

LAW ON THE LEGAL PROTECTION OF NEW VARIETIES OF PLANTS AND BREEDS OF ANIMALS

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The Federal Assembly of the Czechoslovak Socialist Republic has passed the following Law:

PART ONE GENERAL PROVISIONS

Article 1

Purpose and Scope of Application of the Law

- (1) The purpose of this Law is to regulate the rights and duties arising for physical and legal persons from the creation of new varieties of plants (hereinafter referred to as "varieties") and breeds of animals (hereinafter referred to as "breeds") and from their commercial exploitation.
- (2) This Law applies to those varieties and breeds of economically important species of plants and animals which will be listed in a generally binding regulation.

Article 2

Definitions

For the purposes of this Law:

- (a) "Variety" shall mean a set of cultivated plants exhibiting characteristic properties and traits which it maintains during propagation and normal cultivation; lines, hybrids, components of varieties and hybrids, and clones shall also be deemed to be varieties;
- (b) "Propagating material of varieties" shall mean seeds, planting materials, nursery products and plants and their parts to be used for further propagation;
- (c) "Breed" shall mean a population of animals having the same origin and exhibiting characteristic morphological and physiological properties, which is capable of reproducing itself; lines and hybrids of animals, and production stocks of poultry shall also be deemed to be breeds;
- (d) "Propagating material of breeds" shall mean embryos, sperm, as well as living animals and ova to be used for further propagation;
- (e) "Originator" shall mean a physical person who created a variety or a breed through his/her own creative work; if several persons contributed through their creative work to the creation of a variety or a breed, those persons shall also be deemed to be an originator;
- (f) "Creation of a variety or a breed in the framework of the activities of a Czechoslovak organization" shall mean the creation of a variety or a breed in the performance of tasks under an employment, membership or other relationship of a similar nature to such an organization or with the material assistance therefrom;

- (g) “Breeder” shall mean:
1. a legal person who holds the right of ownership or an economic right in respect of a variety or a breed as the product of his breeding activity;
 2. an originator who created a variety or a breed outside the framework of his activity within a Czechoslovak organization;
 3. a legal or physical person who is not a Czechoslovak national and who holds the right in respect of a variety or a breed;
- (h) “Commercial exploitation of a variety or a breed” shall mean the production for sale, offer for sale and sale of propagating material of a variety or of propagating material of a breed;
- (i) “Owner of the Breeder’s Certificate” shall mean the person to whom the Breeder’s Certificate has been granted, or his successor in title.

PART TWO

THE GRANTING OF THE BREEDER’S CERTIFICATE AND THE RIGHTS AND DUTIES OF BREEDERS AND ORIGINATORS

Article 3

- (1) The breeder or his successor in title (hereinafter referred to as “applicant”) shall be granted, on the basis of his application, a Breeder’s Certificate in respect of a variety or a breed which complies with the conditions laid down in Articles 4 to 6.
- (2) The Breeder’s Certificate is to certify:
- (a) the creation of a variety or a breed;
 - (b) the name of the variety or the breed with the indication of the species (genus);
 - (c) originatorship;
 - (d) the right of the owner of the Breeder’s Certificate to exploit the variety or the breed commercially;
 - (e) the dates of commencement and termination of the protection of the rights in respect of the variety or the breed.

Article 4

Conditions for the Granting of the Breeder’s Certificate in Respect of a Variety

- (1) The conditions for the granting of the Breeder’s Certificate in respect of a variety shall be deemed to be complied with if the variety is:
- (a) distinct by at least one major trait or property from any other variety that is commonly known at the date of filing of the application;
 - (b) homogeneous to a level that is adequate to the biological properties of the material concerned;
 - (c) stable in its major traits while respecting the peculiarities of its requirements during propagation;
 - (d) new.
- (2) The condition of novelty shall be deemed to be complied with if the variety has not been sold or offered for sale:
- (a) in the territory of the Czechoslovak Socialist Republic for more than one year before the date of filing of the application (Article 16);
 - (b) in the territory of any other State:

1. for longer than six years before the date of filing of the application if it is a variety of fruit tree, of a forest or an ornamental woody species, or of grapevine;
 2. for longer than four years before the date of filing of the application if it is a variety of any other species.
- (3) The fact that the variety has been sold or offered for sale without the approval of its breeder shall not be considered detrimental to its novelty.

