



PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

**KUVENDI I KOSOVËS**  
**СКУПШТИНА КОСОВА**  
**ASSEMBLY OF KOSOVO**

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**Law No. 02/L-98**

**ON PROTECTION OF PLANTS VARIETIES**

The Assembly of Kosovo,

Pursuant to Chapter 5.1 (n) and 9.1.26 (a) on the Constitutional Framework for Provisional Self Government in Kosovo, (UNMIK Regulation No. 2001/9 of 15 May 2001),

With the purpose of legal adjustment for protection of plants varieties as well as the rights of plant's breeders right,

Hereby adopts the following:

**LAW ON PROTECTION OF PLANTS VARIETIES**

**CHAPTER I**  
**GENERAL PROVISIONS**

**Article 1**  
**Purpose**

The purpose of this Law is to regulate the procedures for protections of plants varieties, granting and protection of the plant breeder's right.

**Article 2**

This law provides the conditions for varieties of all plant genera and plant species including the cross-breeds between genera and species that may be protected by this law

**Article 3**  
**Definitions**

The used expressions for the purpose of this Law have the following meanings:

**Ministry** means Ministry of Agriculture, Forestry and Rural Development.

**Breeder** means the natural or legal person, who has created, bred, discovered created the variety on his own or in cooperation with other natural or legal person.

**Applicant** means the natural or legal person, who has submitted the application.

**The plant breeder's right** means all the rights that have to do with the right of plant breeder's right under this law.

**The holder of the plant breeder's right** means a natural or legal person to whom has been granted plant breeder's right.

**Variety** means a plant grouping within a single botanic taxon of the lowest rank which grouping irrespective of the conditions for growing, can be:

- (i) defined by characteristics resulting from a given genotype or combination of genotypes,
- (ii) distinguished from any other plant grouping with an expression of at least one of these characteristics,
- (iii) considered as a unit with regard to its suitability for being propagated unchanged.

**Protected variety** means a variety for which was issued the decision for its protection.

**The propagating material of the protected variety** means any part of propagating material or harvested material of the protected variety which can be used for further multiplication of that variety.

**Official sample** means the official sample of the propagating material of the protected variety.

**Register of applications** means the register and procedures for protection of plant variety.

**The office for protection of plants variety** means the office for the rights of plant variety within Ministry of Agriculture, Forestry and Rural Development, which office is responsible for all matters related to the granting the plant breeder's right.

**The compulsory license** means granting of license for users of protected variety in the case of public interest and non fulfillment of set out the criteria in article 42 paragraph 1 of this law.

**Person** means any natural or legal person.

#### Article 4

All the procedures with regard to the protection of one variety, register of the application as well as register of the protected varieties will be managed by the Office of plant variety's protection.

### CHAPTER II CONDITIONS FOR PLANT VARIETY PROTECTION

#### Article 5

5.1. Variety shall be protected by granting the plant breeder's right.

5.2. The plant breeder's right shall be granted where the variety is:

- (a) new,
- (b) distinct,
- (c) uniform,
- (d) stable and
- (e) identified by the denomination defined by this law.

Article 6  
New variety

6.1. The variety is a new at the date of the application, if it has been exploited with the consent of the person authorized in Kosovo for a time not more than one year before the application.

6.2. In the cases when the application is outside of Kosovo for a time no more than four years before the date of the application and in case of trees and vine no more than six years before the said date.

6.3. The sales or economical exploitation of the variety under paragraph 6.1 and 6.2 of this article doesn't include:

- (a) utilization and trade of the variety without consent or knowing of the authorized person,
- (b) contract transfer of the rights in the variety,
- (c) contract for cultivation, propagating, processing and storing propagating material or harvested material of the variety for the authorized person provided that person entirely keeps exclusive ownership right to reproduced propagating material, harvested material as well as for their products,
- (d) field trials and laboratory tests or small scale processing trials with the purpose of evaluating the value for cultivation and use of the variety provided that it is done by the authorized person,
- (e) official testing of the variety in order to enter it in the List of varieties,
- (f) selling the harvested material from the different phases of the creation of new variety provided that this harvested material is intended for final use.

6.4. Propagating material of the variety being repeatedly used for production or creation of another variety or a hybrid is considered exploited for benefit purposes, when the plants or parts of plants of another variety were exploited.

Article 7  
Distinctness

7.1. The variety is distinct, if it is clearly different on the basis of at least one important characteristics from any another recognized variety.

