

CZECH REPUBLIC

CONSOLIDATED VERSION OF PLANT VARIETY RIGHTS ACT No 408/2000 Coll.

No. 32/2006 Coll.

THE PRIME MINISTER

promulgates

the consolidated version of Act No. 408/2000 Coll., on the Protection of Plant Variety Rights and the Amendment to Act No. 92/1996 Coll., on Plant Varieties, Seed and Planting Material of Cultivated Plants, as subsequently amended (the Act on the Protection of Plant Variety Rights), in the wording of amendments implemented by Act No. 147/2002 Coll., Act No. 149/2002 Coll., Act No. 219/2003 Coll., Act No. 377/2005 Coll. and Act No. 554/2005 Coll.

ACT

on the Protection of Plant Variety Rights

The Parliament has adopted the following Act of the Czech Republic:

PART ONE

CHAPTER I

GENERAL PROVISIONS

Article 1

(1) This Act regulates

- a) the rights and obligations with respect to plant varieties protected under this Act,
- b) the powers and role of state administration authorities in the field of plant variety rights to varieties,
- c) the proceedings for the grant of plant variety rights,
- d) the control of variety maintenance, and
- e) the imposition of sanctions for infringement of obligations stipulated by this Act which the directly applicable rule of the European Communities¹⁾ entrusts to the competence of European Union individual member States (hereinafter referred to as "Member State").

(2) Further to the directly applicable rule of the European Communities^{1a)} this Act regulates the imposition of sanctions for the infringement of plant variety rights of the European Communities (hereinafter referred to as "the Community plant variety right").

Article 2

Definitions

For the purposes of this Act

- a) "variety" means a plant variety defined by the International Convention for the Protection of New Varieties of Plants²⁾,
- b) "plant variety rights" mean rights and obligations to plant varieties resulting from an effective decision of the Central Institute for Supervising and Testing in Agriculture (hereinafter referred to as "the Institute"),
- c) "holder of breeder's rights" means the breeder who has been granted plant variety rights to the variety, or his successor in title,
- d) "breeder" means the natural or legal person, who bred, or discovered and

improved (hereinafter referred to as "created") a variety or the person for whom someone else created a variety as part of fulfilment of tasks in relation to an employment contract or another similar relationship, unless a written agreement stipulates otherwise; legal successor of the breeder shall also be considered as breeder,

e) "protected variety" means the variety protected by plant variety rights granted pursuant this Act,

f) "member of the Union" means a State or an intergovernmental organization party to the International Union for the Protection of New Varieties of Plants²⁾,

g) "list" means the list of applications for the grant of plant variety rights to a variety, in which the specifications pursuant to Article 9 (a) to (c) shall be entered,

h) "small grower" means grower operating in agricultural production on arable land at a maximum area of 22 hectares.

CHAPTER II

CONDITIONS FOR THE GRANT OF PLANT VARIETY RIGHTS

Article 3

(1) The plant variety rights may be granted to varieties of all plant genera and species, including hybrids between genera and species (hereinafter referred to as "varieties").

(2) The plant variety rights may be granted to the variety which satisfies conditions of

- a) novelty,
- b) distinctness,
- c) uniformity, and
- d) stability.

(3) The variety denomination must comply with the conditions laid down by this Act (Article 7).

(4) Plant variety rights shall be granted and obligations relating to their grant shall be stipulated by the Institute, if the criteria specified by this Act are satisfied.

(5) Plant variety rights cannot be granted to a variety, to which a Community plant variety right has been granted^{1a)}.

Article 4

Novelty

(1) The variety shall be deemed to satisfy the condition of novelty if, at the day of filing of the application for the grant of plant variety rights the propagating material³⁾ or material from the variety harvest (hereinafter referred to as the "harvested material") has not been sold or otherwise disposed of to others by or with the consent of the breeder, for purposes of exploitation of the variety

a) in the territory of the Czech Republic earlier than one year before the application has been filed, or

b) outside the territory of the Czech Republic earlier than four years before the application has been filed or, in the case of trees or of vine, earlier than six years before the application has been filed.

(2) The following shall not be deemed to be a disposal of the variety to others within the meaning of paragraph 1:

a) if the breeder supplies propagating or the harvested material of the variety

1. in order to fulfil statutory duties⁴⁾, or

2. to others based on a contractual relation solely for the purpose of production, propagation, conditioning or storage, provided the breeder preserves the exclusive right of disposal of the variety material; if,

however, the propagating material of the variety is repeatedly used for the production of a hybrid variety, the material of which is sold or otherwise disposed, such use of the propagating material of the variety shall be deemed to be a disposal of the variety to others for purposes of exploitation of the variety, or

b) if the breeder sells or otherwise provides, without reference to the variety, to a third person propagating or harvested material which has been produced from plants grown for experimental purposes or for the creation of other varieties and which is not used for further propagation, or

c) if the breeder had displayed the variety at an international exhibition in compliance with an international treaty⁵⁾.

Article 5

Distinctness

(1) The variety shall be deemed to satisfy the condition of distinctness if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge as of the date of the filing of the application for the grant of plant variety rights by reference to the expression of at least one characteristic resulting from its genotype or combination of genotypes.

(2) The following varieties shall be deemed to be of matter of common knowledge

a) protected in the Czech Republic or abroad,

b) entered in the official plant variety register⁶⁾ in the Czech Republic or a similar register abroad,

c) in respect of which an application for the grant of plant variety rights or for entry in the plant variety register has been filed in the Czech Republic provided the application will lead to the grant or entry,

d) in respect of which an application for the grant of plant variety rights or for entry in the plant variety register has been filed abroad, provided the application will lead to the grant or entry, or

e) offered for sale or sold in the Czech Republic or abroad.

