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UPOV

C/XIII/12

ORIGINAL: englisch

DATUM: 16. Oktober 1979

## INTERNATIONALER VERBAND ZUM SCHUTZ VON PFLANZENZÜCHTUNGEN

GENEVE

## DER RAT

## Dreizehnte ordentliche Tagung

Genf, 17. bis 19. Oktober 1979

## ANTRAG AUF BEITRITT DURCH DEN STAAT ISRAEL

vom Verbandsbüro ausgearbeitetes Dokument

1. In einem Schreiben vom 9. Oktober 1979 hat das Eidgenössische Departement für auswärtige Angelegenheiten der Schweizerischen Eidgenossenschaft den Generalsekretär der UPOV wissen lassen, dass die Botschaft des Staates Israel in einer Note vom 5. Oktober 1979 einen Antrag auf Beitritt zum Internationalen Übereinkommen zum Schutz von Pflanzenzüchtungen vom 2. Dezember 1961 sowie zu der Zusatzakte vom 10. November 1972 gemäss Artikel 32 Absatz 2 des Übereinkommens eingereicht hat. Dieses Schreiben bildet die Anlage I des vorliegenden Dokuments.
2. Dem Schreiben waren eine Kopie der Verbalnote der Botschaft des Staates Israel beigelegt, die die Anlage II des vorliegenden Dokuments bildet, ferner eine Liste der Gattungen und Arten, auf die der Staat Israel sich verpflichtet das Übereinkommen anzuwenden, und schliesslich eine Kopie des Sortenschutzgesetzes 5733 - 1973, das die Anlage IV des gegenwärtigen Dokuments bildet. Die landesüblichen Bezeichnungen in englischer Sprache, die in der obenbezeichneten Liste der Gattungen und Arten aufgeführt waren, sind in der Anlage III dieses Dokuments wiedergegeben.
3. Nach Artikel 32 Absatz 2 des Übereinkommens wird die Regierung der Schweizerischen Eidgenossenschaft den Beitrittsantrag, der durch den Staat Israel vorgelegt worden ist, den Verbandsstaaten notifizieren.
4. Um die Prüfung des Antrags zu erleichtern, hat das Verbandsbüro das Sortenschutzgesetz 5733 - 1973 (siehe Anlage IV dieses Dokuments) daraufhin untersucht, ob es den Bedingungen für einen Beitritt entspricht. Das Verbandsbüro ist der Meinung, dass dies zutrifft.
5. Nach der Liste der Gattungen und Arten (siehe Anlage III dieses Dokuments) ist der Staat Israel in der Lage, den Voraussetzungen des Artikels 4 Absatz 3 dieses Übereinkommens zu entsprechen, nämlich das Übereinkommen auf mindestens fünf der Gattungen anzuwenden, die in der dem Übereinkommen beigelegten Liste aufgezählt sind. Die eingereichte Liste nennt rund 70 Gattungen und Arten, darunter Weizen, Gerste, Mais, Salat, Äpfel, sowie die alternativ vorgesehenen Arten Rose und Nelke. Der Staat Israel verpflichtet sich gemäss Absatz 5 seiner Note (siehe Anlage II dieses Dokuments) das Übereinkommen entsprechend Artikel 33 Absatz 1 auf diese in der Liste genannten Gattungen und Arten anzuwenden.
6. Der Staat Israel verpflichtet sich in Absatz 4 seiner Note, alle Massnahmen zu ergreifen, die für die Anwendung des Übereinkommens nach Artikel 30 Absatz 1 notwendig sind. Die Bestimmungen des Sortenschutzgesetzes 5733 - 1973 dürften den Staat Israel in die Lage versetzen, insbesondere den in Artikel 30 Absatz 1 Buchstaben a), b) und c) genannten Bedingungen zu entsprechen und auch ganz allgemein das Übereinkommen anzuwenden.

## ANLAGE I

BRIEF VOM 9. OKTOBER 1979 DES EIDGENÖSSISCHEN DEPARTEMENTS FÜR  
AUSWÄRTIGE ANGELEGENHEITEN DER SCHWEIZERISCHEN EIDGENOSSENSCHAFT  
AN DEN GENERALSEKRETÄR DER UPOV

Betrifft: Antrag auf Zulassung zum Internationalen Übereinkommen  
zum Schutz von Pflanzenzüchtungen durch Israel

...

Wir beehren uns, Ihnen eine Kopie des obengenannten Antrags vom 5. Oktober 1979 nebst seiner Anlagen zu übersenden; die Kopie ist dem Eidgenössischen Departement für auswärtige Angelegenheiten zugeleitet worden. Die Dokumente sind bei uns am 8. Oktober 1979 eingegangen.

Wir beabsichtigen, Kopien der Note und ihrer Anlagen den Verbandsstaaten des Übereinkommens nach Artikel 32 Absatz 2 des Übereinkommens zu übersenden.

Wir wären dankbar, wenn Sie uns Bemerkungen von Ihrer Seite zu dieser Notifikation zukommen lassen würden.

...

[Anlage II folgt]

## ANLAGE II

NOTE DER BOTSCHAFT ISRAELS IN BERN AN DAS  
SCHWEIZERISCHE EIDGENÖSSISCHE DEPARTEMENT FÜR AUSWÄRTIGE ANGELEGENHEITEN

## BOTSCHAFT ISRAELS

Die Botschaft des Staates Israel entbietet dem Schweizerischen Departement für auswärtige Angelegenheiten seine Grüsse und beehrt sich, auf das Internationale Übereinkommen zum Schutz von Pflanzenzüchtungen vom 2. Dezember 1961 (Paris) und auf die Zusatzakte vom 10. November 1972 zur Änderung des Übereinkommens (Genf) zu verweisen.