7.2. The variety is recognized, if:

- (a) it has been protected and listed in the variety register in any other country up to that day;
- (b) an application for variety protection or listing the variety in a variety register was filled in any other country and the procedure is completed by variety protection or entry of the variety in the register of varieties, and
- (c) propagating material of the variety or harvested material has been marketed or used for profit purposes.

## Article 8 Uniformity

The variety is a uniform if its characteristics which are basic for the distinction from other varieties are sufficiently uniform in expression, in spite of variations or changes which may be expected from particular features of its propagation.

## Article 9 Stability

The variety is stable if its relevant characteristics remain unchanged after repeated propagation or, in case of any particular cycle of propagation.

## Article 10

10.1. Any denomination, which provides the distinguishing of the variety can be registered as a name of protected variety and it may consist of any word, combination of words, combination of words and figures, or combination of letters and figures, unless this law stipulates it otherwise.

10.2. The proposed denomination should not be registered as the name of protected variety if it:

- (a) is inappropriate for linguistic;
- (b) prevents the identification of the variety;
- (c) consists only of figures, excluding only when this is already a common practice;
- (d) is identically or similarly with a determined denomination of an existing variety of the same or closely related species, unless the existing variety is no longer in circulation or exploited and its denomination doesn't present any significant importance;
- (e) misleads or causes confusion regarding the origin, characteristics, value, usage, recognizing or geographical origin;
- (f) consists of botanical or general name of the genera or species, or includes such a name which might create the confusion;
- (g) contains names like "variety, cultivated variety, form, hybrid cross-breed" or a translation of these terms;
- (h) creates confusion about the breeder or authorized person;
- (i) is in the contrary with the public order and morality;
- (j) is in opposition with the law of property rights.

10.3. If a certain variety has been protected or registered in the register of varieties, or submitted an application for the recognition of the plant breeder's right.

10.4. In a special way, the defined variety in Kosovo may be registered under different nomination, but only if the usage of the previous name is not suitable for linguistic reasons or in cases, when it is in opposite to public order and morality.

10.5. Plant's species that are closely related from the paragraph 10.2 of this Article as well as more details criteria for the registration of the variety name shall be regulated by Ministry bylaws acts.

## Article 11

11.1. The usage of protected variety name is obligatory. The propagating material of the protected variety can enter and to circulate in the market, only if the name of the protected variety is in the list of protected varieties.

11.2. Provisions from the paragraph 1 of this article shall not be applied, if the propagating material of the protected varieties is used for non commercial purposes.

11.3. The denomination used for the protected variety must be the same in all countries, except the excluded cases from the article 10 of the paragraph 10.4 of this law.

11.4. When a variety is marketed, the use of protected variety name accompanied together with trademark or any another indication shall be permitted, provided that the name of variety remains recognizable.

11.5. Name which is identical or confusingly and similar to the denomination of the protected variety can not be used for another variety.

## CHAPTER III PLANT BREEDER'S RIGHT AND THE AUTHORIZED PERSON FOR PROTECTION OF VARIETIES

### Article 12

12.1. Person entitled to the variety protection and to the plant breeder's rights is a breeder of the variety or his legal authorized person.

12.2. If many persons have created, breed discovered and developed a variety jointly, the authorization for protection of variety and plant breeder's right shall vest in them or to their legal successors jointly.

12.3. If many persons have created, breed, discovered and developed a variety separately, the person who first submits the request will be authorized to the plant breeder's right.

12.4. When the breeder is an employee of a legal person and the rights and obligations are settled through a contract, the entitlement to the acquisition is defined by this contract.

### Article 13

13.1. The plant breeder's right can be applied for the authorized person from the article 12 of this law, who is a Kosovo Citizen, other natural person with residence in Kosovo and other legal person with a registered office in Kosovo.

13.2. Natural and legal persons, local and international, is granted the same plant variety protection rights in Kosovo as domestic legal or natural person, if stipulated so in international contracts and convention.

13.3. In the procedures of the office, international natural and legal person uses the rights of this law through procedures of the representatives from the natural person who is an inhabitant of Kosovo or legal person with a registered office in Kosovo.

CHAPTER IV  
PLANT BREEDER'S RIGHT

Article 14

14.1. The plant breeder's right is granted by protecting the variety.

14.2. The plant breeder's right includes only the right for economic exploitation and using the protected variety.

Article 15

15.1. The authorization of the holder of plant breeder's right is required for the use of protected variety for:

- (a) production and reproduction of propagating material,
- (b) marketing of propagating material, including the export and import and,
- (c) stocking the material of the protected variety from paragraph (a) and (b) of this Article.