Article 6

Uniformity and Stability

The variety shall be deemed to satisfy the conditions of uniformity and stability if it meets the requirements of uniformity and stability stipulated in a special legal regulation⁴⁾.

Article 7

Variety Denomination

(1) The same variety denomination shall be used for an identical variety in the Czech Republic and any other Member State or member of the Union.

(2) A designation may not be used as a variety denomination if

a) it consists solely of figures, except where this is an established practice for designating varieties,

b) it is identical or may be confused with the denomination of another variety of the same or of a closely related species used in the Czech Republic, in another Member State or a member of the Union,

c) it is liable to mislead evoking false impressions concerning the value, characteristics or origin of the variety or the identity of the breeder,

d) it is identical to or may be confused with a trademark, appellation of origin or geographical indication for the same or similar products or otherwise infringing the

rights or safeguarded interests of other persons,

e) it is unsuitable for linguistic reasons.

CHAPTER III PROCEEDINGS IN MATTERS OF PLANT VARIETY RIGHTS

Article 8

(1) A breeder who is a citizen of the Czech Republic or is a legal person having its registered office in the Czech Republic or who is a national or a legal person having its registered office in a Member State or a member of the Union (hereinafter referred to as "the applicant") shall be entitled to file an application for the grant of plant variety rights to a variety (hereinafter referred to as "the application"). An application may be filed jointly by several applicants.

(2) An application may also be filed by a natural person who is a citizen of a State or is established on the territory of a State, which provides persons of Member States or members of the Union similar protection for varieties of the same botanical taxon, as well as legal persons, having a registered office on the territory of such a State.

Article 9

The application shall contain the following

a) the applicant's name, surname and permanent residence address, provided this is a citizen of the Czech Republic, the residence address in another Member State or a State which is member of the Union, provided this is a citizen of another Member State or member of the Union, or in case of a legal person, its business name, registered office or branch office within the territory of the Czech Republic, and legal form.

b) Latin and Czech name of the species, or another botanical taxon, if appropriate,

c) a proposed denomination or provisional designation of the variety,

d) information on all previous applications for protection for the variety in question,

e) information on previous exploitation of the variety,

f) a description of the variety.

Article 10

Plant variety rights to a variety may be granted to a breeder who filed an application for the grant of such a right with the Institute. Shall more than one breeder have jointly participated in the variety creation, the granted plant variety rights to such protected variety shall be shared equally, unless stipulated otherwise in a written agreement between them.

Article 11

(1) The Institute shall enter the application in the list of applications in order of delivery date and shall examine whether the variety may be subject to plant variety rights, whether there are no obstacles hindering further proceedings for the grant of plant variety rights and whether an administrative fee has been paid.

(2) Shall the application not comply with the details and requirements stipulated by this Act or shall obstacles exist hindering further proceedings, the Institute shall request the applicant to rectify shortcomings. If the applicant fails, within the specified time limit, to rectify shortcomings, the Institute shall stay the proceedings, provided the applicant has been notified of such consequence in the above mentioned request.

Article 12

(1) If more applications for the grant of the plant variety rights to the same variety have been filed with the Institute, such a right may only be granted to one applicant, i.e. the one, whose application was submitted first; the right of priority resulting from an earlier filing of the application in any State which is the member of the Union shall be recognised, provided further conditions specified by this Act have been met.

(2) Shall the applicant file an application in another member of the Union prior to filing an application in the Czech Republic, he/she shall enjoy the priority right²⁾ in respect of filing for the same plant variety in the Czech Republic over a period of 12 months of filing his previous application in another member of the Union, provided such right has been exercised in the application filed with the Institute. The right of priority shall not be taken into account unless within three months of filing the application with the Institute, the applicant submits an authenticated copy of his previous application filed in another member of the Union.

Article 13

(1) The Institute shall publish the following information in the Bulletin of the Central Institute for Supervising and Testing in Agriculture (hereinafter referred to as "the Bulletin"):

- a) notice of applications filed in succession by filing date including information regarding the applicants [Article 9 (a)],
- b) change to the proposed variety denomination or the proposed variety denomination, if the application included only a provisional designation [Article 9 (c)].

(2) Anyone may object with the Institute against:

- a) a filed application, not later than by the decision under Article 11 (2) or Article 16 has been issued,
- b) the proposed variety denomination, not later than within three months of its publication in the Bulletin.

(3) Objections under paragraph 2 shall be resolved by the Institute by the latest until the decision under Article 11 (2) or Article 16 has been issued. The Institute makes the decisions on objections; no appeal lies against such decision.

Article 14

(1) After all terms and requirements under Article 11 (1) have been complied with, the Institute shall examine whether the variety meets the conditions of novelty, distinctness, uniformity and stability and whether the proposed variety denomination complies with the conditions stipulated under Article 7. Compliance with the requirements of distinctness, uniformity and stability is ascertained using field and laboratory tests. When examining varieties to ascertain compliance with the conditions, the Institute may use the results of examinations of distinctness, uniformity and stability performed by professional institutions abroad.

(2) The applicant shall be obligated

- a) to supply the Institute with the plant material necessary for the examination of the variety according to paragraph 1, within a reasonable period prescribed by the Institute,
- b) to reimburse the Institute for costs incurred in connection with the performance of special acts related to the proceedings for the grant of plant variety rights.

Article 15
Change of Applicant

In the course of the proceeding for the grant of plant variety rights the application can be transferred to another person only with consent of the applicant.