Gemäss Artikel 32 Absatz 2 des Übereinkommens möchte die Botschaft für die Regierung des Staates Israel um Beitritt zu diesem Übereinkommen und der Zusatzakte nachzusuchen. Die Botschaft wäre dankbar, wenn das Eidgenössische Departement für auswärtige Angelegenheiten gemäss dem genannten Artikel die Verbandsstaaten des Verbands zum Schutz von Pflanzenzüchtungen von diesem Ersuchen unterrichten würde.

Die Botschaft möchte ferner das Eidgenössische Departement für auswärtige Angelegenheiten auf folgendes hinweisen:

Gemäss seiner Entscheidung vom 8. April 1979, dem genannten Übereinkommen und der genannten Zusatzakte beizutreten, verpflichtet sich der Staat Israel, alle Massnahmen zu ergreifen, die zur Anwendung des Übereinkommens gemäss Artikel 30 Absatz 1 desselben notwendig sind.

Gemäss Artikel 33 Absatz 1 des genannten Übereinkommens ist dieser Note eine Liste der Gattungen und Arten beigefügt, in bezug auf die Israel sich verpflichtet, das Übereinkommen anzuwenden.

In Übereinstimmung mit Artikel 26 Absatz 4 des genannten Übereinkommens in der durch Artikel II der genannten Zusatzakte geänderten Fassung wünscht Israel in die Klasse V für die Bestimmung des Betrags seines jährlichen Beitrags eingestuft zu werden. Im Hinblick auf die wirtschaftlichen Schwierigkeiten, die in dem Staat Israel gegenwärtig bestehen, erbittet Israel die Erlaubnis in Übereinstimmung mit Artikel 26 Absatz 5, nur die Hälfte der Beitragseinheit zahlen zu dürfen, die dieser Klasse entspricht.

Um eine baldige und günstige Entscheidung über seinen Beitragsantrag zu erleichtern, ist dieser Note zur Information des Rats der UPOV eine amtliche Übersetzung des Sortenschutzgesetzes 5733 - 1973 beigefügt\*.

[Schlussklausel]

Bern, 5. Oktober 1979

An das  
Eidgenössische Departement für  
auswärtige Angelegenheiten  
Bern

[Anlage III folgt]

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\* in englischer Sprache; siehe Anlage IV.

## ANNEX III/ANNEXE III/ANLAGE III

LIST OF GENERA AND SPECIES ELIGIBLE FOR PROTECTION  
 LISTES DES GENRES ET ESPECES BENEFICIAINT DE LA PROTECTION  
 LISTE DER SCHUTZFAHIGEN GATTUNGEN UND ARTEN

Alfalfa	Gerbera	Peach
Almond	Gladiolus	Peanut
Alstroemeria	Grapefruit	Pear
Annona		Pecan
Anthurium	Hardings Grass	Pepper
Apple	Horse Bean	Persimmon
Apricot		Petunia
Aster	Iris	Plum
Avocado		Pumpkin
	Lemon	
Barley	Lettuce	Ranunculus
Bean	Leucospermum	Rose
Begonia	Liatris	
	Lily	Safflower
Carnation	Litchi	Sesame
Castorbean	Loquat	Sorghum
Cauliflower		Strawberry
Chick-pea	Maize	Sunflower
Chrysanthemum	Mandarin	
Citron	Mango	Tobacco
Clover	Muskmelon	Tomato
Cotton		
Cucumber	Narcissus	Vetch
	Oat	Vinca
Duboisia	Olive	Vine
	Onion	Violet (African)
Eggplant	Orange	
	Orchid	Watermelon
Freesia	Oryzopsis	Wheat

[Annex IV follows/  
 L'annexe IV suit/  
 Anlage IV folgt]

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ANNEX IV/ANNEXE IV, ANLAGE IV

PLANT BREEDERS' RIGHTS LAW OF ISRAEL  
 LOI SUR LA PROTECTION DES OBTENTIONS VEGETALES D'ISRAEL  
 SORTENSCHUTZGESETZ VON ISRAEL

(No. 109)

PLANT BREEDERS' RIGHTS LAW, 5733—1973 \*

## CHAPTER ONE: INTERPRETATION AND APPLICATION

## 1. In this Law —

Definitions.

“examiner” means any person or institution approved by the Minister as an examiner or adviser for the purposes of applications and oppositions filed under all or part of the provisions of this Law;

“foreign application” means an application filed by a breeder or a previous holder of the breeder’s right for protection of the right in a Convention state;

“the Convention” means the Paris Convention for the Protection of New Varieties of Plants, 1961;

“variety” means a group of plants capable of reproduction which may be regarded as an independent unit for purposes of propagation or be reconstituted each time in accordance with its defined characters, and includes an individual plant capable of reproduction and any such selection, strain or hybrid of a higher plant as is capable of being bred;

“registered variety” means a variety in respect of which a breeder’s right has been registered;

“this Law” includes regulations made thereunder;

“Convention state” means a foreign state in respect of which the Registrar has given notice in *Reshumot* that it is a member of the Union for the Protection of New Varieties of Plants by virtue of the Convention and that the Minister regards it as granting protection to breeders of varieties in Israel on a basis of reciprocity;

“breeder” means a person who has developed a new variety, within the meaning of section 7, and includes those taking title from him by operation of law or by assignment or agreement;

“utilisation” of a variety means —

(1) the cultivation, propagation or marketing thereof;

\* Passed by the Knesset on the 24th Tammuz, 5733 (24th July, 1973) and published in *Sefer Ha-Chukkim* No. 713 of the 28th Av, 5733 (23rd August, 1973), p. 272; the Bill and an Explanatory Note were published in *Hatza'ot Chok* No. 925 of 5731, p. 114.

