of the created variety, with its morphological and biological qualities, such as they have been determined at the time of issuance of the certificate, about which the Patent body shall be informed;

b) does not present to the competent bodies, within the prescribed period, reproduction material, documents or instruction, considered necessary for the exercising control over the new variety, or does not allow to the Institute for introduction and vegetal resources to take a sample for preservation of the variety;

4. when the due annual tax under Art. 42, para 2 and 3 for maintaining the certificate is not paid.

(2) The certificate, with discontinued effect, due to failure to pay the annual tax, can be restored within six months from the last day of the month, when the certificate has been issued, if the overdue tax is paid in double at the Patent body.

### **Violation of the rights of the holder of certificate**

Art. 28. (1) Any use of the variety, entering the range of protection by a certificate, according to Art. 18, and which has been done without the consent of its owner, shall be considered violation of the certificate.

(2) A person, who carries out the activities under para 1, with a variety, protected by a certificate, but produced by other persons, in violation of the certificate, shall be liable for

violation only if he has acted with premeditation.

(3) The holder of certificate for a variety and the licensee of explicit licence can deposit a claim for violation of their rights, unless agreed upon otherwise.

(4) The licensee under Art. 22, of a compulsory licence under Art. 23 and of licence under Art. 24 can present a claim for violated rights, ensuing from the certificate, if the holder of the certificate does not exercise, on his own, his right to claim, within six months from receipt of a written invitation by the licensee.

(5) Every licensee can participate in a case for violated rights, ensuing from the certificate, when the claim is made by the holder of the certificate. The same regards the holder of a certificate, when the claim has been made by the licensee, according to para 3 and 4.

(6) The claim for violation of rights over the variety can also be made by the applicant before the issuance of the certificate, after the publication about the application by the Patent body.

### **Claims for violation of rights, ensuing from a certificate**

Art. 29. (1) The claims for violation of rights, ensuing from a certificate, can be:

1. claim, establishing the fact of violation;
2. claim for compensation for suffered losses and for missed profit;
3. claim for discontinuing the activities of the offender, violating the rights of the holder of the certificate.

(2) If the claim under para 1 is granted the court can order re-processing or destruction of the subject of the violation, and in case of premeditation - of the means of the violation.

### **Provision of evidence**

Art. 30. The type of evidence, the order of its collection and compensation, under Art. 29, shall be carried out according to the Civil procedural code.

### **Nullity of certificate**

Art. 31. (1) The issued certificate shall be void when it is established that:

1. the conditions, determined by Art. 8 and 9 have not been met in issuing the certificate;
2. the right of the selectionist has been granted to a person, who has no right to hold it, unless it is transferred to an authorised person.

(2) On the grounds of enacted decision under para 1, item 2, the Patent body, without discontinuing the effect of the certificate, declared void, shall issue a new certificate to the person determined by the decision, at his request.

(3) The declaring of the nullity of the certificate shall not affect:

1. enacted decisions for violation of the certificate;
2. licence contracts, concluded and fulfilled before declaring the nullity of the certificate, unless agreed upon otherwise.

## **Section IV. Expertise of varieties**

### **Applying for certificate**

Art. 32. (1) The application for certificate for a variety shall be presented at the Patent body and shall be entered in the ledger for the applications for the varieties.

(2) As date of presentation of the application shall be considered the date of receipt in the Patent body of the following documents:

1. application for issuance of certificate for variety, with identification data for the applicant and the author of the variety;
2. description of the variety;
3. proposal for the name of the variety;
4. filled out technical questionnaire for the kind;
5. paid taxes for applying and for publication about the application.

(3) The application for certificate shall regard only one variety.

(4) The documents under para 2 shall be presented in Bulgarian language. The name of the variety, the technical questionnaire and the description, accompanied by illustrations, shall be presented in triplicate. The name of the applicant and of the author, as well as the name of the variety shall also be filled out in Roman.

(5) If the applicant presents application through a representative of the intellectual property, it shall also be accompanied by a letter of authority.

### **Withdrawal of the application**

Art. 33. The application for certificate for a variety can be withdrawn by a written declaration of the applicant, if a certificate has not already been issued. With the withdrawal of the application the applicant shall lose the right of priority under Art. 34.

### **Right of priority**

Art. 34. (1) The applicant, who has applied for certificate under Art. 32, shall use the right of priority from the date of applying.

(2) If the applicant has presented earlier applications for protection of one and the same variety, in contractual states, prior to applying at the Patent body, he can claim conventional priority for a period of twelve months, considered from the date of the first applying.