Article 16
Breeder's Certificate

(1) The Institute shall grant the applicant the plant variety rights to the variety and shall approve the proposed variety denomination by the issuance of a breeder's certificate, provided all conditions stipulated by this Act have been met; otherwise the proceeding shall be terminated.

(2) The breeder's certificate shall include the denomination of the species to which the variety belongs, variety denomination, name, surname, permanent residence address or business name, registered office and legal form of the holder of breeder's rights. The certificate shall also include the variety description prepared on the basis of the results of tests of distinctness, uniformity and stability.

Article 17
Using the Variety Denomination

(1) Everyone offering or providing for the use the material of the protected variety or variety under Article 19 (4) is obligated to use the approved variety denomination. Shall this variety denomination be used in a written form together with a trademark, trade name or other similar indication, it must be clearly distinguishable from such indication.

(2) Denomination of a protected variety or a variety protected in another Member State or member of the Union or denomination,

which may be confused with such denomination, must not be used for another variety of the same or related species.

(3) The provisions of paragraphs 1 and 2 shall also apply to the period of the time the termination of the plant variety rights.

Article 18
Variety Maintenance Control

(1) The holder of breeder's rights shall be obligated to ensure the maintenance of the protected variety over the entire period of the plant variety rights duration to make sure that the characteristics specifying the variety remain unchanged.

(2) The Institute performs verification testing to control the maintenance of the protected variety. The execution of this control is regulated by a special Act⁸⁾, unless this Act stipulates otherwise.

(3) The employees of the Institute entrusted with the execution of control are entitled to enter grounds, companies and their branch offices, premises, establishments and facilities in which the holder of breeder's rights or a person entrusted by him handles the protected variety, and request from such persons necessary evidence, information and co-operation for a smooth and fast performance of control including allowing them to take necessary quantity of control samples of material of the protected variety. Samples are to be provided free of charge.

(4) Upon request of the Institute, the holder of breeder's rights is also obligated to deliver free of charge and within a reasonable period of time specified by the Institute, material of the protected variety required for the performance of control tests.

CHAPTER IV
SCOPE OF PLANT VARIETY RIGHTS

Article 19

(1) The holder of breeder's rights has got the exclusive right to use the protected variety in the territory of the Czech Republic consisting in the right to exploit the propagating material in following manners:

- a) production or propagation,
- b) conditioning for the purpose of propagation,
- c) offering for sale,
- d) selling or other marketing⁹⁾,
- e) placing on the market of Member States and exporting to third countries,
- f) placing on the market from Member States and importing from third countries,
- g) stocking for the purposes specified under letters a) to f).

(2) The holder of breeder's rights may provide his consent with the use of the protected variety (hereinafter referred to as "the licence") to a third person; the licence is provided in writing and must include an agreement on the licence charge.

(3) The provisions of paragraphs 1 and 2 also relate to the harvested material of the protected variety, including whole plants and their parts, if obtained from the propagating material of the protected variety without a licence provided by the holder of breeder's rights who could not exercise these rights in respect of the above propagating material.

(4) The provisions of paragraph 1 to 3 shall also relate to

- a) varieties essentially derived from the protected variety,
- b) varieties which are not distinct from the protected variety,

c) varieties whose production requires the repeated use of the protected variety.

(5) If the protected variety itself is an essentially derived variety, the exclusive right to such variety held by the holder of breeder's rights does not include varieties derived from such variety.

(6) Varieties shall be considered as essentially derived from another variety (hereinafter referred to as "the initial variety") if:

- a) they are predominantly derived from the initial variety or from a variety which itself is essentially derived from the initial variety,
- b) they are distinct from the initial variety, and
- c) except for the differences which result from the act of derivation, they conform essentially to the initial variety in the expression of characteristics resulting from the genotype or the combination of genotypes of the initial variety.

(7) Essentially derived varieties may be obtained, in particular, by the selection of a natural or induced mutation or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering methods.

(8) If an essentially derived variety is a protected variety, then the right of the holder of breeder's rights to the initial variety is limited with respect to this essentially derived variety to the extent of providing the licence for the variety use to the holder of breeder's rights to this variety. The holder of breeder's rights to an essentially derived variety may use this variety only provided he has a licence issued by the holder of breeder's rights to the initial plant variety.

(9) The following exploitation of the propagating material shall not constitute a

breach of the plant variety rights (paragraph 1)

- a) performed for research,
- b) performed with the aim to create additional varieties including exploiting such varieties except for varieties under paragraph 4,
- c) performed for the own use of a natural person.

Article 19a

(1) A person conducting business in agricultural production¹⁰⁾ (hereinafter referred to as a “grower”) is authorized, for the species of plants set forth in Annex No. 1 to this Act, to use without the consent of the holder of breeder’s rights for agricultural production in its own enterprise^{10a)} on arable land owned, leased or subleased by them, material which it acquired on this land by the cultivation of propagating material³⁾ of protected varieties, if such propagating material originates from certified propagating material^{10b)}, either directly or from repeated propagation, with the exception of hybrid or synthetic varieties (hereinafter referred to as “farm saved seed”). Potato farm saved seed means propagating material of a protected variety, acquired directly by planting certified propagating material of a protected variety.