(2) the derivation of a benefit therefrom in any other manner if the Minister, with the approval of the Economic Committee of the Knesset, so prescribes by regulations ;

“development” of a variety means the development thereof by means of the artificial narrowing or expansion of genetic variability, the isolation of spontaneous genetic variability through self-fertilization, crossing, back-crossing or vegetative isolation or any other similar procedure ;

“fundamental character” means any such character or combination of characters as is capable of being distinguished and described and sets a variety apart from the other varieties of its species ;

“the Minister” means the Minister of Agriculture ;

“Breeders’ Rights Committee” means a committee appointed under section 18.

- Application.** 2. (a) The provisions of this Law shall apply to the plants and species of plants specified in the Schedule.
- (b) The Minister may add to, or replace, the Schedule, provided that he does not delete any part of it.

#### CHAPTER TWO: RIGHTS AND ELIGIBILITY THEREOF FOR REGISTRATION

- Breeder's right.** 3. (a) A breeder's right in a variety bred in Israel is capable of registration in the Register of Rights in the name of the breeder of the variety upon his application.

(b) An Israeli national or resident in Israel may apply for registration of a breeder's right in the Register of Rights in respect also of a variety bred outside Israel.

- Safeguarding of right.** 4. A breeder's right in a variety accrues to a person when it has been registered in his name in the Register of Rights, and, subject to the provisions of this Law, it shall exist so long as the registration exists.

- Register of Plant Breeders' Rights.** 5. (a) A “Register of Plant Breeders' Rights” (in this Law referred to as “the Register of Rights”) shall be kept for the registration of breeders' rights in which the following particulars shall be recorded in respect of each variety:

- (1) the name and address of the holder of the right ;
- (2) the denomination of the variety ;
- (3) a description and summary specification of the fundamental characters of the variety ;

(4) in the case of a hybrid variety — the denominations of the parents, if the Council so decides or upon the application the breeder ;

(5) the claims under section 20 (a) (5) which have been accepted for the purposes of the registration ;

(6) any other particulars which have been prescribed.

(b) The Registrar may record additional particulars in the Register of Rights which, in his opinion, deserve registration.

(c) The Register of Rights shall be kept at such place as the Minister has directed and shall be open for inspection by the public.

(d) The Minister may by regulations prescribe the modes of arranging and keeping the Register of Rights.

6. A variety eligible for registration of a breeder's right therein in the Register of Rights is a variety in respect of which all of the following apply: **Eligibility for registration.**

(1) it is new ;

(2) it is sufficiently uniform as to its fundamental characters as indicated in the application ;

(3) its fundamental characters are stable, its description and characters are preserved also after reproduction and, where breeding involves a whole cycle, its characters are preserved at the termination of each cycle.

7. A new variety is a variety which is different as to at least one fundamental character from any other variety which was a known variety at the time the application for registration of a breeder's right therein was filed ; for this purpose, "known variety" means a variety in respect of which, at or before the time the application as aforesaid was filed, one of the following applied: **What is a new variety.**

(1) its reproduction material had been utilised, except for utilisation being marketing or other commercial use outside Israel for a period of less than four years ;

(2) it had been the subject of a publication — in or outside Israel — setting out its mode of production or characters in such a way that a person with professional training can reproduce it in accordance with the particulars so made known.

8. Notwithstanding anything provided in this Law, the right of a breeder to registration of a breeder's right in his name shall not be affected by reason only that the variety was published by giving parti- **Publications not preventing registration.**

culars thereof, during the period of breeding, for the purpose of examination or testing —

- (1) with a view to filing an application for registration of a breeder's right therein;
- (2) with a view to a recommendation under the Seeds Law, 5716—1956<sup>1)</sup>.

**Priority right.** 9. Where several breeders have applied for registration of a breeder's right in the same variety, the right shall be registered in the name of the one who first validly applied for its registration.

#### CHAPTER THREE: THE COUNCIL, THE REGISTRAR AND THE BREEDERS' RIGHTS COMMITTEE

**Appointment of Council and its committees.**

10. (a) The Minister shall appoint a Plant Breeders' Rights Council (in this Law referred to as "the Council") consisting of nine members, of whom three shall be representatives of the Government and six shall be scientists, researchers, seed growers or plant variety breeders.

(b) The Minister shall appoint one of the members of the Council to be the chairman thereof.

(c) The Minister may, with the approval of the Economic Committee of the Knesset, increase the number of the members of the Council up to thirteen.

(d) The Council may appoint committees, from among its members or otherwise, to make recommendations to it on such matters or classes of matters as it shall prescribe.

(e) The term of office of the Council shall be three years from the date of its appointment.

(f) Where a member of the Council has died, resigned or been removed from office, the Minister shall appoint another person in his stead who shall serve until the expiration of the term of office of the Council.

(g) The Council shall prescribe its rules of procedure and those of the committees appointed by it in so far as they are not prescribed by this Law.

**Functions of Council.**

11. The Council shall —

- (1) consider and decide upon applications;

<sup>1)</sup> *Sefer Ha-Chukkim* of 5716, p. 97; *LSI* vol. X, p. 99.

