

# **Act on Plant Variety Rights 21.8.1992/789** (Unofficial translation)

*(Amendments up to 2000/651 included; Amendments 2005/76 and 2005/306 not included )*

## **Chapter 1** General provisions

### **Section 1** – Plant variety rights

The breeder of a plant variety or anyone to whom the breeder's variety rights have been assigned (variety holder) may register exclusive right to professional exploitation of the variety as provided in this Act.

**Section 2** has been repealed (5.3.1999/238).

## **Chapter 2** Conditions for granting plant variety rights

### **Section 3** – Conditions concerning breeders

A breeder's right to a plant variety may be granted to:

- 1) a person who has bred the variety in Finland;
- 2) a breeder who is a citizen of a member country of the international UPOV union founded to protect new plant varieties, hereinafter referred to as 'the union';
- 3) a breeder with registered offices within the territory of a union member country;
- 4) a breeder who is a citizen of a member country of the World Trade Organization, hereinafter referred to as 'the organization';
- 5) a breeder who has registered offices within the territory of an organization member country;
- 6) anyone to whom the right granted in accordance with paragraphs 1-5 has been assigned. (238/1999)

What is provided above in subsection 1 also applies to applicants for plant variety rights who have discovered a variety and developed it further, including those to whom their rights have been assigned. (238/1999)

### **Section 4** – Conditions concerning varieties

Plant variety rights may only be granted for a variety:

- 1) that can be clearly distinguished from other varieties which have become commonly known before submission of the application or, if a priority right has been requested for the

application prior to this date, before the date as of which a priority right is requested for the application; (238/1999)

2) that is sufficiently uniform; and

3) whose essential characteristics are stable when propagated in the manner proposed by the breeder.

### **Section 5 – Novelty requirement**

Plant variety rights may be granted if propagated or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the variety holder, for purposes of exploitation of the variety: (238/1999)

1) in this country earlier than one year before the application has been filed or, if a priority right has been requested for the application, earlier than one year before the date as of which a priority right is requested for the application; (238/1999)

2) abroad earlier than six years before the application has been filed or in the case of a vine, fruit tree, forest tree, ornamental tree or their rootstock; or

3) abroad earlier than four years before the application is filed if the plant in question is other than those referred to in paragraph 2.

## **Chapter 3**

### **Scope of protection**

### **Section 6 – Protection provided by plant variety rights (238/1999)**

Without the variety holder's consent, no party other than the holder of the variety is allowed to:

1) produce propagating material for the variety;

2) condition the variety's propagating material the purpose of propagation;

3) offer the variety's propagating material for sale;

4) sell or otherwise market the variety's propagating material;

5) export the variety's propagating material from Finland;

6) import the variety's propagating material to Finland; and

7) stock the variety's propagating material for any of the purposes listed above.

If the variety holder has not had reasonable opportunity to exercise his/her rights in relation to the propagating material, the acts referred to in subsection 1 in respect of harvested

material of the protected variety, including entire plants and parts of plants, require the authorization of the variety holder.

**Section 6a** – Scope of plant variety rights (238/1999)

The variety holder's rights prescribed above in section 6 also apply to:

- 1) plants that are not clearly distinguishable from registered varieties;
- 2) varieties which are essentially derived from the protected variety (derived varieties), where the protected variety is not itself an essentially derived variety; and
- 3) varieties that can be produced only by repeated use of a protected variety (hybrids).

**Section 6b** – Exceptions to plant variety rights (238/1999)

Plant variety rights do not restrict the use of a variety:

- 1) privately for other than commercial purposes;
- 2) for experimental purposes; or
- 3) for breeding or discovering and developing other varieties.

Subject to the conditions laid down in section 6c, farmers have the right to sow the seed of a variety produced by them on their own farms.

**Section 6c** – Right to grow a protected variety and duty to pay remuneration for it (238/1999)

By paying a remuneration, farmers obtain the right to use harvested crops of plants covered by the legal protection referred to in this Act, not including hybrids, for propagation purposes on their own farms. This right applies only to cultivation of the varieties of the following plant species: oats, barley, rye, wheat, triticale, rape, colza, seed flax, pea, broad bean, potato and buckwheat.

The remuneration payable must be substantially lower than the royalty payable for the licensed production of propagating material. A contract may be made between the variety holder and the farmer or between organizations representing them on an equitable remuneration payable to the variety holder. Where such contract has been concluded or does not apply, the farmer has the duty to pay to the variety holder a remuneration of 50 per cent of the sum payable for the licensed production of propagating material.