(3) The right of priority under para 2 shall be acknowledged if the applicant has presented a declaration for claimed priority at the time of applying at the Patent body and has paid the respective tax. The right of priority shall be proven within three months from applying at the Patent body, by copies of the documents, composing the first application, as well as samples or other evidence. The copies must be certified by the administrative body, where the first application has been presented. Missing the deadline and failure to pay the tax for the claimed priority shall lead to its losing.

(4) The applicant under para 3 shall be given the chance, for the duration of two years upon expiration of the term of priority, or if the first application has been withdrawn or rejected, to present for expertise additional information, documentation or material.

### **Advance expertise**

Art. 35. (1) For an application for certificate, registered by the Patent body, within one month upon its presentation, advance expertise shall be held, checking up:

1. the formal regularity of the application and of the documents attached to it, according to Art. 32;
2. the contents of the attached documents;
3. the correspondence of the name of the variety to the requirements of Art. 12. By the consent of the Patent body the applicant can indicate a temporary proposal for the name, instead of the name of the variety for the needs of the expertise.

(2) The Patent body shall inform the applicant about the established defects, and shall determine a period of three months for their elimination. Should the applicant fail to comply with this period, the application shall be considered abandoned and the expertise for it shall be discontinued. In this case the applicant shall lose the right of priority under Art. 34, para 1.

### **Publication for the application**

Art. 36. (1) The Patent body shall make publication about the application in the official bulletin, immediately upon expiration of the fourth month, but not later than the sixth month from the date of presentation of the application.

(2) No access shall be permitted in the Patent body to materials of applications for certificate before the publication about it, except when there is a written permit by the applicant.

(3) (amend. SG 86/00; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The access to materials of applications under para 2 shall be admissible for the Ministry of Agriculture, Foods and Forestry, pursuant to Art. 23, 24 and 25 and for the Ministry of Defence or the Ministry of the Interior, according to Art. 24 and 25.

### **Submitting applications for essential expertise**

Art. 37. (amend. SG 86/00) Within one month from the advance expertise of the application the Patent body shall present it to the Executive agency for variety trial, approbation and seed control for essential expertise, informing the applicant about due payment of the respective taxes to the Executive agency for variety trial, approbation and seed control.

### **Essential expertise**

Art. 38. (1) (amend. SG 86/00) For each application for certificate the Executive agency for variety trial, approbation and seed control shall carry out expertise within two to four years, in order to establish whether the variety of the plant corresponds to the requirements of Art.7. If necessary, at the proposal of the applicant, this period can be extended.

(2) (amend. SG 86/00) For the purposes of the expertise the Executive agency for variety trial, approbation and seed control shall test the variety in their other testing stations, specialised institutes, laboratories and offices and shall describe and prove the qualities, which allow the definition and distinguishing of the new variety.

(3) (New, SG 27/98; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The Ministry of Agriculture, Foods and Forestry shall issue a licence to the persons who will carry out plant variety testing. The conditions and order of issuing a licence shall be determined by an ordinance of the minister for agriculture, forests and food supply.

(4) (Prev., para 3 - SG 27/98, amend. SG 86/00) The applicant shall submit, free of charge, the planting and sowing material, necessary for the test of the variety, as well as any other additional information and documentation, stipulated by the Regulations for the work of the Executive agency for variety trial, approbation and seed control.

(5) (Prev., para 4 - SG 27/98) If, in the process of the expertise, it is established that the name, announced to the Patent body does not correspond to the requirements of Art. 12, para 1 and 2, the applicant shall be given two months to propose a new name. If the deadline is not met the application shall be considered abandoned and the procedures on it shall be closed.

(6) (Prev., para 5 - SG 27/98) The expertise of the name should establish whether the announced name of the tested variety is the same as the name of the application for the same variety in contractual countries.

(7) (Prev., para 6 - SG 27/98, amend. SG 86/00) If the Executive agency for variety

trial, approbation and seed control decides that the variety does not meet the requirements of Art. 7, they shall inform, in writing, the applicant, expressing their motives and submitting three months for reply. If the applicant does not reply within this period or ungroundedly supports his application, the Executive agency for variety trial, approbation and seed control shall refuse a conclusion for acknowledging the variety, by sending a report to the Patent body.

(8) (Prev., para 7 - SG 27/98, amend. SG 86/00) The Executive agency for variety trial, approbation and seed control shall take a decision for acknowledging the variety when, as a result from the essential expertise, it is established that the announced variety meets the requirements of Art. 7 and shall prepare a report to the Patent body within one month.

