

LAW NO. 8880 DATED APRIL 15, 2002, ON PLANT BREEDER'S RIGHT

Based on Articles 78, 81, point 1 and Article 83, point 1 of the Constitution, upon the proposal of the Council of Ministers,

THE PEOPLE'S ASSEMBLY
OF
THE REPUBLIC OF ALBANIA

D E C I D E D:

CHAPTER 1

GENERAL PROVISIONS

Article 1

The goal

The purpose of this Law is to protect the rights of the persons who breed, discover and develop new varieties of plants.

Article 2

Subjects for Law application

The provisions of this Law are applicable to legal and physical persons, Albanian citizens or foreigners, and legal and physical persons who are citizens of:

- a) contracting parties or states that are parties in international treaties and conventions for the protection of plant varieties, where the Republic of Albania adhere to.
- b) states that adopt the principles of reciprocity.

Article 3

Definitions

For the purpose of this Law:

1. "Breeder" means a physical or legal person, or any employee who has bred, discovered and developed a new plant variety.
2. "Breeder's right" means the rights provided by this Law to the breeder who has bred, discovered and developed a new variety, as well as the rights of a successor in title.

3. “Variety” means a plant grouping within a botanical taxon of the lowest known rank, which is given when it satisfies the requirements for granting breeder’s right, and might be:
 - a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
 - b) distinguished from any other plant grouping by the expression of at least one of the said characteristics;
 - c) considered as a unit with regard to its suitability for being propagated unchanged.
4. “NSI” is the National Seed and Seedlings Institute in the Ministry of Agriculture and Food.
5. “SCVA” is the State Commission for Variety Attestation that operates within the NSI, and examines and qualifies or not new varieties, which are recorded in the register for the breeder’s right.
6. “Board of appeal” is the body that has the task to examine the applicant claims for the decisions of the SCVA on the breeder’s right.
7. “Patent” means the legal document that certifies the breeder’s right and the denomination of the variety.
8. “Contracting party” means a state (other than the Republic of Albania) or any intergovernmental organization, which is a party to the International Convention for the Protection of New Varieties of Plants.
9. “possessor or owner” means the person who has been granted the breeder’s right, in compliance with the provisions of this Law.
10. “Applicant” is the person who has filed an application to the responsible agency for granting the breeder’s right.
11. “Successor in title” means the inheritor of the breeder’s right.
12. “Obligatory license” means the license issued on the basis of this Law.
13. “UPOV” is the International Union for the Protection of the New Varieties of Plants.
14. “Mutant” means a new plant propagated from the initial known variety as the result of essential transformations occurred naturally or by genetic engineering.
15. “Soma clonal” are clones propagated from the development of somatic or vegetative cells.
16. “Application Register” is the register kept by the NSI for all the people that apply for the grant of the plant breeder’s right. The applications of this register are published periodically.

17. “Register for the breeder’s right” is the register where all the physical and legal persons that have been awarded the breeder’s right are recorded. This register is kept by the NSI, too. The records of this register are published periodically.

18. “Contracting authorization” means any contract through which one party (the authority) awards the other party (authorized) its approval to adopt in the Republic of Albania one of the acts referred to in Article 20 for a variety of plants, subject of an application for granting breeder’s right.

19. “Material” means:

- a) propagating material of any variety (seed, sapling, piece, bulb, rhizome and slip).
- b) harvested material including entire plants or parts of plants.

CHAPTER II

CONDITIONS FOR GRANTING THE BREEDER’S RIGHT

Article 4 Granting conditions

1. The breeder’s right shall be granted where the variety is new, distinct, uniform, stable and subject to denomination designated in accordance with Articles 25 and 26 of this Law.
2. The grant of the breeder’s right shall not be subject to any other or different conditions than the conditions stipulated in this Law.

Article 5

A new variety

1. A variety shall be deemed to be new if at the date of filing the application for the breeder’s right, the propagating or the harvested material of the variety has not been sold, offered for sale or otherwise disposed of to others, by or with the consent of the breeder or by the successor in title, for purposes of exploitation of the variety:
 - a) for more than one year in the territory of the Republic of Albania;
 - b) for more than four years in a territory other than Albania, and in case of vines and fruit trees more than six years.
2. Novelty shall not be lost due to any sale or disposal to others:
 - a) when it is part of an agreement for the disposal of variety rights;

- b) when it is part of an agreement according to which one person propagates the material for the multiplication of the said variety on behalf of the breeder or the successor in title, making sure that the ownership of the propagated material will be returned to the breeder or his successor in title and the propagated material is not used for creating a another variety.
- c) when it includes the harvested material as a sub product or additional products of the variety or activities referred to in paragraph 2.b) of this Article, ensuring that the above mentioned material is for consumption purposes.