Farmers who possess an arable area of less than 10 hectares are entitled to use the propagating material of a protected variety in the manner referred to in paragraph 1 without paying remuneration. However, remuneration must be paid in the case of a protected potato variety if the cultivation area of the variety is larger than 2 hectares or if the area of early potato cultivated under covering is larger than 1 hectare.

**Section 6d** – Duty to provide variety cultivation data (238/1999)

Farmers and those preparing propagating material are required to provide on request any data required by the authorities and the variety holder to establish the duty to pay remuneration.

#### **Section 6e** – Exhaustion of plant variety rights (238/1999)

Plant variety rights do not extend to acts concerning any material of protected varieties or plants referred to in section 6a, which has been sold or otherwise marketed by the holder or with the holder's consent in any state within the European free trade area unless such acts involve:

- 1) further propagation of the variety; or
- 2) an export of material of the variety to a third country which does not protect the varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

The material referred to in subsection 1 means, in relation to a variety:

- 1) propagating material of any kind;
- 2) harvested material from the variety's cultivation area, entire plants and parts of plants; and
- 3) any product made directly from the harvested material.

#### **Section 7** – Ornamental plants

Plant variety rights also apply to seedlings of ornamental plants or plant parts that are usually used for purposes other than propagation if they are used commercially as propagating material for producing ornamental plants or cut flowers.

**Section 8** has been repealed (5.3.1999/238)

### **Chapter 4**

#### Registration application and its processing

#### **Section 9** – Registration authority

The registration authority is the Plant Variety Board, which maintains a plant variety register.

The Plant Variety Board is appointed by the Ministry of Agriculture and Forestry. The Board comprises a chairman, a deputy chairman and a maximum of ten members. Each member has a deputy. The Board is appointed for three years at a time. Further provisions concerning the Board are issued by decree.

#### **Section 10** – Registration application

Registration applications are made in writing to the registration authority.

The registration application must explain how the new variety differs from other varieties and give the variety a denomination. The application must state the name of the breeder. If a party other than the breeder of the variety applies for plant variety rights the applicant must prove his/her right to the variety. The applicant must assure that the variety has not been offered for sale or marketed in a manner referred to in section 5 prior to the application.

The applicant must pay a registration fee.

The date on which the application documents are submitted to the authority and the registration fee is paid is registered as the date of the application.

### **Section 11 – Variety denomination**

It must be possible to distinguish a variety from other varieties by its denomination.

The denomination of a variety must not be approved if it:

- 1) consists solely of figures, except where this is established practice for designating varieties;
- 2) is liable to mislead the public;
- 3) is against the law, public order or good practice;
- 4) may be confused with the denomination of a variety of a species in the same or closely related genus that has been entered or been put up for entry in the official plant variety register or that is used from the propagating material of such a variety;
- 5) may be confused with a trademark, name, company name or other identification symbol for which a party other than the applicant has been granted protection, so that this protection held by the other party would constitute an impediment to registration of a variety denomination as a trademark for the plant material or similar product derived from the variety; or
- 6) may be confused with a trademark of such plant variety material or similar products on which the applicant has been granted protection.

### **Section 12 – Priority right period (238/1999)**

If a variety holder has previously applied for plant variety rights within the jurisdiction of a union member, the registration application, provided it is submitted within 12 months of submission of the previous application (priority right period), must, when so requested, be considered to have been submitted simultaneously here.

### **Section 13 – Remedying defects**

If an applicant has not observed the provisions concerning application or if the registration authority discovers other impediments to registration, a preliminary ruling must be issued to require the applicant to submit a statement or remedy the defect within a fixed time.

If the applicant does not submit a statement or take action to remedy the defect within the period fixed by preliminary ruling, the application must be dismissed. The preliminary ruling referred to above in subsection 1 must mention this consequence.

A dismissed application will be re-processed if the applicant so requests within a month of expiry of the period laid down by preliminary ruling, and makes a statement or takes action to remedy the defect and pays a re-processing fee within the same period.

#### **Section 14** – Refusing applications

If, after the applicant has submitted a statement, there continues to be an impediment to approval of the application, the application must be refused unless there is reason to issue a new preliminary ruling concerning the applicant.