- (2) guide the Registrar as to any matter relating to the exercise of his powers and the carrying out of his functions ;
- (3) make recommendations to the Minister as to the making of regulations for the purposes of this Law ;
- (4) carry out any other function and exercise any other power prescribed by the Minister under this Law.

12. (a) Half of the number of the members of the Council shall be a quorum at its meetings, and it shall be sufficient if such a quorum is present at the time of the opening of the meeting. Validity of acts.

(b) The existence of the Council, its powers and the validity of its decisions shall not be affected by the vacancy of the place of a member of the Council or by a defect in the appointment or continued tenure of a member.

13. (a) Voting in the Council shall be secret: Provided that, at the request of a majority of the members, voting shall be by a show of hands in respect of the subject of the request. Deliberations and voting.

(b) A person who has filed an application with the Council may be present at its deliberations thereon: Provided that the Council may direct that he shall not be present during the whole or part of the deliberations even if he is a member of the Council.

(c) A member of the Council who directly or indirectly, himself or through his relative, agent or partner or through a relative of any of these, has any share or interest in any matter to be considered by the Council shall give written or oral notice of such fact to the chairman immediately after learning that the matter is to be considered and shall not take part in the voting on any question connected therewith. Where notice is given orally, it shall be recorded in the minutes of the next meeting of the Council.

(d) For the purposes of subsection (c), "relative", in relation to a particular person, has the same meaning as in the Land Appreciation Tax Law, 5723—1963<sup>1)</sup>.

14. (a) The Minister shall appoint an employee of the Ministry of Agriculture to be the Registrar of Plant Breeders' Rights (in this Law referred to as "the Registrar"). The Registrar and his functions.

(b) The Registrar shall —

- (1) keep the Register of Rights and deal with any matter relating to entries therein ;

<sup>1)</sup> *Sefer Ha-Chukkim* of 5723, p. 156 ; *LSI* vol. XVII, p. 193.

(2) issue certificates and other documents for the purpose of the registration or deletion of a breeder's right in or from the Register of Rights ;

(3) carry out any function and exercise any power prescribed by the Minister under this Law.

(c) The Registrar shall report to the Council on his activities at such times as it shall prescribe.

(d) The Registrar shall take part in the meetings of the Council to which it invites him and may take part in all its meetings.

**Filing of application.**

15. (a) In this chapter, "application" means any application or opposition under Chapter Four or Ten.

(b) Every application shall be filed with the Registrar.

(c) Where it appears to the Registrar that the application contains the particulars required to be contained therein under this Law, he shall refer it to the Council for consideration and decision.

(d) Where it appears to the Registrar that an application does not contain the particulars required to be contained therein under this Law, he shall notify the applicant of the defects. If the applicant does not within the time prescribed remedy the defects notified to him by the Registrar, the Registrar shall reject the application.

**Examination of application.**

16. (a) For the purpose of examining an application, the Council shall take such measures as it thinks fit, and it may, *inter alia* —

(1) invite testers and other experts to give an opinion as to technical questions ;

(2) carry out, itself or through testers acting at its request, any research, testing or examination required for making a decision ; the applicant may watch the carrying out of field tests at such time, in such manner and on such conditions as shall be prescribed ;

(3) transmit particulars of the application to an international institution for the purpose of a search for material enabling an examination.

(b) The applicant shall pay the expenses involved in examining his application under this section, as the Registrar may decide, and the Registrar may require him to make advance payments on account of such expenses.

**Hearing.**

17. Before giving a decision on an application, the Council shall enable the applicant to testify before it.

**Plant Breeders' Rights Committee.**

18. (a) The Minister of Justice shall appoint a Plant Breeders' Rights Committee. The Committee shall consist of three members, viz. a

**Judge of a District Court, who shall be the chairman of the Committee, the Registrar and a person with professional training in plant variety breeding appointed upon the proposal of the Minister of Agriculture.**

(b) The Minister of Justice may make regulations as to procedure and fees in proceedings before the Plant Breeders' Rights Committee, in so far as the same are not prescribed by this Law.

19. Save for the purpose of the implementation of this Law, a person shall not disclose anything that comes to his knowledge in proceedings thereunder; a person who alleges that something came to his knowledge otherwise than in proceedings under this Law shall bear the burden of proof. **Secrecy.**

#### CHAPTER FOUR: REGISTRATION PROCEEDINGS

20. (a) An application for registration of a breeder's right in the Register of Rights shall be filed in the manner and on the conditions prescribed by regulations and shall contain the following: **Application for Registration of breeder's right.**

- (1) the name of the applicant;
- (2) an address for service of documents in Israel or, if the applicant is not resident in Israel, the name of a representative resident in Israel authorised to represent him in any matter relating to the application;
- (3) a description and particulars of the variety which has been bred, including a detailed statement of its characters;
- (4) the denomination of the variety, which shall enable its identification;
- (5) a claim or claims setting out the distinctiveness of the variety in such manner that each claim reasonably arises out of the particulars given under paragraph (3);
- (6) any such other particular relating to the implementation of this Law as has been prescribed.

(b) Where the applicant is a person taking title from the breeder, he shall indicate the basis of his right in the application.

21. (a) For the purpose of examining an application under section 20, the Registrar may request of the applicant any further material or particulars relating to the subject of the application. **Further particulars.**

(b) If the applicant does not furnish the material and particulars requested by him, on such conditions, in such manner and at such time as has been prescribed, the Registrar may decide not to forward the application to the Council for consideration.