15.2. The holder's authorization is also required for using harvested material of the protected variety, but only if:

- (a) the harvested material is obtained through the unauthorized use of propagating material of the protected variety, and
- (b) the holder of the plant breeder's right did not have a suitable opportunity to apply for plant breeder's right for propagating material of this variety.

15.3. The holder's authorization is also required for:

- (a) varieties which are essentially derived from the protected variety, unless the protected variety is itself a derived variety;
- (b) varieties which are not clearly distinguishable from the protected variety;
- (c) varieties or hybrids whose production requires the repeated use of the protected variety.

15.4. A certain variety is an essentially derived variety if:

- (a) the initial variety or another variety, which was itself derived from the initially variety, was used as the basic material for its breeding or discovery;
- (b) it is distinguishable as it is defined by article 7 of this law, and
- (c) except for the differences which result from the activities of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

## Article 16

The plant breeder's right is not infringed, if the protected variety is used or exploited for:

- (a) Non commercial private purposes;
- (b) Experimental purposes;
- (c) Breeding of new varieties;
- (d) If the harvested material of the protected variety of certain plant species, produced by the farmers on their properties, is used for further sowing on his farm and the farmer using this opportunity, pays a sufficient amount to the holder of plant breeder's right;
- (e) The paid amount is sufficient, if it is considerably lower than the amount charged for production of licensed propagated material of this variety in the same area;
- (f) The producers who use the possibility of further sowing in accordance with the point (e) of this Article, must present all data for sowing surfaces to the holder of the plant breeder's right on his request;
- (g) Small farmers are exempt from this payment in accordance with point (e) of this Article;
- (h) The plant species from the point (d) of this Article as well as criteria for small farmers must be determined by Ministry with by-laws acts.

## Article 17

17.1. The plant breeder's right is infringed if the propagating material of the protected variety or essentially derived variety is marketed by the holder himself or someone in agreement with him, in the cases when:

- (a) Uses entire plant, a part of the plant or harvest of the protected variety or derived variety, for further reproduction;
- (b) Exports the material of protected variety or essentially derived variety from that one, which can be used for further reproduction, into a state where the species or plant genera of this plant can not be protected.

17.2. Provisions of this article do not stand if the material that is exported is intended for final use.

## Article 18

18.1. The right of the plant breeder's right is valid since the date of granting of this right for field and vegetable crops 25 years, whereas for fruit and grapevines 30 years.

18.2. The plant breeder's right shall expire at the end of twentieth 25 calendar year following the date of the granting for field and vegetable crops and twenty-fifth 30 year after for trees and grape vine, if this law or sub law acts does not stipulate otherwise.

18.3. Regardless from provisions of paragraph 18.1 of this article, the authorized person from article 12 of this law, who has already filed a complete application, shall have the right for an equitable remuneration, if during the procedure for protection of variety any person economically exploited or used the variety for which the application had been filed, contrary to the article 15 of this law.

18.4. The authorized person will have the right for this payment, only for a period between the date of the publication of the application in the Official Gazette and the date of being granted plant breeder's right.

18.5. The plant breeder's right shall terminate when:

- (a) the holder of the plant breeder's right requires so,
- (b) when the term provided in the paragraph 18.1 of this article expires;
- (c) by abolition or cancellation of decision with which it was granted.

## CHAPTER V PROCEDURES FOR PROTECTION OF VARIETY

### Article 19 The Competent Authorities

19.1. The office for protection of plant varieties has the following competencies and tasks:

- (a) to manage the administrative procedures for the protection of varieties and the registration of denomination according to this law;
- (b) to maintain the register of the application and the register of protected varieties;
- (c) to announce or to publish in the official Gazette the list of protected varieties;
- (d) to define and announce in conformity with the Law of the Official Gazette: the application for granting of the plants breeder's right;
- (e) to cooperate with international organizations and associations, government and non - government organizations local and international in the field of protection of plant varieties;
- (f) to cooperate in the technical and professional aspects with the competent officers of other countries in the field of testing varieties and checking the maintenance of the varieties;
- (g) to exchange the results of the testing of the varieties as well as other information which are in their competences with the competent bodies of the other countries, and
- (h) to monitor the fulfillment of obligations of the holder of plant breeder's right.

19.2. To perform other tasks in the field of variety protection that will be defined by Ministry with bylaw acts.

## Article 20

20.1. Ministry will nominate an experts commission for variety protection that is consisted of 5 members. Commission selects the chairman and its deputy chairman.