#### **Section 15** – Claim for a better right

If a third party should claim to the registration authority that it has a better right to a variety than the applicant and if the matter is unclear, the authority may issue a preliminary ruling admonishing the third party to institute court proceedings within a fixed period. If court proceedings are not instituted within the fixed period, the claim is ignored, which must be mentioned in the preliminary ruling.

If a dispute over a better right to a variety is pending in court, the processing of a registration application can be suspended until the matter is finally resolved.

#### **Section 16** – Transferring applications

If a third party proves to the registration authority that it has a better right to a variety than the applicant, the registration authority must, on the third party's request, transfer the application to the third party. The transferee must then pay a new registration fee.

The application must not be left unprocessed, approved or cancelled until the transfer request has been finally resolved.

#### **Section 17** – Publication of application

If an application meets the requirements, the registration authority must allow the public an opportunity to make claims concerning said application by publishing it.

Claims concerning applications must be submitted to the registration authority in writing within the period set by the authority.

#### **Section 18** – Examination of varieties

The registration authority must ensure that varieties are examined unless, for special reasons, this is considered unnecessary. (238/1999)

Applicants must provide the examiner with the necessary plant material and other necessary information.

Applicants requesting a priority right on the basis of an application made in another country must submit the plant material and other necessary information within four years from the expiry of the priority period.

#### **Section 19** – Decisions on applications

When the period reserved for the submission of claims has expired and necessary investigations have been carried out concerning the variety in question, the processing of the application continues and the registration authority makes a decision on registration of the variety.

Applicants must be reserved an opportunity to make a statement on any objections made and on the investigation carried out.

#### **Section 20** – Registration of plant variety rights

When a decision by the registration authority referred to in section 19 has gained legal force, the variety in question must be entered in the plant variety register. The registration must be published. The applicant is given a certificate of registration.

Decisions to refuse applications must be published after they have gained legal force.

### **Chapter 5**

Duration of plant variety rights and using and amending variety denominations (238/1999)

#### **Section 21** – Duration (238/1999)

Plant variety rights are in force as from the date on which the registration authority makes the decision to include the variety in question in the register. The right can be kept in force by making annual payments for 25 years, except in the case of potato, trees and vines, when the period is 30 years, as from the beginning of the year following the date of the decision.

## **Section 22** – Using variety denominations

When propagating material of a registered plant variety is kept for sale, its registered denomination must be used even after the plant variety rights have expired or otherwise been terminated.

A variety's registered denomination or a denomination easily confused with it must not be used for varieties of the same or closely related species or for the propagating material of such a variety for as long as the variety denomination is registered.

## **Section 22a** – Cancelling and amending variety denominations (238/1999)

The registration authority must cancel a registered variety denomination:

- 1) if the variety denomination has been registered contrary to the provisions of this Act and an impediment to registration continues to exist;
- 2) if the holder so requests, presenting legal justification; or
- 3) if the holder or a third party presents a court decision forbidding the use of a variety denomination.

The registration authority must notify holders of any claims to cancel their denominations and require holders to submit a new denomination proposal within 30 days of having received notice of such a claim. If the variety is no longer protected, the registration authority may itself propose a new denomination.

Proposals for new denominations must be examined and published as provided in the Decree on Plant Variety Rights (907/1992). Following approval, the new denomination must be registered and published. The previous denomination must be cancelled at the same time.

## **Chapter 6**

### Licences, compulsory licences and entries in the register

## **Section 23** – Licences

If a variety holder has given another party permission to use a registered variety (licence), this party may not assign this right to a third party without agreement. (238/1999)

If a licence belongs to a company, it may be assigned to a third party in the context of a transfer of the company unless otherwise agreed.

## **Section 24** – Compulsory licences

If propagating material for a registered variety is not produced for the market under reasonable terms and conditions and in sufficient quantities relative to general food supply needs, a party wishing to exploit the variety professionally in Finland may be granted a compulsory licence to do so, provided there is no justification for the variety holder's



behaviour. A compulsory licence also entails the right to obtain necessary amounts of the variety's propagating material from the variety holder.

A compulsory licence may only be granted to parties considered to meet the conditions for exploiting the variety covered by plant variety rights in an acceptable manner and in compliance with conditions laid down in the compulsory licence.

A compulsory licence does not prevent the variety holder from exercising his/her own rights or from granting licences.

Compulsory licences are granted by courts, which prescribe the extent of use of a registered variety and confirm relevant considerations and other conditions for the compulsory licence. A court of law may, if the variety holder so requires, cancel a compulsory licence or confirm new conditions for it if essential changes in circumstances so demand.