Article 6

The distinct variety

1. A variety shall be deemed to be distinct if it is clearly distinguished from any other variety, whose existence is a matter of common knowledge at the time of the filing of the application.
2. Other indicators that are used to mark the distinction of a variety are:
 - a) the variety shall be in use;
 - b) the variety shall be entered in the register of the new varieties, which is kept by the NSI or in the registers of other member countries of UPOV.

Article 7

The uniform variety

A variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant features and characteristics.

Article 8

The stable variety

A variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or/and in case of a particular cycle of propagation.

CHAPTER III

APPLICATION FOR THE GRANT OF THE BREEDER'S RIGHT

Article 9

Basic principles

1. The right for filing an application for granting the breeder's right is awarded to the breeder or his/her successor in title. The application of the successor in title is supported by documentations certifying his/her status.
2. When one or more persons have bred, discovered and developed together a new variety, the breeder's right title will be granted in joint ownership, if they have no written agreement stipulating the opposite.
3. When the variety is bred, discovered or developed according to a commission contract or contract of employment outside the Republic of Albania, the right to file the application for the breeder's right is determined in the commission contract or contract of employment, in which context the new variety was bred, discovered and developed, in compliance with the contract between the parties.
4. When the new variety is bred, discovered or developed according to a commission contract or contract of employment, within the territory of the Republic of Albania, the right to file the application for the breeder's right will belong to the person who has commissioned the activity or the employer, in case that there are no other contracting stipulations.

Article 10

The application form

1. Any person that wishes to get the breeder's right and protect a variety he has to file his application at the NSI against payment.
2. The application form, the supporting documents and the application fee will be determined by the rules and regulations of the Ministry of Agriculture and Food.
3. The physical and legal foreign persons can file the applications for the breeder's right in compliance with this Law and might protect their rights through their domestic or foreign representatives, Albanian residents, when have provided a Power of Attorney.

Article 11

Right of Priority

1. The breeder enjoys the right of priority for a variety in case where there is an initial application for the same variety, filed by him/her or by his/her successor in title, with the Contracting Party.
2. When an application filed in the NSI is preceded by other such applications, the priority will fall only on the initial application. The right of priority will be duly required in the application filed to the NSI. It can be required only within a period of 12 months from the date of the filing of the first application.

3. The breeder will submit to the NSI a copy of the first application within 3 months from the date of the filing, in compliance with Article 12, point 3. The NSI has the right to examine the first application within 3 months from the date of receiving the request.

4. The effects of priority will be such that when the conditions for the protection of the variety are applied, the date of filing of the first application is taken into account. The breeder has the right to ask the postpone of the application examination up to two years from the date of the expiration of priority, and 3 years from the date of the filing of the first application. When the first application is rejected or withdrawn the NSI has the right to start the examination of the variety before the date determined by the applicant. In such a case, within an appropriate period, the breeder is allowed to furnish data, documentations or materials required for the examination of the variety.

CHAPTER IV

EXAMINATION OF THE APPLICATION

Article 12

Formal requirements for examination

1. The NSI will examine the application if it meets the formal requirements.
2. When the application is not complete, then the NSI will ask the breeder to complete and amend it within 30 days from the date of receiving the request. Any application which is not amended within this period, it is assumed as if it was not submitted at all.
3. Each application that is complete and proper, in compliance with the requirements of Article 10 to this Law, it will be entered in the register of applications.

Article 13

Preliminary examination of the application

1. The NSI shall examine the application based on the records in order to verify if the variety is new and if the breeder shall be granted the right of the application, in compliance with Article 9 to this Law.
2. When the application does not meet the requirements of Articles 4 and 9 to this Law, it is rejected.

Article 14

Technical examination of the variety

1. The variety shall be subject to the technical examination in order to determine if the variety is distinct, uniform and stable and based on these, the formal description of the variety is made supported by the agro botanic evaluation.