(2) When exploiting farm saved seed under paragraph 1, a grower

- a) is not limited as to the quantity of his plant production produced on the land used by him/her for the needs of his enterprise,
- b) may process the farm saved seed for subsequent sowing and planting either himself/herself or via another person, who performs the processing of such material as an entrepreneur¹⁰⁾ (hereinafter referred to as the “seed processor”); the seed processor must perform the processing to make sure

that the product delivered for processing is identical with the resulting product,

c) is obligated to pay to the holder of breeder’s rights for the use of the farm saved seed by sowing or planting reasonable remuneration^{10c)}, which as a rule equals to 50% of the usual licence charge for the certified propagating material of the respective variety; the grower shall pay the reasonable remuneration not later than by six months from the date of inception of the obligation. The obligation to pay reasonable remuneration for the use of farm saved seed shall not apply to small growers.

(3) The holder of breeder’s rights is entitled to require requisite information from the grower and seed processor which relates to the farm saved seed of a protected variety used or processed by them, to which the holder of breeder’s rights was granted plant variety rights, and to do so in writing.

(4) The grower and seed processor are obligated to inform the holder of breeder’s rights at his request of their name, or names, surname, place of business activities and identification number, if assigned, for a natural person, or the business name or name, registered office, identification number, if assigned, and legal form, in the case of a legal person, and to do so in writing.

(5) The seed processor is further obligated to inform the holder of breeder’s rights at his request of the quantity of farm saved seed which was delivered for processing and the subsequent quantity of the processed farm saved seed, and information about the date, place of processing, and person for whom the processing was performed, and to do so in writing.

(6) The grower is obligated to convey to the holder of breeder’s rights in writing at his request

a) data on the scope of use of farm saved seed, including information about the scope of use of certified propagating material of the variety in question,

b) data on the seed processor who performed the processing for him according to paragraph 2(b), in the event that he did not process the farm saved seed himself.

(7) The holder of breeder's rights is obligated to provide the grower at his request with written information on the amount

a) of remuneration which he will require according to paragraph 2(c),

b) the usual licence charge for certified propagating material in the respective calendar year for the given variety.

(8) The holder of breeder's rights is entitled to request the Institute, the State Phytosanitary Administration or the Ministry of Agriculture (hereinafter referred to as "the Ministry") to provide information which relates to the production, processing or use of farm saved seed of the variety, for which he is a holder of breeder's rights; the provision of information may be denied if

a) the information could not be gained as part of the ordinary activity of the respective administrative authority,

b) the information could be gained only with the expenditure of additional costs, or

c) special legal regulations^{11a)} would be violated by its provision.

(9) The propagating material of a protected variety must not be moved from the grower's premises for the purposes of its processing without the prior consent of the holder of breeder's rights; consent is not needed for moving the propagating material for the purposes of processing farm saved seed to a seed processor who is listed according to Article 19b (2).

(10) The grower and seed processor are obligated to provide the holder of breeder's rights at his written request with the document which confirms the information provided by them under paragraphs 4 to 6.

(11) The holder of breeder's rights is entitled to require the information under paragraphs 3 to 6 and 8 and fulfilment of the obligations under paragraph 10, in the regular calendar year and for, not more than, the three previous calendar years.

(12) The holder of breeder's rights who receives information under paragraphs 3 to 6 and 8 is not authorized, without the prior written consent of the person who provided it, to pass it to another person or use it for another purpose than the exercise of the right protected by this Act.

Article 19b

Notification

(1) A seed processor who intends to perform processing of propagating material of protected varieties under Article 19a (2) (b), must notify the Institute in writing of this activity before its initiation.

(2) The Institute maintains a list of seed processors under paragraph 1 on the basis of the written notification, which shall contain

a) for natural persons their name, or names, surname, identification number, if assigned, place of permanent residence, or address of residence abroad, and place of business activities,

b) for legal persons, the business name or name, identification number, if assigned, and registered office.

(3) The Institute shall publish the list of seed processors each year in the Bulletin.

Article 20

(1) Plant variety rights do not extend to acts concerning any material of the protected variety or of a variety under Article 19 (4) which was sold or otherwise marketed in the territory of the Czech Republic by the holder of breeder's rights or with his consent or the exploitation of any material derived therefrom, unless this represents

- a) further propagation of such varieties, or
- b) export of material of such varieties which enables their further propagation into a country that does not protect plant varieties of the same plant genus or species to which this variety belongs; this does not apply provided such material is intended for final consumption.

(2) Material of plant variety under paragraph 1 shall be understood as

- a) any propagating material of the protected variety,
- b) harvested material of the protected variety.

(3) If the plant variety protected under this Act would be granted the Community plant variety right, for the duration of the valid Community plant variety right the plant variety rights granted under this Act cannot be invoked.

Article 21

Compulsory Licence

(1) Upon request, the Ministry of Agriculture may grant a compulsory licence for the exploitation of a protected variety in a manner specified under Article 19 (1) to one or more persons, if the holder of breeder's rights refuses to issue a licence for such exploitation in the required scope and if such exploitation is in public interest. The

Ministry shall inform the Institute about the grant of a compulsory licence.

(2) When granting a compulsory licence, the Ministry shall stipulate the conditions, time limitation and scope of the exploitation including the payment of an appropriate licence charge to the holder of breeder's rights in respect of such licence.

(3) On the expiry of one year after the grant of the compulsory licence, each participant of the proceeding for the grant of the compulsory licence may request the Ministry in writing to cancel or amend the decision on the grant of the compulsory licence. Only a change of circumstances on the basis of which the decision was made may constitute a reason for such request.

(4) The Ministry may grant a compulsory licence in respect of an essentially derived variety based on a proposal of the holder of breeder's rights to this variety if the holder of breeder's rights of the initial variety refuses to provide a licence for the exploitation of the essentially derived variety and if such exploitation is in the public interest.