#### **Section 24 a – Reciprocal compulsory licences (651/2000)**

If the holder of a patent concerning a biotechnological invention cannot exploit it without infringing a prior plant variety right, the holder may apply for a compulsory licence for non-exclusive use of the plant variety protected by that right, subject to payment of an appropriate royalty. If such a licence is granted, the holder of the variety right will be entitled to a cross-licence on reasonable terms to use the protected invention.

Applicants for the licences referred to in subsection 1 must demonstrate that they have applied unsuccessfully to the holder of the patent or of the plant variety right to obtain a contractual licence and that the invention constitutes significant technical progress of considerable economic interest compared with the protected plant variety.

Provisions on the plant breeder's right to be granted a compulsory licence for use of a patent-protected invention are laid down in the Act on patents. (550/1967).

#### **Section 25 – Register entries**

When plant variety rights have been transferred or a licence has been granted to someone or assigned to a third party, this must be entered in the plant variety register on request. The same applies to pledging plant variety rights. Granting of a compulsory licence is always entered in the register, however.

If it is shown that a licence, lien or compulsory licence has expired, the entry must be removed from the register.

A fee is charged for register entries.

The variety holder is considered to be the party last entered in the register as variety holder.

## **Chapter 7**

### Termination of plant variety rights

#### **Section 26** – Waiving plant variety rights

A variety holder may waive his/her rights by submitting a written notification to the registration authority, in which case the authority will remove the variety from the register.

Plant variety rights are terminated if an annual fee is not paid within the prescribed period.

#### **Section 27** – Annulment

A court must annul plant variety rights if, on the date of the application or, if the variety holder has been granted a priority right as referred to in section 12, on the date of the priority right:

- 1) the conditions for distinctness or novelty of the variety were not met;
- 2) the conditions for uniformity or stability were not met, provided that registration of the variety was essentially based on data provided by the applicant;
- 3) European Community plant variety rights had been granted to the plant variety; or
- 4) the person registered as variety holder was not entitled to holdership and it has not been demonstrated to the registration authority that some party other than the applicant has a better right to the variety. (238/1999)

In matters concerning annulment of plant variety rights, the court must request an opinion from the registration authority.

In other matters related to plant variety rights the court may obtain an opinion from the registration authority if there is reason to do this.

#### **Section 28** – Forfeiture (238/1999)

The registration authority may declare a plant variety right forfeit if:

- 1) the variety holder is unable to produce propagating material for the variety with identifying features corresponding to those of the registered variety;
- 2) the variety holder, in spite of having received a request to that effect from the registration authority, does not provide propagating material, documents and other information concerning the variety which are needed to ensure that the variety is being maintained appropriately, or the variety holder does not allow inspection of the measures carried out to maintain the variety; or
- 3) the variety denomination has been cancelled after the rights have been granted and the variety holder does not propose an acceptable new variety denomination.

## **Chapter 8**

### Private law protection

#### **Section 29** – Prevention of infringement

If someone infringes an exclusive right acquired through plant variety rights a court may forbid continuation or repetition of the act.

#### **Section 30** – Declaratory action

A variety holder or a party who is entitled under a licence or compulsory licence to exploit a plant variety protected under plant variety rights may initiate declaratory action concerning whether he/she is entitled to protection from another party under the plant variety rights granted if the matter is unclear and causes him/her harm.

Anyone who exploits or intends to exploit a plant variety protected on the basis of plant variety rights may, on the same conditions, initiate declaratory action against the holder of the plant variety rights concerning whether said plant variety rights constitute an impediment to said activity.

#### **Section 31** – Damages

Anyone who intentionally or through negligence infringes plant variety rights or the provisions of section 22 on using variety denominations is liable to pay remuneration for exploiting the variety and compensation for other damage caused by the infringement. If the negligence is minor, compensation for the damages can be adjusted.

If infringement of plant variety rights or the provisions of section 22 on using variety denominations is not intentional or caused by negligence, the infringing party is liable to pay compensation only to a reasonable amount.

Compensation for damages may not be claimed for a period longer than five years immediately prior to the institution of proceedings based on infringement of plant variety rights or the provisions of section 22 on using variety denominations.

If plant variety rights have been annulled by a court decision that has gained legal force, compensation for damages cannot be claimed.

What is provided in the Tort Liability Act (412/1974) also applies, as appropriate, to the compensation prescribed in this section.