20.2. Commission from paragraph 20.1 of this Article shall operate according to the provisions of this law.

20.3. The Commission carries the professional works during the procedures in the function of the protection of varieties of plants.

20.4. Work procedures of the Commission and the compensation of commission members will be regulated with bylaw acts by the Ministry.

## Article 21

### Registers

21.1. The Office shall maintain a register of applications and a register of protected varieties by this Law.

21.2. The register of applications shall contain the following:

- (a) the data for the applicant, breeder and procedural representative;
- (b) date of complete application;
- (c) the identification of the plant species;
- (d) the proposed denomination for the variety or a provisional designation;
- (e) proposal for withdrawal of the application;

21.3. The register of the protected varieties shall contain the following:

- (a) the plant species and register of variety denominations, including all synonyms;
- (b) official description of the variety or reference documents from the document file which include the official description of the variety;
- (c) in case of the varieties, whose production requires the repeated use of other varieties respectively parts or different components, these components must be listed;
- (d) the name and surname of the holder of the plant breeder's right, breeder and procedural representative;
- (e) the date of granting and of termination of the variety protection with the reasons for termination;
- (f) the name and address of the person onto whom the right for economic exploitation of the variety was transferred by the license contract;
- (g) the name and address of the person to whom a compulsory license was given, in the compliance with this law as well as the expire date of this right.

21.4. The office shall keep the document files in the original form or copies at least for five years after withdrawal or rejection of application and five years after the expire date of the plant breeder's right.

21.5. The content and the way of keeping the register will be specified with bylaw acts by Ministry.

## Article 22

22.1. The register of the application and the register of protected varieties are public.

22.2. The office is obliged to ensure for each natural and legal person, who presents the official interest, based on the Law for the public access, the insight into the following documents:

- (a) the documents of the applications,
- (b) the documents of the granted plant breeder's rights,
- (c) the documentation on official testing of varieties.

22.3. Exclusion from the provision of the paragraph 22.2 of this Article, the applicant may require regarding a hybrid that the documentation about variety components shall not be subject to public insight.

## Article 23

### Procedure costs

23.1. Payments and costs of the technical examination of the application, the cost of variety testing, publication costs and other service expenditures shall be borne by the applicants or holders of plant breeder's right.

23.2. The type and the amount of the payments and the expenditures from the paragraph 23.1 of this Article shall be regulated by Ministry with bylaw acts.

## Article 24

### Procedures for protection of varieties

24.1. The procedures for variety protection shall begin on the basis of an application submitted to the Office.

24.2. The Office shall make decisions about further actions of application in the legal procedure.

## Article 25

Application must be filed on the regular form and shall include the following data:

- (a) about the applicant or his representative or authorized person;
- (b) about the breeder unless he is the applicant himself;
- (c) name in Latin language and the official languages too of the country of the species and variety;
- (d) proposal for denomination of the variety or temporary designation of the variety;
- (e) the state in which the application is already been filed, the date of the application in that state, if the procedures of the application requires so;
- (f) technical description of a variety, and
- (g) in cases of genetically modified variety previous approval for variety testing in accordance with regulations on genetically modified organisms will be required together with the application.

## Article 26

26.1. The Office shall check if the application is complete and filled in proper way, and whether are enclosed data for the accomplishment of the payment.

26.2. If the application is not complete or filled in proper way and if the payments are not paid, the office requires from the applicant to complete those as well to pay the payments within 30 days after receiving the notification. If one applicant does not fulfill the obligations to the office in the defined term, his application with the decision of the office will be considered as non existing subject.

26.3. Confirmation of a complete application will be issued for the applicant. A complete application enters in the register of the applications and will be published or announced in the Official Gazette. As a completed date will be written or calculated the date of the acceptance of the completed application.

26.4. An extract from a complete application will be published in the Official Gazette three months after the submission of the application.

## Article 27

27.1. An applicant who has submitted an application for the protection of a variety in Kosovo may after the submission of the complete application for the same variety in the other countries claim for the right of priority in conditions of actual reciprocity.

27.2. The right of priority from the paragraph 27.1 of this Article must be exactly required by the applicant in his application.

27.3. The applicant can use the right of priority in Kosovo no later than 12 months after the submission of complete application in other country.

## Article 28

28.1. Regarding the published application in the Official Gazette based in the paragraph 26.4 of the Article 26 of this law, any person who has any special legal interest, may file objections during the procedure for the protection of the variety.