- Publication of application.** 22. (a) Where an application for registration of a breeder's right has been filed and the Registrar had decided to forward it to the Council, the Registrar shall, within thirty days from the date of his decision, publish a notice in *Reshumot*, in a daily newspaper and in an agricultural journal, specifying the following:
- (1) the name of the applicant ;
  - (2) the denomination proposed by the applicant for the variety in respect of which the application has been filed ;
  - (3) a description of the variety and a specification of its characters.
- (b) Subject to the provisions of this Law, the Registrar may include in the notice any other particular which in his opinion should be included therein.
- Opposition to registration.** 23. (a) Where a notice has been published under section 22, any person may, within thirty days from the date of publication of the notice in *Reshumot*, file reasoned opposition in writing to the registration of the right.
- (b) The following are grounds for opposition under this section:
- (1) the opponent's right to be registered as the holder of the breeder's right in the variety is better than the applicant's right ;
  - (2) the variety is not new.
- (c) Notwithstanding the provisions of section 15, where the opposition is not based on one of the grounds indicated in subsection (b), the Registrar shall reject it *in limine*.
- Registration.** 24. Subject to the provisions of section 25, where it appears to the Council that the variety has been tested and examined, that it possesses the characters specified in section 6, that all material and all technical literature relating to the variety and properly supplied to the Council have been examined and that no opposition that has been filed should be allowed, it shall direct the Registrar to register in the Register of Rights a breeder's right in the variety in the name of the applicant, and when the Registrar has registered the right, he shall publish a notice of the fact in *Reshumot*.
- Referral to Court.** 25. (a) Where an opponent alleges, under section 23 (b) (1), that his right to registration is better than that of the applicant, the Council shall suspend its deliberations and refer the opponent to the Court ; where it does so, and the opponent files an action with the Court within the time prescribed to him by the Council, the Council shall not finally decide upon the registration of the application save after

termination of the proceedings in the action and in accordance with the judgment given therein.

(b) If the Council has reasonable grounds for believing that an application filed with it is tainted with fraud, it shall notify such grounds to the Attorney-General and shall suspend consideration of the application. The Attorney-General may, in the light of the material placed before him by the Council and of any other material he sees fit to collect —

(1) file an action with the Court for a declaratory judgment that the application is tainted with fraud; and the Council shall not decide upon the application save after termination of the proceedings in the action and in accordance with the judgment given therein; or

(2) notify the Council that in his opinion the material does not contain sufficient evidence of fraud; such notification shall bind the Council and it shall continue consideration of the application.

(c) The provisions of this section shall only apply where it appears to the Council that the variety in question is *prima facie* eligible for registration in the Registrar of Rights.

26. (a) The holder of a breeder's right in a particular variety may apply for an amendment of any specification or description of the variety in the Register of Rights if the same is required for the clarification of claims of the holder of the right or for the elimination of any mistake, other than a mere clerical error, in the registration in the Register of Rights; but this shall not involve an extension of the scope of the claims stated in the application under section 20 or an addition of something not originally contained therein in substance.

**Application for  
amendment of  
Register of  
Rights.**

(b) Within thirty days of the date of filing of an application under subsection (a), the Registrar shall publish a summary thereof in *Reshumot* and shall forward the application to the Council for consideration.

(c) Where an application for an amendment under this section is filed while a proceeding for infringement or revocation is pending in court, the Council shall not consider the application save with the permission of the Court.

(d) Where permission has been given, the Council shall decide upon the application after giving all the parties in that proceeding an opportunity to present their arguments to it.

(e) Where court proceedings for infringement are instituted after an application for an amendment of particulars has been filed under

**this section, the consideration of that application shall continue unless the Court otherwise directs.**

**Opposition to registration of amendment.**

27. Any person may file opposition to an application under section 26 within thirty days from the date of publication in *Reshumot* on the ground that the amendment does not achieve the purpose of the application.

**Decision as to amendment to be recorded in Register of Rights.**

28. Where the Council has decided upon an application under section 26, the Registrar shall record the decision in the Register of Rights and shall inform the applicant accordingly and, unless the decision is a refusal, notice thereof shall be published in *Reshumot*.

**Revocation of breeder's right.**

29. (a) The Council may, on its own initiative or on the application of a person interested in a registered variety, revoke the breeder's right therein if one of the following appears to it to be the case:

(1) the variety no longer meets the requirements stated in section 6;

(2) the breeder has not furnished it upon its request, within a period, not shorter than one growing season, prescribed by it, with reproduction material of the variety or, in the case of a hybrid variety, of the parents, whose fundamental characters are identical with those of the variety specified in the Register of Rights, in such quantity as it may have prescribed, as well as with documents and information, as may be required for a re-examination of the variety;

(3) the breeder has not permitted an examination of the measures taken by him for the preservation of the variety;

(4) a court has decided that the right of another to be registered as the holder of the right is better than the right of the registered holder; the date of the coming into force of the better right and the procedure of its registration shall be as prescribed by regulations.

(b) Notice that the Council will consider an initiative to revoke a breeder's right or an application for revocation filed as aforesaid shall be given to the holder of the right and shall be published in *Reshumot*.

(c) The Council shall not decide to revoke a breeder's right before it has enabled the holder of the right and the applicant for its revocation to be heard before it.

(d) The Council shall not consider an application for revocation filed after the expiration of twenty-four months from the date of registration of the right in the Register of Rights: Provided that the time when court proceedings were pending under subsection (a) (4) of

which notice was given to the Council upon their institution shall not be taken into account in calculating that period.

(e) Save with the permission of the Court, the Council shall not consider an application for revocation filed while a court proceeding for infringement or revocation is pending.