#### **Section 31 a** – Farmers' liability in certain cases (238/1999)

Farmers who neglect the duty prescribed in section 6c are liable to pay compensation. The amount of the compensation is determined in accordance with the European Community provisions on plant variety rights.

#### **Section 32** – Returning plant variety material

On the institution of proceedings by a party suffering from infringement, a court may, within reasonable limits, prescribe that the plant variety material infringed must be surrendered to the injured party against payment. The above does not apply to parties who have obtained the plant material or a special right thereto in good faith and have not themselves committed any infringement of plant variety rights.

The plant material referred to in subsection 1 above may be confiscated if the injured party files a claim demanding surrender of the plant variety material in accordance with chapter 7 of the Execution Act.

### **Section 33** – Temporary protection

If, after submitting an application as referred to in section 10, a party other than the applicant exploits professionally a variety for which plant variety rights have been applied for, provisions concerning infringement of plant variety rights must be applied correspondingly if such rights are consequently granted.

Punishments referred to in chapter 9 of this Act cannot be ordered for action taking place after submission of an application as referred to in section 10 that infringes the plant variety rights but has taken place before the plant variety rights are granted. Damages that have arisen before publication of the application referred to in section 17 can only be ordered payable under section 31(2). (721/1995)

If a claim for damages is filed within a year of the registration of plant variety rights, the provision in section 31(3) does not apply.

## **Chapter 9** Penal provisions

### **Section 34** – Infringement of plant variety rights (721/1995)

Anyone who intentionally infringes the exclusive right prescribed in sections 6, 7 or 8 must be ordered to pay a fine for infringement of plant variety rights.

A public prosecutor may not bring charges for infringement of plant variety rights unless the injured party institutes proceedings.

### **Section 34 a** – Failure to comply with the duty to provide variety cultivation data (238/1999)

Farmers and conditioners of propagating material who intentionally or through negligence fail to fulfil their duty as provided in section 6d must be ordered to pay a fine for failure to comply with the duty to provide variety cultivation data.

### **Section 35** – Misuse of variety denominations

Anyone who intentionally or through negligence violates the provisions of section 22 on using variety denominations must be ordered to pay a fine for misuse of a variety denomination unless the violation is minor.

## **Chapter 10**

### Miscellaneous provisions

#### **Section 36** – Using representative agents

If an applicant for or a holder of plant variety rights has no domicile in Finland, the holder must have a resident agent in Finland with authorization to represent the applicant in all matters related to plant variety rights.

#### **Section 37** – Appeal

An applicant for or a holder of plant variety rights may appeal a final decision made by the registration authority on plant variety rights if the decision is against him/her. A claimant may appeal a decision approving an application in spite of an appropriately filed claim against it. If the claimant withdraws his/her appeal, the issue can nevertheless be investigated should special cause exist.

Applicants may appeal decisions approving requests to transfer applications as referred to in section 16. Claimants can appeal decisions refusing claims for transferral.

Decisions made by registration authorities are appealed to the Supreme Administrative Court. Appeals must be filed within 60 days of having received notification of the decision.

#### **Section 38** – Legal venue

The court of jurisdiction in cases handled under this Act is the Helsinki City Court.

#### **Section 39** – Fees

The fees prescribed in this Act must be equivalent to the total costs incurred by the State in providing the service (cost value). The registration fee and the annual fee can, however, be determined in such a way that the total amount charged is an estimated equivalent of the total cost incurred by the State in maintaining the register.

A fee of the same amount may be charged for similar services provided by the Plant Variety Board even when the costs incurred by the State in providing the service differ. When determining the amount of such a fixed fee, the average overall costs of the services must be taken into account.

For reasons of international agreements, trade policy or various practices, a fee that is higher or lower than the cost value or the fee calculated in accordance with subsection 1, sentence 2, may be ordered to be charged or a fee may be waived completely.

In other respects, what is provided in the Act on the Charge Criteria of the State (150/1992) applies to fees.

#### **Section 40** – Further provisions

Further provisions on the implementation of this Act will be issued by decree. The Plant Variety Board may issue detailed provisions on registration applications and their processing.

**Section 41** – Entry into force

This Act enters into force on 15 October, 1992. However, section 8(2)(1) enters into force on a date to be prescribed by decree.

Measures necessary for the implementation of this Act may be undertaken before the Act's entry into force.

*(Transitional provisions not included)*

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