(5) If a holder of a patent of a biotechnological invention^{11b)} cannot exploit this patent without infringing a prior right to a protected variety, he may apply for a compulsory licence for non-exclusive use of this variety. The Ministry shall grant the compulsory licence, if the holder of the patent has unsuccessfully applied to the holder of breeder's rights to this right for his consent to the use of the protected variety and if the invention protected by the patent constitutes significant technical progress of considerable economic interest in comparison with the protected variety. Reasons for which a given invention represents a significant technical progress of considerable economic interest in comparison with a protected variety may be in particular improvement of cultivation

procedures, the environment, procedures simplifying the use of genetic diversity, improvement of quality, yield, resistance, or improvement of adaptation to specific climatic conditions or environmental conditions. The Ministry shall determine the amount of the corresponding licence charge. In this case the holder of breeder's rights has the right to a cross licence to use the biotechnological invention^{11b)}.

(6) If the holder of breeder's rights was granted a compulsory licence to use of the biotechnological invention, the holder of the patent shall be entitled to a cross licence-to exploit the protected variety.

CHAPTER V

Article 22

Administrative Delicts

(1) A grower or seed processor commits an administrative delict by

a) not communicating with the holder of breeder's rights at his/her request the information set forth in Article 19a (4), or

b) not providing a holder of breeder's rights with the evidence set forth in Article 19a (10).

(2) A seed processor commits an administrative delict by not communicating to the holder of breeder's rights at his/her request the information set forth in Article 19a (5).

(3) A seed processor, who processes propagating material of protected varieties according to Article 19a (2) (b) commits an administrative delict by not notifying the Institute of such an activity.

(4) A grower commits an administrative delict by not communicating to the holder of breeder's rights on his request the information set forth in Article 19a (6)

(5) A holder of breeder's rights commits an administrative delict by not providing a grower in writing with the information set forth in Article 19a (7).

(6) Fine of up to CZK 500,000 shall be assessed for an administrative delict under paragraphs 1 to 5.

Article 22a

Common Provisions

(1) A legal person shall not be responsible for an administrative delict if it proves that he expended all efforts which could be required of him to prevent the violation of the legal obligation.

(2) When determining the amount of the fine for a legal person, the gravity of the administrative delict shall be taken into account, in particular the manner of its commitment and its consequences and circumstances under which it was committed.

(3) The liability of a legal person for an administrative delict expires if the administrative body does not initiate a proceeding thereon within one year from the day when it established the violation, and not later than, however, within three years from the day when it was committed.

(4) The Administrative delicts under this Act shall be assessed in the first instance by the Institute.

(5) The provisions of this Act on the liability and recourse of a legal person shall be applicable to liability of the pursuance of the business activities of natural person¹²⁾ or in direct relation thereto.

(6) Fines are levied by the Institute and recovered by the customs office with relevant territorial competence. The revenue from the fines constitutes the Czech Republic's State budget revenue.

CHAPTER VI
COMMON, TRANSITIONAL AND FINAL
PROVISIONS

Article 23

Duration of the Plant Variety Rights

(1) The plant variety rights may be maintained until the end of the twenty-fifth year after the year in which the grant of such rights came into effect; for protected varieties of trees, hops, vines and potatoes, the plant variety rights may be maintained until the end of the thirtieth year following the year in which the grant of such rights came into effect.

(2) For the period from filing the application until the grant of plant variety rights to the variety becomes legally effective, the holder of breeder's rights is entitled to a reasonable compensation from each person who during such period exploited the variety in a manner which would require granting a licence by the holder of breeder's rights after such rights have been granted.

Fees for the Duration of Plant Variety Rights

Article 23a

The holder of breeder's rights is obligated to pay fees for the duration of plant variety rights to protected variety (hereinafter referred to as the "maintenance fees") during the entire period of the duration of the plant variety rights to the protected variety. The maintenance fees shall be levied by the Institute.

Article 23b

Rates

Maintenance fee rates are set in the Rates tariff of maintenance fees, which is set forth in Annex No. 2 to this Act.

Article 23c

Fee Payer

The holder of breeder's rights is the payer of maintenance fees.

Article 23d

Exemption from Fees

The Czech Republic is exempted from the duty to pay maintenance fees.

Article 23e

Maintenance Fee Due Date

(1) Maintenance fees shall be paid for each individual year of duration of plant variety rights to a protected variety, commencing on the day of the granting of such plant variety rights to a protected variety (Article 16).

(2) The first maintenance fee shall be paid without assessment and is due at the end of the calendar month following the month in which the plant variety rights were granted to the protected variety.

(3) The maintenance fee for the following year is due without assessment by the latest on the day when the previous year has gone by.

Article 23f

Payment of the Maintenance Fee

(1) For each maintenance fee payment, the fee payer is obligated to indicate to which protected variety the maintenance fee

payment relates. If it is not possible unequivocally to ascertain the purpose of the payment, the Institute shall request the fee payer to communicate this purpose in writing within the specified period of time. If the fee payer does not comply with this request, it applies that the payment did occur and the Institute shall return the payment.

(2) If a maintenance fee is not paid in the designated amount, the Institute shall request the fee payer to pay the full amount; to that effect it shall lay down a time limit of 15 days from the delivery date of the invitation. If this time limit expires without payment, the maintenance fee shall be deemed unpaid. The Institute shall return any incomplete payment obtained from the fee payer within 30 days from the date of expiry of the specified time limit without receipt of the full payment. This does not affect the provisions of paragraph 4.

(3) The maintenance fee can be duly paid at the earliest one year prior to its due date. The Institute shall recognize any maintenance fee paid early as duly paid only on the basis of the fee payer's written request, if it is paid in the amount designated by this Act.