(f) Where court proceedings for infringement are instituted after an application for revocation has been filed with the Council, the Council shall continue its consideration of the application unless the Court otherwise directs.

(g) For the purpose of this section, the Council shall have all the powers mentioned in section 16 even if it acts on its own initiative only.

30. (a) A decision to revoke a breeder's right shall come into force at the expiration of fifteen days after the period of appeal under section 86. But where an appeal has been filed, the Court may stay the coming into force of the revocation or attach such conditions as it may think fit to the coming into force or the stay. Coming into force and registration of revocation.

(b) Where a breeder's right has been finally revoked, the Registrar shall register the fact of the revocation in the Register of Rights and the right shall be deemed not have existed.

(c) Notice of the revocation of a breeder's right under this section shall be published in *Reshumot*.

#### CHAPTER FIVE: REGISTERED DENOMINATIONS OF VARIETIES

31. (a) The denomination of a variety shall not be registered in the Register of Rights if an identical or similar denomination or description is still registered under the Trade Marks Ordinance (New Version), 5732—1972<sup>1)</sup>, in respect of agricultural crops of the same species, and a denomination shall not be registered under the said Ordinance in respect of crops as aforesaid if an identical or similar denomination of a variety has at any time been registered in the Register of Rights. Restrictions on registration of denominations of varieties.

(b) The denomination of a variety shall not be registered under this Law if one of the following applies to it:

(1) it is identical with the denomination of a registered variety of the same species or so similar to such a denomination as to be misleading;

(2) it is identical with the denomination of a variety of the same species mentioned in any enactment within the jurisdiction of the Minister;

<sup>1)</sup> *Dinei Medinat Yisrael (Nusach Chadash)* No. 26, p. 511; *NV* vol. II, p. 292.

(3) it is identical with a denomination accepted by the public as the denomination of a variety of the same species even though such variety may not be mentioned in an enactment as aforesaid ;

(4) it is identical with the denomination of a variety of the same species registered in a Convention state or so similar to such a denomination as to be misleading ;

(5) it is likely to be injurious to public order or morality ;

(6) it is likely to mislead the public with regard to the variety or to its characters or to its difference from other varieties of the same species ;

(7) it does not conform to accepted international rules regarding denominations of varieties.

**Approval of denomination of variety.**

32. Where the Registrar is satisfied that no bar exists under section 31 to the registration of the denomination of the variety proposed by the applicant in his application for the registration of a breeder's right, he shall approve the proposed denomination and it shall be included in the notice under section 24. Where a bar as aforesaid exists, the applicant shall be requested to propose another denomination within the time prescribed by the Registrar ; if he does not do so, the Registrar shall prescribe the denomination of the variety.

**Contestation of determination of denomination of variety.**

33. A person who considers himself aggrieved by a decision prescribing the denomination of a variety may, before the expiration of one year from the date of publication of the notice under section 24, file with the Registrar a reasoned contestation in writing. The Registrar shall decide the matter and shall notify the contestor, in writing, of his decision.

**Protection of denomination of variety.**

34. (a) When a variety has been given a denomination, such denomination shall be used for it whether or not a trade mark is coupled with such denomination.

(b) The registered denomination of a variety or a denomination so similar to it as to be misleading may be used only for a variety which has characters identical with those of the first-mentioned variety.

(c) For the purpose of the provisions of this section, it shall be immaterial whether or not at the time of the use of the denomination the breeder's right is still registered.

(d) On application made to him in writing, the Registrar may recommend to a person appointed in that behalf by the Minister to authorise the applicant to use a secret mark, instead of the denomination of the variety, on conditions prescribed in the authorisation. The

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Registrar shall in every case forward the application to that person, whose decision shall be final.

35. When the denomination of a variety has been registered, it can only be changed in proceedings under section 33. Registered denomination to be the only denomination.

CHAPTER SIX: PROTECTION OF BREEDERS' RIGHTS

36. (a) Subject to the provisions of this chapter and of Chapter Seven, the holder of a breeder's right may prevent any other person from utilising without his permission or unlawfully the variety in respect of which the right has been registered. Utilisation as aforesaid shall be called infringement. Scope of breeder's right.

(b) A breeder's right shall be valid *vis-à-vis* the State, but the Civil Procedure Amendment (The State as a Party) Law, 5718—1958<sup>1)</sup>, shall apply.

37. Notwithstanding the provision of section 36, a person may without the consent of the holder of the breeders' right — Permitted use of registered variety.

(1) utilise reproduction material of a registered variety for the sole purpose of experiments towards the development of a new variety; however, no person shall without permission from the holder of the breeder's right utilise the reproduction material of a registered variety recurrently for the commercial production of another variety;

(2) use a registered variety for purposes of research, science or laboratory tests only.

38. (a) Subject to the provisions of sections 2 and 4 — Period of breeder's right.

(1) the period of a breeder's right is fifteen years from the date of its registration;

(2) the period of a breeder's right in varieties of vines, fruit trees, forest trees and any other perennial plant is eighteen years from the date of its registration.

(b) The Minister may, in respect of any particular plant or class of plants, prescribe a longer period than that prescribed by this section.

39. Notwithstanding the registration of a breeder's right in a variety and the specification of its characters in the Registrar of Rights, it shall be permissible to prove that the variety constitutes no innovation or that the specification does not conform with the actual characters of the variety. Evidential value of registration.

<sup>1)</sup> *Sefer Ha-Chukkim* of 5718, p. 118; *LSI* vol. XII, p. 138.