Article 5

Conditions for the Granting of the Breeder's Certificate in Respect of a Breed

- (1) The conditions for the granting of the Breeder's Certificate in respect of a breed to which special provisions¹ apply shall be deemed to be complied with if the breed has been certified or released pursuant to the said special provisions less than one year before the filing of the application (Article 16).
- (2) The conditions for the granting of the Breeder's Certificate in respect of a breed to which special provisions¹ do not apply shall be deemed to be complied with if the breed is:
- (a) distinct by at least one major trait or property from any other breed that is commonly known at the date of filing of the application;
 - (b) homogeneous to a level that is adequate to the biological properties of the breed concerned;
 - (c) stable in its major traits, while respecting the peculiarities ensuing from the environment in which the animals are bred;
 - (d) new;
 - (e) sufficiently large in number for reproduction.
- (3) The condition of novelty shall be deemed to be complied with if the breed has not been sold or offered for sale:
- (a) in the territory of the Czechoslovak Socialist Republic for longer than one year before the date of filing of the application;
 - (b) in the territory of any other State for longer than six years before the date of filing of the application.
- (4) The fact that the breed has been sold or offered for sale without the approval of its breeder shall not be considered detrimental to its novelty.

Article 6

Denomination of the Variety or the Breed

- (1) If a variety or a breed has been released in the Czechoslovak Socialist Republic pursuant to special provisions,² it shall bear the name established in accordance with the said provisions.
- (2) The denomination of a variety or a breed shall not:
- (a) consist solely of figures;
 - (b) be identical or liable to cause confusion with a denomination used in the Czechoslovak Socialist Republic or abroad for a variety or a breed of the same or a related genus, or otherwise infringe the rights of other breeders;
 - (c) be liable to mislead concerning the value, characteristics or origin of the variety or the breed, or the identity of the breeder or originator;

¹ Law of the Czech National Council No. 86/1972 of Zbírka zákonu (Collection of Laws) on the Breeding of Farm Animals; Law of the Slovak National Council No. 110/1972 of Coll. on the Breeding of Farm Animals; Law No. 102/1963 of Coll. on Fishery. [The footnotes are repeated in the text below in accordance with the original text.]

² Law No. 61/1964 of Coll. on the Development of Crop Production; Law of the Czech National Council No. 86/1972 of Coll.; Law of the Slovak National Council No. 110/1972 of Coll.

- (d) be identical or liable to cause confusion with the trademark, indication of source or geographical designation used for the same or similar products, with a famous trade mark irrespective of the kind of product, or otherwise infringe upon the rights and protected interests of other persons;
 - (e) be contrary to public interests;
 - (f) be unsuitable for linguistic reasons.
- (3) Foreign varieties or breeds shall retain their original denomination, or be given a translation thereof into the Czech or Slovak language, on the condition that this denomination complies with the provisions of Paragraph 2.

Article 7 Rights of the Originator

- (1) Originatorship shall arise from the creation of a variety or a breed and shall be non-transferable.
- (2) If an application is filed in respect of a Czechoslovak variety or breed, the originator shall be indicated in both the application and the Breeder's Certificate.
- (3) An originator who created a variety or a breed while being employed or otherwise engaged by a Czechoslovak organization shall have a right, in relation to the Czechoslovak owner of the Breeder's Certificate, to a share of the financial benefits derived from the commercial exploitation of the variety or the breed, including from the transfer of the Breeder's Certificate to a foreign person. If not otherwise agreed, the share shall always fall due on 1 April for the preceding calendar year in which the financial benefit was achieved.
- (4) If more than one originator contributed through their creative work to the creation of a variety or a breed, they shall share their rights in proportion of their participation in the creation of the variety or the breed. If the shares of the originators cannot be determined, they shall be deemed to be equal.
- (5) The procedure for the determination of the financial benefits derived from the commercial exploitation of a variety or a breed, the determination of the originator's share in the financial benefits and the modalities for its payment shall be laid down in a generally binding regulation.