2. The technical examination is carried out by the SCVA aiming these subjects:
 - a) the results of the field tests and other necessary tests carried out by the NSI;
 - b) the results of the cultivating tests and other necessary tests carried out by the NSI or by another institution in Albania or from abroad.
 - c) payment of fees determined by the rules and regulations of the Ministry of Agriculture and Food for the implementation of this Law.
3. The procedures of examination are determined by the rules and regulations of the Ministry of Agriculture and Food.

Article 15

The grant of the breeder's right or its rejection

1. While as a result of preliminary and technical examinations it is estimated that the variety satisfies the requirements of Article 4 to this Law and the breeder fulfills the other requirements defined by the provisions of this Law, the SCVA shall grant the breeder's right and shall issue the patent of the variety, which are announced by an order of the Minister of Agriculture and Food within 30 days from the date of granting this right.
2. The grant of the breeder's right and the description of the variety or the rejection of the application are respectively entered into the register of applications and the register for the breeder's right.
3. The model for the patent, for the register of the breeder's right, as well as their content and the required fees shall be determined by the rules and regulations of the Ministry of Agriculture and Food.

Article 16

The right to claim

1. Every decision taken by the SCVA is made known to the applying party within 5 days.
2. The applying party shall be allowed to submit its own comments, orally or in writing, within 30 days from the date of receiving the notification.
3. The decision of the SCVA is claimed to the board of appeal. The establishment, operation and composition of the board of appeal are determined by an order of the Minister of Agriculture and Food.
4. The decision of the board of appeal can be brought to the law-court.

Article 17

Review of claims

1. The rejection of the breeder's right is announced to the applicant within 5 days from the date of making the decision. Within a period of three months, the applicant shall express his comments related to the rejection of the breeder's right, stating whether he is aiming to withdraw the application or continue with it. The period may be prolonged upon applicant's request.
2. When the applicant does not reply within the determined period, the application is considered withdrawn. When the applicant wants to continue with the application, his answer is made known to the SCVA within 30 days.
3. The breeder who is claiming for the rejection of the breeder's right by the SCVA, during the technical examination is asked to furnish additional data and documents or plant material, in support of his claim, if they are necessary for the technical examination.

Article 18

Preservation of files

1. The NSI maintains a register for applications and another register for the breeder's right, i.e. the applicants that have been granted this right. The registers are open to the public.
2. Each person has the right to get familiar with:
 - a) documents related to applications;
 - b) documents related to the breeder's right;
 - c) records on the testing trials and other tests carried out according to Article 14.
3. In case of varieties whose production require repeated use of other varieties (parent components), the breeder proposes the documents and tests related to the components to be confidential from inspection.
4. The NSI archive the original documents or its copies in compliance with legislation in force.

Article 19

Publications

1. The requirements for application, in compliance with Article 10 to this Law, shall be published in the bulletin of the NSI.
2. The NSI will publish periodically in its bulletin the information related to the protection of varieties of plants, namely:
 - a) application for the grant of the breeder's right;

- b) applications for the denomination of the variety;
- c) registration of the new denomination for the protected varieties;
- d) withdrawal of applications for granting the breeder's right;
- e) rejection of the request for the application of the breeder's right;
- f) the granting of the breeder's right;
- g) changes to the information about the applicants, successors in title and their representatives, provided with Power of Attorney.
- h) expiration of the duration of the breeder's right;
- i) licenses;
- j) formal information.

CHAPTER V

THE RIGHTS OF THE BREEDER

Article 20

Scope of the breeder's right

1. The right of the breeder in the respect of the propagating material of the protected variety shall extend to the following acts:
 - a) production or reproduction (multiplication);
 - b) conditioning for the purpose of propagation;
 - c) offering for sale;
 - d) selling or other marketing;
 - e) exporting;
 - f) importing;
 - g) stocking or storing for any of the purposes mentioned above.
2. Subject to Articles 21 and 22 to this Law are the acts referred to from item a) to item g), point 1 of this Article in respect of harvested material, which includes parts of plants obtained through the unauthorized use of propagating material of the protected variety, shall require the authorization of the breeder.

3. The breeder can authorize the use of the protected variety for the purposes stipulated in points 1 and 2 in this Article, which are subject to conditions and limitations.

Article 21

Exceptions to the breeder's right

The breeder's right shall not extend to:

- a) acts done for non-commercial purposes;
- b) acts done for experimental purposes;
- c) acts of farmers, who for their needs, use seeds produced in their own holdings.