(9) (Prev., para 8 - SG 27/98, revoked – SG 86/00)

(10) (Prev., para 9 - SG 27/98, revoked – SG 86/00)

(11) (Prev., para 10 - SG 27/98, amend. SG 86/00) The Executive agency for variety trial, approbation and seed control shall send, within the period under para 8, to the Patent body, its report, the description, the paper and a copy of the decision for acknowledging the variety. The Executive agency for variety trial, approbation and seed control can correct or supplement the description at any time, in compliance with the development of the agronomic science. These corrections and supplements shall not affect the range of the protection.

(12) (Prev., para 11 - SG 27/98, amend. SG 86/00) The Executive agency for variety trial, approbation and seed control can use results from earlier expertise for the same variety, carried out by competent bodies in the country or abroad.

(13) (Prev., para 12 - SG 27/98, amend. SG 86/00) The Executive agency for variety trial, approbation and seed control can conclude agreements with competent bodies of the contractual states for carrying out expertise for foreign plant varieties in the country, as well as to assign the use of the results from such expertise by the competent bodies of contractual states.

(14) (Prev., para 13 - SG 27/98, amend. SG 86/00) All activities on the protection after the essential expertise shall be carried out by the Patent body, on the grounds of the decisions and reports of the Executive agency for variety trial, approbation and seed control.

### **Extension of terms**

Art. 39. At the request of the applicant, presented before the expiration of the terms under Art. 35, para 2, Art. 38, para 4 and 6, these terms can be extended by three months, but no more than twice. For the request for extension of the terms the applicant shall pay taxes.

### **Issuance of certificate**

Art. 40. The Patent body shall issue a certificate on the grounds of the decision for acknowledgement of the variety and if, within three months from the announcement to the applicant about the decision, taxes for issuance and publication about the certificate are paid.

### **Publication about issued certificate**

Art. 41. (1) About issued certificate for variety shall be made publication in the official bulletin of the Patent body.

(2) The official bulletin shall publish all changes in the legal status of the application and the certificate.

(3) The issued certificate shall be entered in the register for the certificates for varieties of the Patent body.

### **Fees**

Art. 42. (1) (amend. SG 86/00) For all activities under this Act, before the Patent body, the Executive agency for variety trial, approbation and seed control and the State Commission for animal breeds, shall be paid fees, according to a tariff, approved by the Council of Ministers.

(2) For maintaining the effect of the certificate shall be owed annual fee.

(3) The annual fee for the first and for every consecutive year shall be paid by the last day of the month of issuance of the certificate.

(4) The raised funds under para 1, 2 and 3 shall be used for financial support of the said administrative bodies.

## **Chapter three. LEGAL PROTECTION OF ANIMAL BREEDS**

### **Expertise of animal breeds**

Art. 43. (1) The application for certificate for animal breeds shall be presented at the Patent body and shall be entered in the ledger for the applications for animal breeds, upon which expertise shall be carried out by the State Commission for animal breeds, in compliance with the Regulations for the work of the commission.

(2) By the essential expertise of animal breeds the State Commission shall study and analyse the following special requirements:

1. breeding purposes;
2. brief characteristics of the original breeds;
3. description of the methods of creating the breed;
4. productive qualities and morphological particularities of the breed;
5. adaptive abilities and resistance to disease;
6. number, tribal and genealogical structure;
7. region of propagation.

(3) (new, SG 18/04) Expertise in essence of breeds, lines and hybrids of the silk butterfly shall be carried out by the Executive Agency for sort testing, approbation and seed control. The expertise shall be carried out through testing for importance, homogeneity and stability and for economic biological qualities.

(4) (prev. para 3 – SG 18/04) The material expertise of foreign breeds shall be carried out on their offspring in our country.

(5) (prev. para 4 – amend., SG 18/04) The State Commission for animal breeds, and in the cases of para 3 – the Executive Agency for sort testing, approbation and seed control, upon taking decision for acknowledging the breed, shall send, within one month, to the Patent body, its report, the description, the paper and copy of the decision for acknowledgement of the breed, informing the selectionist to pay the respective taxes to the Patent body.

### **Legal protection**

Art. 44. The legal protection of animal breeds shall be provided by a certificate, with validity of thirty years from the date of issuance of the certificate.