**Compulsory  
 pharmaceutical  
 licence.**

40. (a) Where it appears to the Council that it is necessary so to do in order that medical supplies may be available to the public in reasonable quantities and at reasonable prices, it may, in consultation with the Breeders' Rights Committee, without the consent of the holder of the breeder's right, permit a registered variety to be utilised for the sole purpose of manufacturing a medicament.

(b) A licence under this section may be issued only to a person having the ability and know-how to utilise the variety under the conditions prescribed by the Council.

**Compulsory  
 agricultural  
 licence or  
 revocation  
 of right.**

41. (a) Where it appears to the Council that the holder of a breeder's right has not utilised the registered variety or has utilised it under circumstances and under conditions not in the public interest, it may, in consultation with the Breeders' Rights Committee, permit such variety to be utilised under conditions prescribed by it and without the consent of the holder of the right.

(b) The Council may revoke the breeder's right in a variety if it has requested the holder of the right to present and supply reproduction material of the variety or, in the case of a hybrid variety, reproduction material of its parents, and the holder of the right has not proved that he has done so. The Council may in the request prescribe to whom the reproduction material is to be presented and supplied, the conditions of its presentation and supply, including quantity, and the period, not shorter than one growing season, within which it is to be presented and supplied; the Council may extend the period prescribed as aforesaid.

(c) The Council shall not exercise its power under this section within two years from the date of registration of the breeder's right unless, in its opinion, there are special reasons for doing so.

**Supplementary  
 provisions.**

42. A licence under section 40 or 41 —

(1) shall be issued on the application of a person qualified to receive it and after the holder of the right has been given an opportunity to state his case;

(2) shall specify its period and conditions, including payment to the holder of the right;

(3) shall, with its conditions, become an agreement between the holder of the right and the licensee, in addition to or without any other agreement between them;

(4) may be revoked by the Council if it appears to it that an infringement of any of the conditions of the licence justifies its revocation.

43. A breeder's right and the right to apply for its registration are transferable in writing and pass by operation of law, but the passing of a breeder's right otherwise than by operation of law shall be of no effect *vis-à-vis* any person other than the transferor and the transferee unless it has been registered in the Register of Rights. **Transfer of breeder's right.**

44. (a) A person who proves to the satisfaction of the Registrar that for at least three years immediately preceding the determining date he utilised in Israel in good faith the variety to which an application for registration of a breeder's right relates may utilise such variety personally and in the course of his business only. Where the Registrar has certified that proof as aforesaid has been produced to him, the Breeders' Rights Committee shall, on the application of the holder of the breeder's right, prescribe the consideration to be paid by that person for utilisation of the variety. The Committee's decision shall be enforceable in like manner as a final judgment of a court. **Utilisation permitted in consequence of bona fide earlier use.**

(b) For the purpose of this section, "the determining date" means the date on which the application for registration of a breeder's right was filed in Israel or, where a priority right is claimed for that application under Chapter Ten, the date on which the application on the basis of which the priority right is claimed was filed.

(c) The right to utilise a variety under this section is not capable of transfer, devolution or transmission by way of inheritance save together with the business in which the variety was used.

#### CHAPTER SEVEN: VARIETY BRED DURING OR IN CONSEQUENCE OF SERVICE

45. An employee shall notify his employer in writing — **Notification of breeding of variety.**

(1) of any variety bred by him in the period of his service or in consequence of his service as soon as possible after completing the breeding of the variety and before filing an application under section 20 ;

(2) of the filing of any application by him under section 20.

46. (a) Where an employee has bred a variety in consequence of his service, the right to register a breeder's right in such a variety shall accrue to the employer unless otherwise agreed between them or unless the employer waives such first-mentioned right in writing within six months from the date on which the employee's notification under section 45 is delivered to him. **Variety bred in consequence of service.**

(b) Where in a notification under section 45 the employee states that failing a written reply to the contrary by the employer within six months from the date of such notification the breeder's right will

accrue to the employee, and the employer does not give a reply as aforesaid, the right shall not accrue to the employer.

Dispute in connection with breeding of variety.

47. Where a dispute arises as to whether a variety in respect of which notification has been made under section 45 was bred in consequence of service, the employee or the employer may, upon the expiration of three months from the date of delivery of the notification, request the Registrar to decide the question.

Presumption of breeding in service.

48. Where an employee has bred a variety in the period of his service, he shall, pending proof to the contrary, be presumed to have bred it in consequence of his service.

Determination by Breeders' Rights Committee.

49. (a) In the absence of agreement between an employee and his employer as to the consideration to which the employee is entitled for a variety bred by him in consequence of his service, the Breeders' Rights Committee shall determine whether, to what extent and on what conditions the employee is entitled to a consideration.

(b) The Breeders' Rights Committee may on application reconsider a decision under subsection (a) if, in its opinion, the circumstances which existed at the time of the decision have changed; but it may order the applicant to pay costs if in its opinion there was no occasion for the application.

(c) The Breeders' Rights Committee shall take into account, *inter alia* —

- (1) the capacity in which the employee was employed;
- (2) the nature of the connection between the breeding of the variety and the employee's work;
- (3) the initiative of the employee in breeding the variety;
- (4) the possibilities of utilising the variety and its actual utilisation;
- (5) expenses which according to the circumstances were reasonably incurred by the employee to secure protection of the variety in Israel.

(d) The deliberations of the Breeders' Rights Committee under this section shall be held *in camera* unless the Committee otherwise directs.

(e) Decisions of the Committee under this section shall be enforceable in like manner as a final judgment of a court.

Duties of State employee.