Article 8 Rights and Duties Arising from the Breeder's Certificate

- (1) The owner of the Breeder's Certificate shall have the exclusive right to exploit the variety or breed commercially; the variety or breed shall not be commercially exploited during the period of protection without his consent.
- (2) Czechoslovak organizations which are engaged in the State system of the care of the development of animal breeding on the basis of a licence issued pursuant to special provisions¹ shall not be required to obtain such consent if the owner of the Breeder's Certificate in respect of a breed is a Czechoslovak legal or physical person.
- (3) The consent of the owner of the Breeder's Certificate shall not be required if the variety or the breed serves for the breeding of another variety or breed; this shall not apply to cases where such a variety or breed is used repeatedly as a component for the production of another variety or the formation of another breed for purposes of sale.
- (4) The right to commercially exploit a variety or a breed shall also include the right to authorize such commercial exploitation to other persons. Such authorization (licence) shall be granted by means of a written contract which shall include the conditions of use and the agreement on the licence fees.

Article 9

- (1) If a variety or a breed has been created by several originators in the framework of their activity for several Czechoslovak organizations, those organizations shall, as co-owners of the Breeder's Certificate, share the rights and duties in respect of the variety or the breed at the same ratio as the originators share their rights.

(2) The rights and duties of the co-owners of the Breeder's Certificate shall, in relation to third persons, be joint and several. As for their mutual claims, they shall settle accounts according to their shares.

Article 10
Compulsory Licences

(1) If the owner of a Breeder's Certificate refuses to authorize the commercial exploitation of the variety or the breed, or refuses to do so to the extent necessary, the Federal Ministry of Agriculture and Food (hereinafter referred to as "the Ministry") may substitute for his authorization, in the public interest, a compulsory licence.

(2) In the case where a compulsory licence is granted, the owner of the Breeder's Certificate shall be entitled to compensation through licence fees. If the owner of the Breeder's Certificate fails to reach agreement in respect of the value of the compensation with the organization to the benefit of which the compulsory licence has been granted, the decision shall be made, upon the proposal of either of them, by an authority referred to in Article 25, due account being taken of the costs of the breeding of the variety or the breed and of the financial benefits expected from its commercial exploitation.

Article 11
Transfer of the Breeder's Certificate

(1) The owner of the Breeder's Certificate may transfer the Certificate to any other person by written contract. All the rights and duties ensuing from the Breeder's Certificate, except the rights of the originator, are thus passed on to the new owner. The owner of the Breeder's Certificate shall be entitled to request the transferee to pay a financial compensation for the transfer.

(2) A co-owner of the Breeder's Certificate may transfer his share to any other co-owner. The Breeder's Certificate may be transferred to a third person only if none of the co-owners accepts a written offer of transfer within a period of one month.

(3) The contract relating to the transfer of the Breeder's Certificate shall come into force on the day of its entry in the Register of Protected Varieties or in the Register of Protected Breeds, both Registers being kept by the Ministry; the entry shall be made upon payment of an administrative fee.³

(4) Any change in the person of the owner of the Breeder's Certificate other than through transfer in accordance with paragraphs (1) to (3) may only occur in cases determined by Law.

(5) Any change in the person of the owner of the Breeder's Certificate shall be entered in the Register of Protected Varieties or in the Register of Protected Breeds.

Article 12
Term of Validity of the Breeder's Certificate

The Breeder's Certificate shall be in force from the day of the filing of the application:

- (a) for 25 years in the case of varieties of hop, grapevine, fruit, ornamental and forest woody species and rootstocks thereof;
- (b) for 20 years in the case of varieties of other species;
- (c) throughout the duration of the breed in the case of breeds.

Article 13
Termination of Validity of the Breeder's Certificate

- (1) The Breeder's Certificate shall cease to be in force if:
 - (a) its term of validity has elapsed;

³ Decree of the Federal Ministry of Finance, the Ministry of Finance, Prices and Wages of the Czech Socialist Republic and the Ministry of Finance, Prices and Wages of the Slovak Socialist Republic No. 231/1988 of Coll. on Administrative Fees.