### **Provisions for the animal breeds**

Art. 45. (1) The regime for the plant varieties shall also apply for animal breeds, inasmuch as this chapter provides otherwise.

(2) The provisions of Chapter Four and Five shall also apply regarding the animal breeds, complying with the specifics, stipulated by this chapter.

## **Chapter four. DISPUTES**

### **Types**

Art. 46. The disputes, related to the creation, protection and rights, ensuing from the certificate, shall be settled by administrative and court order.

Disputes, settled by administrative order

### **Disputes, settled by administrative order**

Art. 47. (1) By administrative order shall be settled:

1. claims against decisions for discontinuation of the procedures on application for issuance of certificate under Art. 35;
2. claims against the decision for refusal to issue a certificate;
3. claims against the decision for discontinuation of the procedures under Art. 38, para 4 regarding the correspondence of the name of the variety to the requirements of Art. 12;
4. requests for declaring nullity of issued certificate under Art. 31;
5. claims against refusal to restore the effect of the certificate under Art. 27, para 2;
6. claims against the decisions for granting or refusal to grant compulsory licence.

(2) (amend. SG 86/00; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The claims and the requests under para 1 shall be considered by specialised bodies, appointed by the chairman of the Patent body, including a state expert and a lawyer from the Patent body and an expert from the Ministry of Agriculture, Foods and Forestry. The bodies under para 1, item 6 shall be appointed by the Minister of Agriculture, Foods and Forestry.

(3) (amend. SG 86/00) At the requests under para 1, item 4 can be opened proceedings ex-officio by the Patent body and the Executive agency for variety trial, approbation and seed control.

(4) The proceedings under para 1 and 2 shall be opened upon payment of a tax, except in case of procedures ex-officio.

(5) The bodies under para 2 shall take decisions, respectively within three months on the claims under para 1, item 1, 2, 3, 5 and 6 and within six months - on the requests under para 1, item 4.

### **Terms for appeal**

Art. 48. (1) The claims under Art. 47, para 1, item 1, 2, 3, 5 and 6 shall be presented within three months from receipt of the decision.

(2) The requests under Art. 47, para 1, item 4 shall be admissible for the whole duration of the effect of the certificate.

### **Restoration of terms**

Art. 49. The terms, missed due to particular unforeseen circumstances, can be restored at the request of the applicant. The application shall be presented within three months from dropping the reason for missing the term, but not later than one year from expiration of the missed term. The decision for restoration of the term shall be taken by the chairman of the Patent body.



### **Court control**

Art. 50. (amend. SG 86/00; amend. - SG 30/06, in force from 12.07.2006, and for the replacement of the words "Sofia city court" by "Administrative court – city of Sofia", in force from 01.03.2007 ; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The decisions of the bodies of the Patent body or of the Ministry of Agriculture, Foods and Forestry shall be subject to appeal before Administrative court – Sofia city by the order of the Administrative procedure code.

### **Legal disputes**

Art. 51. (1) (amend. - SG 30/06, in force from 12.07.2006) The Administrative court – city of Sofia shall consider:

1. disputes on authorship;
2. disputes on the right of applying and the right to certificate for variety;
3. disputes on violation of the rights of the applicant and the exclusive rights of the holder of certificate. If the claim is presented by the applicant prior to the issuance of the certificate, the proceedings shall be discontinued until the publication of the certificate by the Patent body;
4. disputes on conclusion, fulfilment and discontinuation of licence contracts;
5. disputes regarding the official nature of the variety, in the context of Art. 16 and the amount of the remuneration of the author of variety selected ex-officio;
6. disputes on the amount of the remuneration, due to the holder of the certificate under Art. 23, 24 and 25.

(2) The claims under para 1, item 5 shall be presented within one year upon issuance of the certificate.

## **Chapter five.**

### **ADMINISTRATIVE AND PUNITIVE PROVISION**

#### **Sanction**

Art. 52. (1) Every person who, without the permit of the holder of certificate, carries out some of the activities under Art. 18, shall be fined with 100 to 1 000 levs, and in case of repeated violation, the fine shall be from 1 000 to 10 000 levs. The reproduction material in both cases shall be confiscated.

(2) (amend. SG 86/00 ; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The violation shall be established by an act, issued by an official, appointed by the Minister of Agriculture, Foods and Forestry. The administrative penalty shall not exclude criminal liability and other sanctions, according to the laws of the country.

(3) The issuance of the act, the issuance, appeal and fulfilment of the penalty decree shall be carried out by the order of the Administrative Violations and Penalties Act.