Article 22

Exhaustion of the breeder's right

The breeder's right shall not extend to acts concerning the material of the protected variety or obtained from it, which have been sold by the breeder or with his content, in the territory of the Republic of Albania in cases:

- a) when there is no further propagation of the variety in question;
- b) when there is no export of the propagating material of the variety.

Article 23

Duration of the breeder's right

The breeder's right for crops shall be granted for 20 years, for fruit-trees, shrubs and decorating plants shall be 25 years. The rights of the breeder and of the owner of the variety start at the date of application.

Article 24

Obligatory license

1. Each person, may, through an application, require from the NSI the issue of an obligatory license for the breeder's right, which can be delivered only when this right shall effect the protection of public interest.

2. The obligatory license is granted when the applicant is capable to make use of the breeder's right in a conscious and fruitful manner.

3. The procedures and conditions for issuing the obligatory license are determined by the rules and regulations of the Ministry of Agriculture and Food.

CHAPTER VI

VARIETY DENOMINATION

Article 25

Denomination

1. The denomination of a protected variety shall be designated by its main generic characteristics.
2. The denomination may consist of a word, a word combination, a combination of words with figures or a combination of letters with figures, that shall enable the variety to be identified.
3. When in a contract between parties, a denomination is proposed or registered to be used for a variety, then this denomination shall be the only used in the territory of the Republic of Albania.
4. It is not allowed the use of the same or closely related denomination that will cause confusion between this variety and another variety of the same kind or of a closely related type in the territory of the Republic of Albania, as long as this variety shall be used. The above restriction is applied for denominations designated in the contract between the parties.
5. Any person who offers for sale, sells or markets the propagating material of a protected variety, shall be obliged to use the denomination of that variety.
6. The obligation to use the denomination does not expire with the right of the breeder, as long as it is in production or in the marketing.
7. When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indications with a registered variety denomination, provided that the denomination shall be easily recognized.

Article 26

Registration procedures

1. The denomination proposed for a variety is submitted along with the application for protection. The breeder follows the procedures for the registration of the variety denomination after paying the determined fee and submits a temporary denomination for it in the application. In this case, the breeder proposes the new denomination for the variety within 30 days from the date of receiving the proposal forwarded to the NSI. If the breeder does not file a proposal within the determined period, the application is rejected.

2. If the criteria stipulated under Article 25 of this Law are fulfilled, then the denomination of the variety shall be published in the bulletin of the NSI.
3. Each interested person might make comments within 3 months after the publication for the registration of the denomination, for one of the reasons for the rejection of the breeder's right, in compliance with Article 25 of this Law.
4. The objections and remarks are sent to the breeder in writing, within 30 days.
5. Based on the objections and remarks, the applicant may file a new proposal. When the proposed denomination does not comply with the provisions under Article 25 to this Law, the NSI asks the applicant to submit a new proposal within 30 days from the date of receiving the written notification. The fail to submit a new proposal within this period will be associated with the rejection of the application.
6. The new proposal is subject to re-examination. When the new proposal does not comply with the provisions under this article, the NSI informs the applicant for another denomination that will be in compliance with the above-mentioned stipulations. The failure to make a new proposal is associated with the rejection of the application.
7. If no objections or remarks are taken into account, a statement, clarifying the reasons for this decision, will associate each decision of the SCVA. The decision is made known to the parties. The rejection of a proposed denomination is also associated with a decision.
8. The denomination is registered on the same date with the grant of the breeder's right.

CHAPTER VII

THE MAINTENANCE OF THE BREEDER'S RIGHT

Article 27

Annual payment

The holder of the title of the variety, until 31 January of each year, shall make an annual payment to the NSI for the entire duration of the breeder's right. The amount of the payment is determined by a decision of the Council of Ministers.

Article 28

Maintenance of the variety

1. The holder of the title must maintain the protected variety or its parent components for the entire duration of the breeder's right.

2. Upon the request of the NSI, the holder of the title or any authority selected by him, within the prescribed period, shall supply information associated with documents or materials that are thought to be necessary for verifying the maintenance of the variety.
3. The conditions for the maintenance of the variety are determined by the rules and regulations of the Ministry of Agriculture and Food.

Article 29

Verification of the variety maintenance

During the protection period, the NSI shall verify whether the variety and its parent components are properly maintained.