- (b) the owner of the Breeder's Certificate has failed to pay in due course the administrative fee³;
 - (c) the owner (all co-owners) of the Breeder's Certificate renounces the Breeder's Certificate by a written declaration;
 - (d) the Breeder's Certificate is annulled (Article 23).
- (2) The termination of the validity of a Breeder's Certificate shall be entered in the Register of Protected Varieties or the Register of Protected Breeds and shall be published in the Bulletin of the Federal Ministry of Agriculture and Food (hereinafter referred to as "Bulletin").

Article 14

Protection of the Denomination

The denomination of a variety or a breed shall be used in the commercial exploitation of the variety or the breed and in further breeding. The denomination of the variety or the breed shall not be used for any other variety or breed of the same or a related genus, not even after the termination of the validity of the Breeder's Certificate.

Article 15

Relationships with Other Countries

- (1) Under the condition of reciprocity, any foreign physical and legal person shall have the same rights and duties as Czechoslovak nationals, provided that, if the rights of the owners of Breeder's Certificates are involved, this shall apply only where the State whose national such a person is or in which such a person has its seat, provides protection in respect of the species of plants or animals concerned. The Breeder's Certificate may be granted, despite the fact that this condition is not complied with, in cases deserving special consideration.
- (2) Provisions of international agreements binding on the Czechoslovak Socialist Republic shall remain unaffected.

PART THREE

PROCEDURE IN RELATION TO THE PROTECTION OF VARIETIES AND BREEDS

Article 16

Filing of the Application

- (1) The applicant (Article 3) shall be entitled to file an application for the protection of a variety or a breed.
- (2) The application shall be filed with the Ministry; the filing shall confer a right of priority on the applicant.
- (3) The right of priority, as it may be derived from an international agreement, shall be claimed already in the application and shall be proved by due evidence within three months, failing which such a right of priority shall not be taken into consideration. The application shall contain the date and the name of the State of the first filing abroad from which the applicant derives his right of priority.
- (4) The Ministry shall enter the applications, in the order in which they are received, in the Register of Applications in Respect of New Varieties or the Register of Applications in Respect of New Breeds.

Article 17

Examination of the Application

- (1) If an application does not conform to the prescribed requirements, the Ministry shall request the applicant to remedy the insufficiencies within a prescribed period. In cases deserving special attention the Ministry may assist in remedying the insufficiencies. If the insufficiencies are not remedied within the prescribed period, the procedure shall be discontinued. The applicant shall be notified of this eventuality at the time when the period is prescribed.
- (2) If the applicant remedies the insufficiencies in due course, his right of priority shall remain unaffected.
- (3) The requirements for the application shall be laid down by a generally binding regulation.

Article 18

Publication of the Application

- (1) The Ministry shall publish information on the filing of applications in its Bulletin. Justified objections against a filed application may be raised, with the Ministry, within three months from its publication. They may be raised by any legal or physical person. The decision on the objections shall be made by the Ministry. If an expert opinion is required for the decision on the objections (Article 20), the decision shall be made by the Ministry within three months from the receipt of the said expert opinion.
- (2) A change in the applicant may be made:
 - (a) with the approval of the applicant;
 - (b) without his approval, on the basis of a valid decision of an authority referred to in Article 25.
- (3) If, during the course of the processing of the application, an argument arises as to whether the application has been filed by an entitled person, the Ministry shall continue to process the application, but the decision on the Breeder's Certificate shall only be issued after the decision of an authority referred to in Article 25 has come into force.
- (4) Any change in the applicant shall be entered in the Register of Application in Respect of New Varieties or Register of Applications in Respect of New Breeds.

Article 19

Applications for the Protection of Czechoslovak
Varieties and Breeds in Other Countries

- (1) An application for the protection of a Czechoslovak variety or breed may only be filed in another country after the filing in the Czechoslovak Socialist Republic; the Ministry may grant a derogation from this obligation where important trade policy interests are involved. This provision shall apply unless otherwise provided in an international agreement binding on the Czechoslovak Socialist Republic.
- (2) The person who files an application in respect of a Czechoslovak variety or breed in another country shall notify the Ministry of the filing.