### **Additional provisions**

§ 1. In the context of this Act:

1. "Variety" is a vegetal combination of an individual botanical tax on of the lowest known degree which, regardless of whether completely meets the requirements for granting the right to the selectionist:

- a) can be defined by expressing the qualities characterising a genotype or a definite

combination of genotypes;

b) can be distinguished from any other vegetal combination at least by expressing one of the qualities;

c) is considered as a unit regarding its fitness to reproduce in unchanged kind.

2. "Reproductive material" is a whole plant, seeds, sowing material, as well as parts of this plant, inasmuch as they contain at least one cell and are used for reproduction of a whole plant, regardless of the method of its obtaining - artificial or natural.

3. "Breed" is a group of similar, in biological qualities and morphological signs, animals of common origin and of one kind, claiming similar requirements for the natural and production conditions.

4. "Selectionist" is the person:

a) who has created or discovered and cultivated the variety or the breed;

b) employer of the person under letter "a", on the grounds of a contract between them;

c) legal successor of the persons under letters "a" and "b".

5. "Economic qualities of the variety" are qualities substantiating the fitness of the variety for use as object of reproduction and as material for production of vegetal products of definite designation and quality.

6. "Official variety list" is a catalogue, consisting of:

a) list A, containing the varieties, which are recommended (permitted) for use in the country;

b) list B, containing the varieties, for which, by the order of this Act, certificates have been issued.

### **Transitional and concluding provisions**

§ 2. The requests for author certificates for plant varieties and animal breeds for which, until the entry into force of the Act, no protective certificate or a final decision for refusal have been issued, can be transformed into applications for certificate. The transformation shall be made upon presentation of application at the Patent body, by the persons and within the period under §3, para 2 and by the order of Art. 14.

§ 3. (1) The author certificates for plant varieties and animal breeds, issued by the enactment of this Act and which, according to §2, para 2 of the Act on patents, have been excluded from transformation, by the force of Art. 7 of the Act on patents, can be transformed into certificates upon presentation of application at the Patent body.

(2) The applications shall be presented within six months from the entry into force of the Act, and the Patent body shall issue a certificate to one of the applicants, complying with the following order of right holders:

1. to the author, when the variety or the breed have been created independently;

2. to the following persons, when the variety or the breed have been created in conditions of selection ex-officio:

a) to the employer and/or assigning party;

b) to the user of the variety or breed, when this variety or breed is basic production;

c) to the author of the variety or breed.

(3) (amend. SG 86/00) The transformation of the author certificates into certificates shall be made upon additional expertise of compliance with the requirements of Art. 9, 10 and 11 and the proposed decision of the Executive agency for variety trial, approbation and seed control, according to Art. 38, para 10. The additional expertise can use the results from previous

tests of the variety or breed.

(4) Certificates, issued under para 1, 2 and 3 shall be valid for a period of 20 years, considered from the date of their issuance. The persons, who have used the variety or breed before the transformation of the author certificates, but after the date of the application for author certificate, shall not have the rights of the previous user.

(5) The rights ensuing from the certificate, issued under this paragraph, shall be instituted on the date of its issuance by the Patent body.

(6) The author certificates, which are not transformed into certificates under para 1 - 5, shall discontinue their effect.

§ 4. (amend. - SG 30/06, in force from 12.07.2006) The decision of the Patent body for transformation of applications and author certificates into certificates shall be subject to appeal by the order of the Administrative procedure code before Sofia city court.

§ 5. For transformation of author certificates into certificates shall be paid taxes for transformation, for expertise, for issuance of certificate, for publication of the transformation. The taxes for transformation of author certificate shall be paid at the time of applying under §3, para 1, and all other taxes shall be paid according to this Act.

§ 6. Proprietary and non-proprietary rights of authors of acknowledged and implemented author certificates, which have not been transformed under §3, para 1, shall be settled while they last, by the order of the Act, which has been in force at the time of their occurrence.

§ 7. (1) (amend. SG 86/00) The status of the Executive agency for variety trial, approbation and seed control and of the State Commission for animal breeds shall be determined by an act of the Council of Ministers.

(2) (amend. SG 86/00 ; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The State Commission for animal breeds shall be formed if necessary, and its membership shall be approved by the Minister of Agriculture, Foods and Forestry.

§ 8. The following amendments are introduced to the Seed and Planting Stock Act (prom., Izv., No 13 of 1958; amend., SG, No 99 of 1963, No 36 of 1979 and No 103 of 1990):

1. In Art. 2 the words "the regional varieties" are replaced by "of the varieties entered in list A of the official varieties list".