(4) If the maintenance fee was not paid within the time limit or if it applies that it was not paid according to paragraph 2, the fee payer can subsequently settle it within a time limit of six months from its due date. In this case the fee payer is obligated to pay a maintenance fee of double amount of the respective rate.

Article 23g

(1) The Institute shall return a paid maintenance fee if the obligation to pay it has not arisen; this does not apply if, on the basis of the fee payer's request according to Article 23f (3), the Institute recognized the maintenance fee, which was not yet due, as duly paid.

(2) In the absence of the fee payer's request, the Institute shall return overpayment of maintenance fee to the fee payer, if this amount exceeds CZK 50.

(3) The Institute shall not return a paid maintenance fee if the protective rights were cancelled after it was paid; this includes maintenance fee paid early according to Article 23f (3).

Article 23h

Method of Maintenance Fee Payment

(1) The maintenance fee can be paid

a) by non-cash transfer from an account maintained at a bank, foreign bank branch, savings and credit cooperative or postal licence holder of breeder's rights to the Institute's relevant account,

b) in a cash payment at the Institute's cashier's office; the Institute shall issue a receipt of payment confirmation,

c) by cheque.

(2) The Institute shall publish in the Bulletin the number of the relevant account for the payment of maintenance fees.

Article 23i

Proceeding

(1) Unless this Act stipulates otherwise, with respect to the maintenance fee it is not possible

a) to forgive missing its payment time period,

b) to permit delayed payment,

c) to permit its payment in instalments.

(2) Unless this Act stipulates otherwise, the provisions of special legal regulations for the administration of taxes and payments¹³⁾ apply to maintenance fee proceedings.

Article 23j

Budgetary Allocation of Maintenance Fees

Maintenance fees constitute the Czech Republic's State budget revenue.

Article 24

Transfer of the Plant Variety Rights

(1) The holder of breeder's rights is entitled to transfer the plant variety rights to the protected variety to a third person based on a written contract. If plant variety rights to the same protected variety belong to more persons, the share in such rights may be transferred to any of the co-holders of breeder's rights without consent of the rest of them; a co-holder of breeder's rights may transfer his share to a third person only provided none of the other co-holders of breeder's rights accepts his written offer for transfer within one month upon its delivery.

(2) Unless this Act stipulates otherwise, the relations between the co-holders of breeder's rights shall be governed by the Civil Code.

(3) A contract on the transfer of the plant variety rights to the protected variety or on the transfer of a share of the plant variety rights to the protected variety becomes effective on the day of its entry to the Register of Protected Varieties kept by the Institute. The Institute shall make the entry after the administrative fee under special legal regulation¹⁴⁾ has been paid.

Article 25

Termination and Cancellation of the Plant Variety Rights

(1) The plant variety rights shall terminate upon the expiry of the period stipulated by this Act or if the holder of breeder's rights fails to pay the maintenance fee even after a

written notification by the Institute within a period specified by the Institute, or if the holder of breeder's rights surrenders his plant variety rights in writing to the Institute.

(2) Before the expiration of the plant variety rights the Institute shall cancel such rights if the protected variety no longer meets the condition of uniformity and stability or if the holder of breeder's rights fails to comply with his obligation under Article 18 (1) or (4).

(3) If it is revealed that at the time of the issue of the breeder's certificate effectively granting the plant variety rights, not all the conditions for their granting have been met, the Institute shall cancel such breeder's certificate; in such case the plant variety rights granted shall be regarded as null and void.

Article 26

(1) The grants issued, termination, cancellation of plant variety rights, transfer of or any change to plant variety rights to the protected plant variety, compulsory licence, change of name, surname, business name, permanent residence address or registered office of the holder of breeder's rights, shall be entered in the Register of Protected Varieties kept by the Institute; information on the above mentioned facts shall be published by the Institute in the Bulletin.

(2) At the request of the contract party, the grant of a licence under Article 19 (2) can also be entered into the Register of Protected Varieties.

Article 26a

(1) The following persons are entitled to enforced rights protected under this Act:

a) holder of breeder's rights,

b) assignee to a licence for a protected variety, or

c) professional organization authorized to represent holders of breeder's rights.

A licence assignee may enforce rights only with the holder of breeder's rights consent. Consent shall not be required if the holder of breeder's rights initiated the proceeding with respect to the violation of or threat to the law within one month from the delivery of notification of the assignee on the violation of or threat to the right.

(2) The person referred to in paragraphs 1 (a) to (c) (hereinafter referred to as the "authorized person") may request information on the origin and distribution network of propagating material or harvested material of the plant variety or services, by which the right has been violated, with respect to the person who violated the rights protected by this Act or with respect to the person who for the purposes of direct or indirect benefit of farming or business

a) has kept propagating material or harvested material of a variety violating a right,

b) has used services violating a right,

c) has provided services used during activities violating rights, or

d) was designated by a person set out in letters a), b) or c) as a person participating in the manufacture, processing, storage or distribution of propagating material or harvested material of a plant variety or provision of services.

(3) Information provided according to paragraph 2 contains

a) for natural person the name, surname or business name^{14a)}, place of permanent residence^{14b)} or residence^{14b)} and place of the supplier's business activities if they differ from the person's permanent residence; for legal person the business name^{14a)} and registered office, or place of the branch

office on the territory of the Czech Republic of the manufacturer, processor, storer, distributor, supplier or other previous holder of the propagating material or harvested material of the variety,

b) information about the manufactured, processed, delivered, stored, received or ordered quantity and on the price received for the given propagating material or harvested material of the variety or service.