28.2. The objection shall only refer to the fulfillment of the conditions or requests from the Article 6, 7, 8, 9 and 10 of this law or in the authorizations to the variety protection according to article 12 of this law.

28.3. The objection shall be made in written form and the same to be substantiated.

28.4. The office shall send the received objection to the applicant and to require from him to respond in objection no later than 30 days after receiving the objection.

28.5. The office shall respond to the persons who have filed the objections at least 3 months after the acceptance of the objection.

## Article 29

### The examination procedures

29.1. The office shall check if the application fulfils the official requests in that way that the data of the application are checked, if the variety is new and if the applicant is entitled to the plant breeder's right.

29.2. If it is ascertained or decided that the conditions from the Article 5 and 12 of this law are not met, this application shall be rejected.

## Article 30

30.1. The Office shall examine the suitability of the proposed denomination for the variety. When the proposed name is in opposition with the provisions of the Article 10 paragraph 10.2 of this law, the Office shall inform the applicant to propose a new denomination for the variety. The proposal must be presented no later than three months after receiving notification.

30.2. In the procedure for the protection of a new variety, the office is obliged to use exclusively the denomination of the variety, which is registered in the register of applications for the protection of a new variety.

## Article 31

31.1. If the conditions from Articles 26 and 29 of this law are met, the technical examination shall be undertaken for each variety, the purpose of which shall be:

- (a) to check, if the variety belongs to the botanical unit, that is the species or plant genera, notified in the application;
- (b) to define if the variety is distinct, uniform and stable under Articles 7, 8 and 9 of this law, and
- (c) to prepare official variety description provided that the conditions from these two points of the paragraph of this Article are met.

31.2. Technical examination shall be undertaken on the basis of the results of the examination of the variety in the field and in the laboratory.

31.3. Examination is obligatory and can be carried out by:

- (a) a professional institution authorized in Kosovo;
- (b) the applicant, if it is required by the Office.

31.4. Where the Office does not undertake the examination itself then the examination of the variety shall be provided by the authorized institution by the Office.

31.5. For the technical examination of a variety, the office can use the examination results obtained in another state which has comparable agroclimatical conditions provided the examination was carried out within international standards of the examination.

31.6. Conditions, criteria, procedures and methods of variety examination shall be regulated by the Ministry with bylaws acts.

## Article 32

32.1. The Applicant must submit all necessary data, documents or propagating material requested for technical examination of the variety for the specified purposes in the paragraph 31.1 of the Article 31 of this law.

32.2. Failure to submit or provide the requested information under conditions from the paragraph 32.1 of this Article for no justified reasons shall cause an application to be rejected.

## Article 33

### Variety protection

33.1. When the results of the examinations prove that the variety fulfils the requirements from the Article 31 of this law and the applicant has fulfilled all required conditions, the office shall issue a decision for protection of the variety which will be announced in the Official Gazette.

33.2. The data from the legal decision on the protection of the variety or for its rejection shall enter in the registration of the application.

33.3. With the legal decisions on the protection of the varieties, valid certificate for the plant breeder's right since the date of the official approval will be issued for the holder of plant breeder's right.

33.4. Based on the legal approval of the decision of variety protection, relevant data shall enter in the register of the protected varieties.

33.5. The form and the content of the certificate for plant breeder's right shall be specified by Ministry with bylaws act.

## Article 34

### The expire of the plants breeder's right

34.1. At the request of the holder of plant breeder's right from the Article 18 paragraph 18.5 point (a) of this law, the Office in a legal procedure issues the decision for termination of granting of plant breeder's right.

34.2. The Plant breeder's right shall be terminated one day after receiving of a written declaration by the variety holder.

34.3. Based on a legal decision from paragraph 34.1 of this Article, the termination of the plant breeder's right shall be announced in the Official Gazette.

## Article 35

The Office declares a decision on the variety protection as non valid in the cases, when it is established:

- (a) that the variety is not new according to Article 6 or distinct article 7 of this law;
- (b) that the variety was not uniform according to article 8 and stable in Article 9 of this law;
- (c) when the plant breeder's right had been granted to the person that is not authorized for that, and when the authorized person has not brought any evidence act for his authorization from the Article 37 of this law.