CHAPTER VIII

NULLITY AND CANCELLATION OF THE BREEDER'S RIGHT

Article 30

Nullity

1. The SCVA shall declare the breeder's right granted by it null and void when examinations have proved the variety is not new, uniform, distinct, stable, and when the breeder's right has been granted to a person who is not entitled to it.
2. When the breeder's right has been declared null and void because it does not comply with the provisions of this Law, it is presumed to be ungranted.
3. Each person can submit to the SCVA the request for the nullification of the breeder's right. The SCVA has the authority to act on its own initiative.

Article 31

Cancellation of the breeder's right

1. The SCVA may cancel the breeder's right granted by it when the breeder has failed to maintain the variety and the variety cease to be uniform and stable.
2. The breeder's right is cancelled when:
 - a) the breeder does not meet the requirements made by the NSI for verifying the maintenance of the variety.
 - b) the SCVA proposes the cancellation of the denomination of the variety when the breeder does not propose another suitable denomination within the determined period.

3. The breeder is informed in writing about the reasons of the SCVA for the cancellation of the breeder's right, leaving him a period of 30 days to act immediately in compliance with the decision.

4. The cancellation of the breeder's right comes into effect on the date of its entry in the register for the plant breeder's right.

CHAPTER IX

JOINT OWNERSHIP

Article 32

Every contract between the parties for joint application for the breeder's right is made in writing and is signed by the parties. The contract provides penalties in case of its violation and turning the application invalid.

Article 33

1. In case when some applicants are requesting the breeder's right, each one shall be allowed, without being in agreement with the others, to determine or dispose by inheritance his own part of the application. The joint applicant may also withdraw the application or conclude a contract with third parties only according to the joint application.

2. When there are joint owners for a breeder's right, each of them has the right, without agreement with the others, to determine or dispose by inheritance his own portion of breeder's right or to start legal procedures to examine the violation of breeder's right against any person that will use the protected variety in the Republic of Albania. In the Republic of Albania, the use of the protected variety by one of joint owners does not require the agreement of other owners, however, the joint-owners have the right to withdraw from Plant Breeder's Right or conclude contracts with third parties according to the joint right of plant breeder.

3. The stipulations of this article are applicable only then where there is no agreement for challenges between applicants or between joint owners.

CHAPTER X

CONTRACT AWARD AND RIGHTS

Article 34

1. Contract award is made in writing and signed by both parties.

2. The signed contract award is entered into the Register for breeder's right after payment of the certain license fee. The licensee has the right to start a legal procedure for contract award only if it has been recorded in the Register for Breeder's Right.

Article 35

1. While a separate Article for challenging contract award is missing, the awarder may allow a third party to carry out for the protected variety any actions specified in Article 20 in this Law.
2. If the contract specifies that the award is only one and if it is not otherwise stipulated, no third party, even the licensor himself, has the right to make any actions specified in Article 20 of this Law for the protected variety.

CHAPTER XI

CONTRAVENTIONS

Article 36

According to this Law, the administrative contraventions consist of:

- a) Violations specified in points 1 and 2 of Article 20 to this Law for carrying out acts by various subjects without the authorization of the breeder, for products protected by the patent.
- b) Violations stipulated in points 1 and 2 of Article 20 to this Law, for carrying out activities by various subjects against the applicant and without his authorization that are related to production in temporary protection, based on Article 23 of this Law.

Article 37

The owner and the applicant of breeder's right have the right to bring a claim to the law court against any person that violates breeder's right or temporary protection. The owner and the applicant of breeder's right have equal rights against any person that facilitates any kind of violation. The claiming procedures cannot be initiated after a period of 5 years since violation occurrence.

CHAPTER XII

Article 38

1. Violations stipulated in points a and b to Article 36 of this Law, when they do not constitute penal offences, will be punished by a fine levied by the inspectors of the State Control Inspectorate of Seeds and Saplings, starting from 50.000 Lek up to 150.000 Lek.
2. In case of repeated offences, the maximum levied fine will be doubled.

3. Fine execution procedures are conducted in compliance with Law No. 7697, dated 07.04.1993, “ On administrative contravention”.
4. Collected fines will be distributed 60% to State budget and 40% to patent holder.

CHAPTER XIII

FINAL PROVISIONS

Article 39

The Council of Ministers and the Ministry of Agriculture and Food are authorized respectively to deliver required by-laws and regulations for relevant implementation of Article 27 and Articles 10, 14, 15, 16, 24, and 28 of this Law.

Article 40

Abrogation

Article 4 of the Law No. 8732, dated 24.01.2001, “On plant cropped material” is abrogated.

Article 41

This Law enters into force 15 days after publication in the Official Gazette.