(4) The provisions of paragraphs 2 and 3 shall be without prejudice to the provisions of separate legal regulations providing for in particular the provision, use and protection of information^{11a)}.

Article 27

Resolution of Disputes

(1) Disputes resulting from legal relations established on the basis of this Act shall be discussed and decided by courts.

(2) In case of an infringement of a right protected under this Act, the entitled person whose right has been threatened or infringed may claim from the infringer to refrain from such behaviour and redress the defective state. If the infringement caused a damage, the damaged party is entitled to compensation. In case of non-property damages the damaged is entitled to reasonable satisfaction which may consist in pecuniary compensation.

(3) Upon request by the entitled person, the relevant court may decide that the plant propagating material or harvested material to which the infringement of the exclusive right of the holder of breeder's rights relates shall be destroyed unless the infringement of the right may be corrected in another manner and destruction of plant material would be inadequate to such infringement. If the measures for redress aim at the propagating material or the harvested material of a

variety, which is not possessed by the person violating the holder's right, the court shall look to the interest of third parties, in particular of consumers and persons acting in good faith.

(4) An entitled person may claim at the court the rights set forth in paragraphs 2 and 3 and similarly with respect to the intermediary, whose resources or services are used by third parties for the violation of rights.

(5) The court may in its judgment acknowledge to the entitled person, whose proposal was accepted, the right to publish the judgment at the expense of the violator, who did not prevail in the dispute, and depending on the conditions, determine the extent, form and method of publication.

Article 28

(1) Unless this Act stipulates otherwise, the decision-making under this Act shall be governed by the Administrative Procedure Code¹⁵⁾.

(2) The Institute is entitled to suspend the proceedings for a definite period requested by the applicant for serious reasons.

(3) The decision on the grant of the plant variety rights shall be made by the Institute within three months

a) after the completion of tests required for the decision or after the receipt of the test results performed by other professional institutions, and

b) after the expiration of the deadline for filing of objections under Article 13 (2) (b).

(4) Appeals against the Institute's decision shall be decided by the Ministry.

Transitional Provisions

Article 29

(1) Proceedings in the matters of plant variety protection not completed before the effective day of this Act shall be completed in accordance with this Act.

(2) Unless this Act stipulates otherwise, legal relations that arose before its effective date shall be governed by this Act; however, the inception of such legal relations and claims arising from them before the effective day of this Act shall be resolved in accordance with the existing regulations.

(3) On the effective day of this Act rights and obligations under this Act shall become effective for the owner of breeder's certificate granted under the existing regulations; the duration of such breeder's certificate, however, shall be counted as per Act No. 132/1989 Coll., on the legal protection of new varieties of plants and breeds of animals, in the wording of Act No. 93/1996 Coll. The exclusive right of the holder of breeder's rights to a variety, which under this Act is considered as an initial variety, shall not relate to varieties for which the breeder's certificate has been granted under the existing regulations and which can be considered as essentially derived varieties under this Act.

Article 30

Plant variety rights may also be granted to varieties the propagating material or harvested material of which was not sold or provided for use to third persons by the breeder or with his consent for more than four years and in case of trees for more than six years before the effective date of this Act, if the varieties are varieties of genera or plant species or their hybrids not covered by the existing regulations. In such case the application for the grant of plant variety

rights must be filed by the latest within one year of the effective day of this Act and at the time of the application filing the variety must be registered in the State Variety Book (National List) under a special legal regulation⁶⁾ or must enjoy a variety protection in a member of the Union. The duration of plant variety rights specified in Article 23 (1) shall be shortened in such case by the time calculated from the day of the entry of the variety in the State Variety Book until the effective date of the grant of the plant variety rights to variety or by the time calculated from the day of grant the plant variety rights to variety in the member of the Union until the effective date of the grant the plant variety rights to variety under this Act.

Article 31

If before the effective date of this Act a third person, to which the existing regulations on the protection of rights to varieties do not apply, exploits the variety of plant genera and species or the hybrids thereof, the holder of breeder's rights under this Act is obligated to allow such third person free of charge further exploitation of this variety until the end of the year, or, in case of trees, until the end of the second year following after the year in which this Act became effective; after the expiration of the above period, the holder of breeder's rights is obligated to allow such third person to further exploit the variety for an usual licence charge.

PART FOUR ENTRY INTO EFFECT

Article 34

This Act shall enter into effect on 1 February 2001.

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Act No. 147/2002 Coll., on the Central Institute for Supervising and Testing in Agriculture and on the amendment to certain related Acts (Act on the Central Institute for Supervising and Testing in Agriculture) entered into force on 1 June 2002.

Act No. 149/2002 Coll., which implements the amendment to Act No. 408/2000 Coll., on the protection of plant variety rights and the amendment to Act No. 92/1996 Coll., on plant varieties, seed and planting material of cultivated plants (Act on the protection of plant variety rights), and Act No. 368/1992 on administrative fees, as amended, entered into effect on 1 June 2002.

Act No. 219/2003 Coll., on the marketing of seed and planting material of cultivated plants and on the amendment to certain acts (Act on the marketing of seed and planting material) entered into effect on the 30th day after the date of its promulgation (31 August 2003).

Act No. 377/2005 Coll., on additional supervision of banks, savings institutions and credit cooperatives, institutions of electronic money, insurance companies and stockbrokers in financial conglomerates and on the amendment of certain other acts (Act on financial conglomerates), entered into effect on the day of its promulgation (29 September 2005).