## Article 36

The Office shall cancel a decision on the protection of variety without consent or request of the variety holder, when:

- (a) it is established that holder of variety has failed to meet his obligations under Article 44 of this law;
- (b) the holder of the variety within the prescribed period does not meet the written requests made by the Office to provide the propagating material or the relevant documentation for the purpose of verifying the maintenance of the variety under Article 44 paragraph 44.2 of this law;
- (c) the holder of the variety does not fulfill the written request of the Office for providing a new proposal for the denomination of variety from the paragraph 38.1 of the Article 38 of this law within the prescribed time;
- (d) the holder of the variety does not pay the annual fee for the plant breeder's right to remain in force from under Article 43 of this law in the prescribed time.

## Article 37

37.1. Where a person who is not authorized to the plant breeder's right filed an application for variety protection or was granted the plant breeder's right, the entitled person must bring an evidence or proof act for the assignment or bearing of the plant breeder's right to him.

37.2. The demand from the paragraph 37.1 of this Article can be filed after the date of the publication of the application for protection of new variety in the Official Gazette, but not later than 5 years.

37.3. When the unjustified rights were transferred to the third party under paragraph 37.1 of this article, the transfer shall become null and void.

37.4. Regardless the provisions under the paragraph 37.3 of this Article, the holder of any exploitation rights acquired in good faith who had exercised his rights before the beginning of the procedure under paragraph 37.1 of this Article, may continue to perform exploitation of the variety provided that the adequate remuneration to the entitled person is made.

## Article 38

### Cancellation of a denomination of the variety

38.1. The denomination registered in the register of the applications or in register of protected varieties shall be cancelled under the following conditions:

- (a) when the applicant or the holder of the plant breeder's right requests so and proves having the legitimate right for this action; the reasons for the cancellation and new denomination need to be presented;
- (b) when it is defined or determined that the variety is registered, in spite of the reasons for refusal according to Article 10 of this law;
- (c) where the holder of the variety or any other party is officially prohibited to use this denomination.

38.2. The applicant of the holder of plant breeder's right immediately will be informed in writing of the proposal or claim for the cancellation of the denomination by the Office which shall demand that a new denomination be suggested no later than three months after receiving the claim.

38.3. After the performed procedure under article 30 of this law, the suggested denomination shall enter in the appropriate register and shall be published in the Official Gazette provided it fulfils the conditions and criteria by this law.

#### Article 39 Compensations

39.1. In the procedure for protection of the variety, the holder of plant breeder's right, the applicant or any other person in procedure, who for justified reasons failed to pay the fee or to fulfill other obligations to the Office and would therefore lose the plant breeder's right, has the right to complain.

39.2. The request must be submitted no later than 60 days after expiry of the reason for not fulfilling the obligation, but not later than one year after the expiry of the term for the fulfillment of obligation. The request should include the explanation and evidence of paid fee.

39.3. When the request is accepted, the Office specifies the new term in which the applicant must perform unfulfilled obligations.

39.4. The Person who has required the compensation for his rights, has no right to demand any such compensation if during the time between the loss and return of his right, any person exploited or entered into a contract for exploitation of the protected variety in a good will.

### CHAPTER VI TRANSFER OF THE PLANT BREEDER'S RIGHT AND ASSIGNMENT OF THE USE OF PLANT BREEDER'S RIGHT

#### Article 40

40.1. The holder of the plant breeder's right may contract to transfer the right to economic exploitation of the protected variety partially or wholly to another person.

40.2. The authorized person or applicant may transfer the right to file an application for protection of a new variety.

40.3. The contract of the transfer of the rights from paragraph 40.1 and 40.2 of this article must be composed in written form, otherwise it is null.

40.4. The transfer of the rights from the paragraph 40.1 and 40.2 of this article must not influence the previous rights of the third person.

40.5. The transfer of the plant breeder's right has no legal force for the third person until the contract is not entered into the relevant register. The request for entry in the relevant register of the contract for the transfer of the rights can be submitted by any contracting party.

## Article 41

41.1. The holder of the plant breeder's right may contract the transfer the right to economic utilization of the protected variety partially or entirely to the third person.

41.2. The license contract shall enter the relevant register at the request from one of the contracting parties.

41.3. The license contract which has not entered the relevant register from the paragraph 41.2 of this Article has no legal force.

41.4. The provisions on obligatory relations shall be used to define the form, the way of entering in the contract and the content of the license contract as well as the legal protection.

## Article 42

42.1. In cases of public interest and if the protected variety is not economically exploited or not exploited to a sufficient extent by holder of breeder's right or any other person having his authorization, and he does not express the wish to assign the right for exploitation to another person or sets the unjustified conditions for assignment of the right, the other person can be granted a compulsory license by the Office.

