

# 2002. évi LI. törvény

## az új növényfajták oltalmára létesült Nemzetközi Egyezmény Genfben, 1991. március 19-én felülvizsgált szövegének kihirdetéséről<sup>1</sup>

Hatályos: 2011. 01. 01. –

1. § Az Országgyűlés az új növényfajták oltalmára 1961. december 2-án létesült, Genfben, 1972. november 10-én, 1978. október 23-án és 1991. március 19-én felülvizsgált Nemzetközi Egyezményt e törvénnyel kihirdeti.

[Az új növényfajták oltalmára létesült Nemzetközi Egyezmény Genfben, 1991. március 19-én felülvizsgált szövegéhez történő csatlakozásról szóló okirat letétbe helyezése 2002. december 1. napján megtörtént; az Egyezmény a Magyar Köztársaság tekintetében – az Egyezmény 37. Cikkének (2) bekezdésével összhangban – 2003. január 1-jén lép hatályba.]

2. § Az új növényfajták oltalmára létesült Nemzetközi Egyezmény 1991. március 19-én felülvizsgált angol nyelvű szövege és annak hivatalos magyar nyelvű fordítása a következő:

„

### **International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991**

#### Chapter I

#### DEFINITIONS

#### Article 1

#### Definitions

For the purposes of this Act:

- (i) „this Convention" means the present (1991) Act of the International Convention for the Protection of New Varieties of Plants;
- (ii) „Act of 1961/1972" means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972;
- (iii) „Act of 1978" means the Act of October 23, 1978, of the International Convention for the Protection of New Varieties of Plants;
- (iv) „breeder" means
  - the person who bred, or discovered and developed, a variety,
  - the person who is the employer of the aforementioned person or who has commissioned the latter's work, where the laws of the relevant Contracting Party so provide, or
  - the successor in title of the first or second aforementioned person, as the case may be;
- (v) „breeder's right" means the right of the breeder provided for in this Convention;
- (vi) „variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be
  - defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
  - distinguished from any other plant grouping by the expression of at least one of the said characteristics and
  - considered as a unit with regard to its suitability for being propagated unchanged;
- (vii) „Contracting Party" means a State or an intergovernmental organization party to this Convention;
- (viii) „territory", in relation to a Contracting Party, means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies;

- (ix) „authority" means the authority referred to in Article 30 (1) (ii);
- (x) „Union" means the Union for the Protection of New Varieties of Plants founded by the Act of 1961 and further mentioned in the Act of 1972, the Act of 1978 and in this Convention;
- (xi) „member of the Union" means a State party to the Act of 1961/1972 or the Act of 1978, or a Contracting Party.

## Chapter II

### *GENERAL OBLIGATIONS OF THE CONTRACTING PARTIES*

#### *Article 2*

##### *Basic Obligation of the Contracting Parties*

Each Contracting Party shall grant and protect breeders' rights.

#### *Article 3*

##### *Genera and Species to be Protected*

- (1) [States already members of the Union] Each Contracting Party which is bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,
- (i) at the date on which it becomes bound by this Convention, to all plant genera and species to which it applies, on the said date, the provisions of the Act of 1961/1972 or the Act of 1978 and,
- (ii) at the latest by the expiration of a period of five years after the said date, to all plant genera and species.
- (2) [New members of the Union] Each Contracting Party which is not bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,
- (i) at the date on which it becomes bound by this Convention, to at least 15 plant genera or species and,
- (ii) at the latest by the expiration of a period of 10 years from the said date, to all plant genera and species.

#### *Article 4*

##### *National Treatment*

- (1) [Treatment] Without prejudice to the rights specified in this Convention, nationals of a Contracting Party as well as natural persons resident and legal entities having their registered offices within the territory of a Contracting Party shall, insofar as the grant and protection of breeders' rights are concerned, enjoy within the territory of each other Contracting Party the same treatment as is accorded or may hereafter be accorded by the laws of each such other Contracting Party to its own nationals, provided that the said nationals, natural persons or legal entities comply with the conditions and formalities imposed on the nationals of the said other Contracting Party.
- (2) [„Nationals"] For the purposes of the preceding paragraph, „nationals" means, where the Contracting Party is a State, the nationals of that State and, where the Contracting Party is an intergovernmental organization, the nationals of the States which are members of that organization.