2. In Art. 3 the words "approved by the Ministry of agriculture and forests" are replaced by "entered in list A of the official varieties list".

3. Art. 5 is revoked.

4. Art. 6 is revoked.

5. In Art. 8, para 1, the words "regional, selected and local varieties" are replaced by "the varieties entered in list A of the official varieties list".

6. In Art. 8, para 2 the words "not regional" are replaced by "not entered in list A of the official varieties list".

§ 9. (amend. SG 86/00 ; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The Minister of Agriculture, Foods and Forestry and the chairman of the Patent body shall issue ordinances and instructions for the fulfilment of the provisions of this Act.

§ 10. The Act shall come into force three months upon its promulgation in the State Gazette.

§ 11. (amend. SG 86/00 ; amend. - SG 36/08, amend. – SG 58/17, in force from 18.07.2017) The implementation of the Act is assigned to the Minister of Agriculture, Foods and Forestry and to the chairman of the Patent body.

The laActw was adopted by the 37th National Assembly on September 19, 1996 and was affixed with the state seal.

**Transitional and concluding provisions  
TO THE ADMINISTRATIVE PROCEDURE CODE**

(PROM. – SG 30/06, IN FORCE FROM 12.07.2006)

§ 51. The following amendments shall be done in the Act on Protection of new Plant Varieties and Animal Breeds (prom. – SG 84/96; amend. – SG 27/98, 81/99, 86/00, 18/04):

.....

2. The words "Administrative Procedure Act" shall be replaced by "Administrative Procedure Code".

.....

§ 142. The code shall enter into force three months after its promulgation in State Gazette, with the exception of:

1. division three, § 2, item 1 and § 2, item 2 – with regards to the repeal of chapter third, section II "Appeal by court order", § 9, item 1 and 2, § 15 and § 44, item 1 and 2, § 51, item 1, § 53, item 1, § 61, item 1, § 66, item 3, § 76, items 1 – 3, § 78, § 79, § 83, item 1, § 84, item 1 and 2, § 89, items 1 - 4§ 101, item 1, § 102, item 1, § 107, § 117, items 1 and 2, § 125, § 128, items 1 and 2, § 132, item 2 and § 136, item 1, as well as § 34, § 35, item 2, § 43, item 2, § 62, item 1, § 66, items 2 and 4, § 97, item 2 and § 125, item 1 – with regard to the replacement of the word "the regional" with the "administrative" and the replacement of the word "the Sofia City Court" with "the Administrative court - Sofia", which shall enter into force from the 1st of May 2007;

2. paragraph 120, which shall enter into force from the 1st of January 2007;

3. paragraph 3, which shall enter into force from the day of the promulgation of the code in State Gazette.

**Transitional and concluding provisions  
TO THE ACT ON STATE AGENCY FOR NATIONAL SECURITY**

(PROM. - SG 109/07, IN FORCE FROM 01.01.2008)

§ 44. The Act shall enter into force from 1 January 2008.

**Transitional and concluding provisions**  
**TO THE ACT ON AMENDMENT AND SUPPLEMENTATION OF THE FISHERIES**  
**AND AQUACULTURE ACT**

(PROM. - SG 36/08)

§ 64. In the Act on Protection of new Plant Varieties and Animal Breeds (prom. - SG 84/96; amend. - SG 27/98, SG 81/99, SG 86/00, SG 18/04, SG 30/06 and SG 109/07) everywhere the words "the Minister of Agriculture and Forests", "Minister of Agriculture and Forests" and "the Ministry of Agriculture and Forests" shall be replaced respectively by "the Minister of Agriculture and Food Supply", "Minister of Agriculture and Food Supply" and "the Ministry of Agriculture and Food Supply".

**Concluding provisions**  
**TO THE ACT AMENDING THE ACT ON BULGARIAN FOOD SAFETY AGENCY**  
(PROM. - SG 58/17, IN FORCE FROM 18.07.2017)

§ 27. In the Act on Protection of New Plant Varieties and Animal Breeds following amendments shall be made:

.....  
2. Everywhere in the Act words "Minister of Agriculture and Food" and "Ministry of Agriculture and Food" shall be replaced with words "Minister of Agriculture, Food and Forestry" and "Ministry of Agriculture, Food and Forestry".

.....  
§ 76. This Act shall enter into force on the day of its promulgation in the State Gazette.