42.2. The compulsory license can be granted only to the person who presents the evidence of possessing of necessary technologies and all needed material resources for the successful exploitation of the protected variety.

42.3. To no one can be granted the compulsory license, if the holder of the plant breeder's right presents the evidence of justified reasons for lack of exploitation or insufficient exploitation of the protected variety.

42.4. The compulsory license can not be granted, if less than three years have passed from the date of the grant of the plant breeder's right and the date of the application for the grant of compulsory license.

42.5. The compulsory license gives to the holder of the license a non-exclusive right to perform the actions referred to in article 15 of this law partially or entirely with the purpose of supply of the local market.

42.6. The compulsory license shall be granted for a period of time at least two and no more than four years.

42.7. The term of license may be extended, where it is defined based on new examination that the conditions for the grant of license continue to exist on the expiry of the first term.

42.8 The decision upon the request for grant or extension of the compulsory license is made by the Office. Before granting a compulsory license, the office may hear the opinion of interested parties.

42.9. In case of granting the compulsory license, the holder of the plant breeder's right is entitled to a reasonable payment.

42.10. The amount of the payment from paragraph 42.9 of this article will be defined by the agreement between the holder of the plant breeder's right and the licensee. If the agreement is not reached, the Office shall fix the amount of the payment.

42.11. The Office may require from the holder of the plant breeder's right to provide the licensee with the propagating material for use of the variety on the basis of the compulsory license. The licensee will pay the holder of plant breeder's right a sufficient amount of the money for the propagating material.

42.12. If a compulsory license is granted, the holder of the plant breeder's right may require the data of the production of the propagating material of the protected variety, from a professional institutions, authorized for performing field control of the production of the propagating material.

## CHAPTER VII OBLIGATIONS OF THE USER OF THE PLANT BREEDER'S RIGHT AND OF THE THIRD PERSONS

### Article 43

43.1. In order to maintain the plant breeder's right, the holder of the variety must pay an annual fee to the office for the breeder's right to remain in force.

43.2. The annual fee shall be paid at the beginning of the calendar year for the current year of the protection of the plant breeder's right no later than 31 March.

43.3. If the annual tariff is not be paid within an additional term according to the paragraph 43.2 of this article, it will be enable the additional term from 15 days, otherwise the right of use will be taken.

### Article 44

44.1. While the protection of variety exists, the holder of the plant breeder's right shall be under the obligation that the protected variety or hereditary material will keep unchanged.

44.2. At the request of the office, the holder of the variety shall provide the data, documents and propagating material necessary for verifying the maintenance of the variety.

44.3. Where assessment and verification ascertains and at the same time suggests that the holder of the variety has failed to maintain the variety, the office shall start the procedure for cancellation of the plant breeder's right.

### Article 45

45.1. At the request of the office, the holder of the variety must provide a representative sample of the propagating material or its hereditary components in a prescribed period.

- (a) for an official sample or for renewal of the official sample;
- (b) for conducting the comparable examination of other varieties subject to the protection procedure.

45.2. The office can authorize the holder of the plant breeder's right to keep and renew by himself the official sample of the propagating material.

## Article 46

46.1. When any person economically use or exploit the propagating material of the protected variety without any agreement or against of the agreement of the holder of the plant breeder's right must present the holder of variety right all appropriate data at his request.

46.2. In cases when data are not provided at free will, the holder of the plant breeder's right may require that the office issue a temporary decision requiring from perpetrator to present the data. The appeal against temporary decision will not hold its execution.

## CHAPTER VIII LEGAL PROTECTION

### Article 47

47.1. The person who infringes the rights under the application or the plant breeder's right shall be held responsible for damages in accordance with general provisions for the payment of damages.

47.2. The person to whom the rights are infringed, shall have the right for requiring the compensation for consequences damages as well as the cessation of further performance of infringement. Infringement of the plant breeder's right shall be considered any economic exploitation of the protected variety without being authorized.

### Article 48

The appeal as well as the judicial indictment regarding the infringement of the plant breeder's right may be presented three years from the date when the holder of the right of the variety has learnt about the infringement. Five years after the date of occurrence of the infringement no claim can be submitted.

## CHAPTER IX LAW ENFORCEMENT SUPERVISION

### Article 49

49.1. The inspection supervision for the enforcement of this law and bylaws acts extracted based on it shall be performed by authorized inspectors of the Ministry.

49.2. The authorized Inspectors of the Ministry foreseen from the paragraph 49.1 of this article will perform also the other tasks with this law and bylaws acts in the field of the protection of the plant variety.