Article 20

Determination of the Traits and Properties of
Varieties and Breeds

- (1) Compliance with the conditions laid down in Articles 4 to 6 shall be examined by the Ministry on the basis of opinions of competent specialist authorities and organizations and, in the case of breeds to which special provisions apply,¹ on the basis of the decision of an appropriate authority.
- (2) The competent specialist authorities and organizations shall, if requested to do so by the Ministry, determine the traits and properties of the varieties and breeds within a period determined upon agreement between them and the Ministry. For this purpose the applicant shall provide free of charge biological material and documentation to the competent specialist authority or organization.
- (3) When examining varieties and breeds, the competent specialist authorities and organizations may also use the results of tests performed in other countries.

(4) The competent specialist authorities and organizations shall be entitled, in relation to the applicant, to compensation for the operations associated with the examination of varieties and breeds, pursuant to the valid price regulations.

Article 21

The Granting of the Breeder's Certificate

- (1) The Ministry shall decide on the granting of Breeder's Certificate within three months from the receipt of the opinion of the competent specialist authority or organization, or from the receipt of the decision of the appropriate authority.
- (2) The decision on the granting of the Breeder's Certificate shall be entered in the Register of Protected Varieties or the Register of Protected Breeds. A Czechoslovak originator who is not the applicant shall be given a copy of the Breeder's Certificate.
- (3) The Breeder's Certificate shall be published in the Bulletin; the Breeders' Certificates in respect of varieties shall also be entered in the State Variety Book.⁴

Article 22

Verification Tests

- (1) While the Breeder's Certificate is in force, the owner of the Breeder's Certificate shall maintain the variety or the breed. If doubts arise as to whether the variety or the breed still complies with the conditions laid down in Article 4(1)(b) and (c) or in Article 5(2)(b), (c) and (e), the owner of the Breeder's Certificate shall have the obligation, when requested to do so by the Ministry, to provide free of charge the biological material and documentation for the verification of the compliance with the said conditions.
- (2) The verification shall be performed by authorities and organizations entrusted with the tests by special provisions.⁵ In the case of breeds to which no special provisions¹ apply the verification shall be performed by authorities and organizations entrusted by the Ministry.
- (3) The authorities and organizations referred to in paragraph (2) shall be entitled, in relation to the owner of the Breeder's Certificate, to compensation for the operations associated with the performance of the verification tests, pursuant to the valid price regulations. This provision shall not apply to the verification tests of breeds to which special provisions¹ apply.

Article 23

Decision on Annulment of the Breeder's Certificate

- (1) The Ministry shall or may annul the Breeder's Certificate if:
 - (a) it is subsequently proved that the conditions for its granting were not complied with; in such cases it shall be deemed that no such Certificate was ever granted;
 - (b) the variety or the breed no longer exhibits the traits which it exhibited when the Breeder's Certificate was granted;
 - (c) the biological material and the documentation necessary for the verification tests have not been delivered properly and on time (Article 22);
 - (d) the owner of the Breeder's Certificate fails to defray the charges for the verification tests within the prescribed period.
- (2) The annulment of the Breeder's Certificate shall be entered in the Register of Protected Varieties or the Register of Protected Breeds and shall be published in the Bulletin. The annulment of Breeders' Certificates in respect of varieties shall also be entered in the State Variety Book.⁴

⁴ Law No. 61/1964 of Coll.

⁵ Law No. 61/1964 of Coll.; Law of the Czech National Council No. 86/1972 of Coll.; Law of the Slovak National Council No. 110/1972 of Coll.; Law No. 102/1963 of Coll.

PART FOUR JOINT, TRANSITIONAL AND FINAL PROVISIONS

Article 24 Administrative Procedure

The procedure before the Ministry shall be governed by the General Administrative Rules,⁶ unless otherwise provided in this Law.

Article 25 Settlement of Disputes

Civil courts and boards of arbitration in economic affairs shall, each within their jurisdiction, be competent to decide disputes concerning legal relationships based on this Law.

Article 26 Protection of Rights

In cases of infringement of a right protected under this Law, the owner of the Breeder's Certificate, or the originator if he is not the owner of the Breeder's Certificate, whose right has been infringed, may claim the infringement to be enjoined and the consequences of the infringement to be removed. If damage has been caused by the infringement, the person who suffered the damage shall be entitled to compensation. In cases of harm other than damage to property, the injured person shall be entitled to adequate satisfaction, which may also take the form of monetary compensation.