Act No. 554/2005 Coll., which implements the amendment to Act No. 408/2000 Coll., on the protection of plant variety rights and the amendment to Act No. 92/1996 Coll., on plant varieties, seed and planting material of cultivated plants (Act on the protection of plant variety rights), as last amended, entered into effect on the day of its promulgation (30 December 2005).

Prime Minister
Ing. Paroubek by his own hand

Footnotes

- 1) Article 3 of Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant variety rights, as amended.
- 1a) Council Regulation (EC) No. 2100/94.
- 2) Notification of the Ministry of Foreign Affairs No. 109/2004 Collection of International Agreements, on accession of the Czech Republic to the International Convention for the Protection of New Varieties of Plants, of December 2, 1961, as Revised at Geneva on November 10, 1971, on October 23, 1978, and on March 19, 1991.
- 3) Article 2 (b) of Act No. 219/2003 Coll., on the marketing of seed and planting material of cultivated plants and on the amendment to certain acts (the Act on marketing of seed and planting material).
- 4) Article 26 of Act No. 219/2003 Coll.
- 5) The Convention on International Exhibitions signed at Paris on 22 November 1928, published in the Collection of Laws and Decrees of the Czechoslovak State, No. 46/1932.
- 6) Article 22 of Act No. 219/2003 Coll.
- 8) Act No. 552/1991 Coll., on State inspection, as amended.
- 9) For instance Article 151b and 628 of the Civil Code, as amended.
- 10) Article 2 (2) (d) of the Commercial Code.
- 10a) Article 5 of the Commercial Code.
- 10b) Article 4 of Act No. 219/2003 Coll.
- 10c) Article 14 of Council Regulation (EC) No. 2100/94 on Community plant variety rights.
- 11a) Act No. 101/2000 Coll., on the protection of personal data and amendment to certain related acts, in the wording of Act No. 227/2000 Coll., Act No. 177/2001 Coll., Act No. 350/2001 Coll., Act No. 107/2002 Coll., Act No. 309/2002 Coll., Act No. 310/2002 Coll., Act No. 517/2002 Coll. and Act No. 439/2004 Coll.
- 11b) Act No. 206/2000 Coll., on the protection of biotechnological inventions and on the amendment to Act No.132/1989 Coll., on the protection of rights to new plant and animal varieties, in the wording of Act No. 93/1996 Coll.

Article 12 of Directive 98/44/EC of the European Parliament and the Council of 6 July 1998 on the legal protection of biotechnological inventions.
- 12) Article 2 (2) of the Commercial Code.
- 13) Act No. 337/1992 Coll., on the administration of taxes and fees, as amended.

- 14) Act No. 368/1992 Coll., on administrative fees, as amended.
- 14a) Act No. 513/1991 Coll., the Commercial Code, as amended.
- 14b) Act No. 326/1999 Coll., on the residence of aliens in the Czech Republic and on the amendment to certain acts, as amended.
- 15) Act No. 71/1967 Coll., on administrative procedures (Administrative Procedure Code), as amended.

Plant Species List (Article 19 (1))

a) Cereals:

Avena sativa L.	Oats
Hordeum vulgare L.	Barley
Secale cereale L.	Rye
Triticosecale Wittm.	Triticale
Triticum aestivum L. emend. Fiori et Paol.	Common wheat
Triticum durum Desf.	Durum wheat
Triticum spelta L.	Spelt wheat

b) Fodder plants:

Lupinus luteus L.	Yellow lupine
Medicago sativa L.	Lucerne
Pisum sativum L. (partim)	Field pea
Trifolium alexandrinum L.	Berseem/Egyptian clover
Trifolium resupinatum L.	Persian clover
Vicia faba L.	Field bean
Vicia sativa L.	Common vetch

c) Potatoes:

Solanum tuberosum L.	Potatoes
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d) Oil and fibre plants:

Brassica napus L. (partim)	Swede rape
Brassica rapa L. (partim)	Turnip rape
Linum usitatissimum L.	Linseed (except flax)

Annex No. 2 to Act No. 408/2000 Coll.

Rates Tariff of Maintenance Fee

The maintenance fee for the duration of plant variety rights for the protected variety equals

a) for the first year of the duration of protected rights	CZK 800,
b) for the second year of the duration of protected rights	CZK 800,
c) for the third year of the duration of protected rights	CZK 800,
d) for the fourth year of the duration of protected rights	CZK 800,
e) for the fifth year of the duration of protected rights	CZK 1,000,
f) for the sixth year of the duration of protected rights	CZK 1,000,
g) for the seventh year of the duration of protected rights	CZK 1,000,
h) for the eighth year of the duration of protected rights	CZK 1,000,
i) for the ninth year of the duration of protected rights	CZK 1,200,
j) for the tenth year of the duration of protected rights	CZK 1,200,
k) for the eleventh year of the duration of protected rights	CZK 1,200,
l) for the twelfth year of the duration of protected rights	CZK 1,200,
m) for the thirteenth year of the duration of protected rights	CZK 1,500,
n) for the fourteenth year of the duration of protected rights	CZK 1,500,
o) for the fifteenth year of the duration of protected rights	CZK 1,500,
p) for the sixteenth year of the duration of protected rights	CZK 1,500,
r) for the seventeenth year of the duration of protected rights	CZK 2,000,
s) for the eighteenth year of the duration of protected rights	CZK 2,000,
t) for the nineteenth year of the duration of protected rights	CZK 2,000,
u) for the twentieth year of the duration of protected rights	CZK 2,000,
v) for each subsequent year of the duration of protected rights	CZK 4,000.

Annex No. 2

Repealed

(The to-date Annex No. 3 is denoted as Annex No. 2).