### Article 50

#### The enforcement

50.1. The control over the acts from provisions of articles 11, 15, 16 and 46 of this law shall be performed by Inspectors of the Ministry.

50.2. Where there is a reasonable doubt that infringement has taken place, the Inspector of the Ministry shall confiscate temporarily the objects which have been or were meant to be used for the purpose of infringement or were as a consequences of the infringement.

50.3. The temporarily seized objects as well as the request for legal procedure related to the infringement shall be immediately submitted to the responsible persons by the inspectors of Ministry.

#### Article 51

51.1. If the holder of the plant breeder's right suspects that his rights may be infringed by export of the material of the protected material from Kosovo or from the import in Kosovo, the phytosanitary inspector according to his request will demand that:

- (a) the holder of the plant breeder's right of the protected variety or his representative examine this material;
- (b) this material will be confiscated, removed from the market and to be kept in the save place up to the taking of merit decision.

51.2. As to the proposal from the paragraph 51.1 of this article, the holder of the variety rights shall provide for the phytosanitary inspector a detail description of the protected variety, proves or satisfactory evidence of the plant breeder's right for suspected infringement.

51.3. At the request of the phytosanitary inspector, the holder of the variety shall pay caution money for the possible damages caused by these measures.

51.4. The phytosanitary inspector shall immediately inform the importer or exporter of material of the protected variety, and in case of the import to Kosovo inform the receiver or recipient of that material.

51.5. Phytosanitary inspector cancels the adopted measures if the authorized person shall not take legal action or start another procedure to justify adopted measures within the period of seven days.

### CHAPTER X ADMINISTRATIVE SANCTIONS

#### Article 52

52.1. For minor offence it will be condemned with fine from 1.500 up to the 2.500 € person who:

- (a) Without the consent of the holder of the plant breeder's right: produce or multiply the material of the protected variety by this law (article 15 paragraph 15.1),
- (b) Produce or multiply the material of the protected variety, if he prepares the material of the protected variety for multiplication, if he puts into the market, imports or exports (article 15 paragraphs 15.2).

52.2. For minor offence a natural or legal person will be condemned with fine from 500 € up to the 1.500 € if:

- (a) acts in opposition with article 11 paragraph 11.1 of this law, and if he puts the material of the protected variety in the market without stating the registered denomination of the variety, as well when it is used not the correct name;
- (b) acts in opposition with article 11 paragraph 11.5 of this law, if he use denomination of protected variety with this law for the denominations, which can be confused by that denomination, by some other variety of the same or closely related species;

- (c) acts in opposition with article 16 paragraph 16.2 and with the article 46 of this law, does not provide the holder of the variety with the requested data;
- (d) detains the competent inspectors in the accomplishment of their tasks (Article 49).

52.3. For minor offence a responsible person of the legal person will be condemned with fine from 100 € up to the 500 € for the infringement from the previous paragraph.

## CHAPTER XI FINAL PROVISIONS

### Article 53

53.1. The variety, which has been protected up to the adoption of this law in the accordance with laws in force, will enjoy the protection in the accordance with this law up to the expiration of granting of this right.

53.2. The plant breeder's right for a variety from the paragraph 53.1 of this article may be proclaimed as not valid and abolished only if it is ascertained that during the time, when this right was given were not meet all conditions or criteria regarding the distinct, uniformity and stability.

### Article 54

54.1. All payments that flow from the application of the administrative sanctions of this law as well as the other incomes from the taxes will go to the Kosovo Consolidated Budget.

54.2. Ministry of Agriculture, Forestry and Rural Development may sign the Memorandum of Understanding with Ministry of Economy and Finance, that a part of generated means from the enforcement of this law to be used by the Office.

54.3. For the enforcement of this law, Ministry of Agriculture, Forestry and Rural Development, will extract bylaws acts.

54. 4. Ministry in the term of 6 months since the entering in to force of this law, must issues the following bylaws acts:

- (a) The Administrative Instruction for the functioning and mandate Office for the protection of varieties of the plants as well as for the procedures of varieties protection.
- (b) The Administrative Instruction for the plants breeder's rights as well as the authorized persons for the protection of the plants breeder's right.

### Article 55

#### Entry into Force

The present law shall enter into force after adoption by the Assembly of Kosovo on the date of its promulgation by the Special Representative of the Secretary-General.

**Law No. 02/L-98**  
**26 January 2007**

**President of the Assembly**

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**Kolë Berisha**