## Chapter III

*CONDITIONS FOR THE GRANT  
OF THE BREEDER'S RIGHT*

*Article 5*

*Conditions of Protection*

(1) [Criteria to be satisfied] The breeder's right shall be granted where the variety is

- (i) new,
- (ii) distinct,
- (iii) uniform and
- (iv) stable.

(2) [Other conditions] The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of Article 20, that the applicant complies with the formalities provided for by the law of the Contracting Party with whose authority the application has been filed and that he pays the required fees.

*Article 6*

*Novelty*

(1) [Criteria] The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety 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

- (i) in the territory of the Contracting Party in which the application has been filed earlier than one year before that date and
- (ii) in a territory other than that of the Contracting Party in which the application has been filed earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

(2) [Varieties of recent creation] Where a Contracting Party applies this Convention to a plant genus or species to which it did not previously apply this Convention or an earlier Act, it may consider a variety of recent creation existing at the date of such extension of protection to satisfy the condition of novelty defined in paragraph (1) even where the sale or disposal to others described in that paragraph took place earlier than the time limits defined in that paragraph.

(3) [„Territory" in certain cases] For the purposes of paragraph (1), all the Contracting Parties which are member States of one and the same intergovernmental organization may act jointly, where the regulations of that organization so require, to assimilate acts done on the territories of the States members of that organization to acts done on their own territories and, should they do so, shall notify the Secretary-General accordingly.

*Article 7*

*Distinctness*

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

*Article 8*

### *Uniformity*

The 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 characteristics.

### *Article 9*

### *Stability*

The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

## Chapter IV

### *APPLICATION FOR THE GRANT OF THE BREEDER'S RIGHT*

### *Article 10*

#### *Filing of Applications*

(1) [Place of first application] The breeder may choose the Contracting Party with whose authority he wishes to file his first application for a breeder's right.

(2) [Time of subsequent applications] The breeder may apply to the authorities of other Contracting Parties for the grant of breeders' rights without waiting for the grant to him of a breeder's right by the authority of the Contracting Party with which the first application was filed.

(3) [Independence of protection] No Contracting Party shall refuse to grant a breeder's right or limit its duration on the ground that protection for the same variety has not been applied for, has been refused or has expired in any other State or intergovernmental organization.

### *Article 11*

#### *Right of Priority*

(1) [The right; its period] Any breeder who has duly filed an application for the protection of a variety in one of the Contracting Parties (the „first application“) shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the authority of any other Contracting Party (the „subsequent application“), enjoy a right of priority for a period of twelve months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.

(2) [Claiming the right] In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application. The authority with which the subsequent application has been filed may require the breeder to furnish, within a period of not less than three months from the filing date of the subsequent application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

(3) [Documents and material] The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection or withdrawal, in which to furnish, to the authority of the Contracting Party with which he has filed the subsequent application, any necessary information, document or material required for the purpose of the examination under Article 12, as required by the laws of that Contracting Party.

(4) [Events occurring during the period] Events occurring within the period provided for in paragraph (1), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

## *Article 12*

### *Examination of the Application*

Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Article 5 to Article 9. In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material.

## *Article 13*

### *Provisional Protection*

Each Contracting Party shall provide measures designed to safeguard the interests of the breeder during the period between the filing or the publication of the application for the grant of a breeder's right and the grant of that right. Such measures shall have the effect that the holder of a breeder's right shall at least be entitled to equitable remuneration from any person who, during the said period, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 14. A Contracting Party may provide that the said measures shall only take effect in relation to persons whom the breeder has notified of the filing of the application.

## Chapter V

### *THE RIGHTS OF THE BREEDER*

## *Article 14*

### *Scope of the Breeder's Right*

(1) [Acts in respect of the propagating material]

a) Subject to Article 15 and Article 16, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- (i) production or reproduction (multiplication),
- (ii) conditioning for the purpose of propagation,
- (iii) offering for sale,
- (iv) selling or other marketing,
- (v) exporting,
- (vi) importing,
- (vii) stocking for any of the purposes mentioned in (i) to (vi), above.