Article 27 Penal Sanctions to Organizations

- (1) Any organization which:
 - (a) infringes this Law during the term of validity of the Breeder's Certificate by:
 1. commercially exploiting a variety or a breed without the approval of the owner of the Breeder's Certificate, or
 2. not using the registered name while commercially exploiting a variety or a breed, or using the registered name for another variety or breed of the same or a related genus;
 - (b) files an application for protection in respect of a Czechoslovak variety or breed in another country without being entitled to do so (Article 19(1)); or
 - (c) fails to notify the Ministry of its application for the protection of a Czechoslovak variety or breed in another country (Article 19(2))shall be liable to a fine, imposed by the Ministry, not exceeding 500,000 Czechoslovak crowns.
- (2) In determining the fine, the Ministry shall consider mainly the seriousness, manner, duration and consequences of the infringement.
- (3) The fine may only be imposed within one year from the day on which the Ministry learned of the infringement and within three years from the day on which the infringement was committed. The fine shall be paid within 30 days from the day on which the decision on its imposition came into force.
- (4) Monies drawn from the fines shall be paid into the State Budget of the Federation.

Article 28 Misdemeanor

Any person who, without being entitled to do so, commercially exploits a variety or a breed for which a Breeder's Certificate has been issued or files an application for protection in respect of a Czechoslovak

⁶ Law No. 71/1967 of Coll. on Administrative Procedure (Administrative Order).

variety or breed in another country (Article 19(1)) or fails to notify the Ministry of his application for the protection of a Czechoslovak variety or breed in another country (Article 19(2)) shall be deemed to have committed a misdemeanor for which he may be liable to a fine not exceeding 5,000 Czechoslovak crowns.

Article 29
Enabling Provisions

(1) The Ministry, upon agreement with the Ministry of Agriculture and Food of the Czech Socialist Republic, the Ministry of Agriculture and Food of the Slovak Socialist Republic, the Ministry of Forestry, Water Management and Woodworking Industry of the Czech Socialist Republic, the Ministry of Forestry, Water Management and Woodworking Industry of the Slovak Socialist Republic and the Federal Ministry of Foreign Trade, shall issue a generally binding regulation for the implementation of Article 1(2).

(2) The Ministry, upon agreement with the Ministry of Agriculture and Food of the Czech Socialist Republic and the Ministry of Agriculture and Food of the Slovak Socialist Republic, shall issue a generally binding regulation for the implementation of Article 7(5) and Article 17(3).

Article 30
Transitional Provision

(1) The varieties which, on the basis of special provisions,⁴ have been entered as original varieties in the State Variety Book before the entry into force of this Law and have not been commercially exploited for longer than 10 years before the entry into force of this Law, as well as the existing breeds which have been certified or released pursuant to special provisions,¹ may be the subject of applications for protection in accordance with this Law. The provisions of Article 7(3) shall not apply to those varieties.

(2) The applications referred to in paragraph (1) shall be filed within 12 months from the day on which this Law enters into force.

(3) The owner of a Breeder's Certificate may commercially exploit the variety or the breed only if the variety or the breed for which the Breeder's Certificate has been issued has also been released pursuant to special provisions.² In such cases the owner shall be regarded as if he were an entrusted organization pursuant to the said special provisions.

Article 31

Article 2(1), second sentence, of Notice No. 62/1964 of Coll. of the Ministry of Agriculture, Forestry and Water Management and the Ministry of Justice, containing implementing regulations to the Law on the Development of Crop Protection, is hereby amended so as to substitute "are submitted" for the words "are submitted by entrusted organizations (Article 1(1))".

Article 32
Abolishing Provisions

The following are hereby abolished:

1. Article 4(2) and (4) of Law No. 61/1964 of Coll. on the Development of Crop Production;
2. Article 1 and Article 2, third sentence, of Notice No. 62/1964 of Coll. of the Ministry of Agriculture, Forestry and Water Management and the Ministry of Justice, containing implementing regulations to the Law on the Development of Crop Production.

Article 33
Entry into Force

This Law shall enter into force on January 1, 1990.

[Annex III follows]