50. (a) A State employee, or an employee of a State enterprise or agency designated by the Minister, or any other person who receives payment for service from the State or from any such enterprise or

agency as aforesaid, who has bred a variety in the period of his service or in consequence of his service shall notify the same to his superior, as well as to the State Service Commissioner or to some other public servant, as may be prescribed.

(b) Notification under this section shall be made, in the manner prescribed in consultation with the Minister of Finance, as soon as possible after the breeding of the variety, but not later than the time at which the employee proposes to file an application under section 20 in respect of the variety.

(c) A person bound to make notification under this section shall not file outside Israel an application for registration of a breeder's right or an application for other protection of the variety bred by him unless —

(1) he has received advance permission therefor from the State Service Commissioner or from some other public servant designated in that behalf, or

(2) within six months from the date on which he notified the breeding of the variety under this section it has not been decided that his rights in the variety have accrued, wholly or in part, under section 46 or by agreement, to the State or to the State enterprise or agency at which he worked.

51. The duty of notification under this chapter shall continue until its fulfilment, even though the time prescribed for it may have elapsed. **Duty of notification to continue.**

52. A person who has made or is bound to make notification under this chapter shall always disclose to his employer all the particulars of the variety bred by him and any further detail relevant to the purposes of sections 46 and 53. **Duty to disclose particulars.**

53. Where a person has bred a variety during service and the right to register a breeder's right therein has wholly or partly passed to his employer under section 46 or by agreement, such person shall do everything required of him by the employer in order to obtain protection of the variety, in any place, in favour of the employer, and shall sign every document required therefor. If he fails to do so, the Registrar may permit the employer to do so after giving the employee an opportunity to be heard. **Duty to assist employer.**

54. So long as application for registration of a breeder's right in a variety bred in consequence of service has not been filed, the employee, the employer or any person to whom particulars of the variety have been communicated in confidence shall not disclose the same. **Duty of secrecy.**

**CHAPTER EIGHT: INDICATION OF NAME OF ACTUAL BREEDER**

**Definition.** 55. In this chapter, "person who has bred a variety" means a person who has developed a new variety, within the meaning of section 7, but does not include those taking title from him by operation of law or by transfer or agreement.

**Indication of name of breeder.** 56. Where a person has bred a variety, and an application for registration of a breeder's right therein has been filed, he or his survivors may request that his name be indicated in the Register of Rights, and the Registrar shall accede to the request subject to the provisions of section 57 and 58, provided that the request has been filed at the time and in the manner prescribed. Notwithstanding the provisions of sections 98 to 100, when the name of the person who has bred a variety has been indicated in the Registrar of Rights, it shall not be deleted save by decision of the Court.

**Hearing of breeder and holder of right.** 57. Where a request under section 56 is filed while the person making it is not entitled to apply for registration of the breeder's right in his name, the Registrar shall give notice thereof to the holder of the breeder's right or the person entitled to apply for registration as aforesaid and, if opposition proceedings under section 23 are pending at the time, to every person who is a party to such proceedings. The Registrar shall give his decision after hearing the persons concerned if they apply therefor within the time prescribed.

**Non-entertainment of request.** 58. The Registrar shall not entertain a request under section 56 if he is of the opinion that it should be dealt with like an application on the ground stated in section 23 (b) (1) or 29 (a) (4).

**Indication of name cannot be waived.** 59. A stipulation by which a person who has bred a variety waives his right to request the indication of his name shall be of no effect.

**Indication of name not to confer rights.** 60. A person whose name has been indicated as that of the person who has bred a variety shall not for that reason alone have any right in the variety or in the breeder's right therein.

**CHAPTER NINE: INFRINGEMENT OF BREEDER'S RIGHT**

**Actions for infringement.** 61. Only the holder of a breeder's right or his agents shall be entitled to file an action for infringement.

**Time for filing actions for infringement.** 62. An action for infringement shall not be filed before the breeder's right has been registered. However, when an action for infringement has been filed, the Court may grant relief for an infringement committed after the date of publication under section 22.

63. The utilisation of a validly forfeited product of a registered variety shall not constitute infringement save in the case of recurrent cultivation. Utilisation of forfeited product.
64. Any ground on which the registration of a breeder's right may be opposed shall be a good defence in an action for infringement. If the Court allows the defence, it shall order that the particulars of registration in the Register of Rights be amended or that the breeder's right be revoked, as the case may be. Invalidity of registration a defence in action for infringement.
65. (a) In an action for infringement, the plaintiff shall be entitled to relief by way of injunction or compensation. Relief for infringement.
- (b) In awarding compensation, the Court shall have regard to the act constituting the infringement and to the position of the plaintiff in consequence of that act, and it may take into account, *inter alia* —
- (1) the direct damage caused to the plaintiff ;
  - (2) the extent of the infringement ;
  - (3) the profits derived by the infringer from the act constituting the infringement ;
  - (4) reasonable royalties which the infringer would have had to pay if he had been granted a licence to utilise the breeder's right to the extent to which he infringed it.
- (c) Where an infringement is committed after the plaintiff has warned the infringer, the Court may order the infringer to pay punitive damages, in addition to the compensation fixed under subsection (b), but the amount thereof shall not exceed the amount of the compensation.
- (d) Where compensation is claimed, the Court may order the defendant to make a report as to the extent of the infringement ; however in fixing the amount of the compensation, the Court shall not be bound by the report but may fix the amount in accordance with all the circumstances of the case. This provision shall not derogate from the rules of procedure concerning the rendering of accounts.
66. Where a breeder's right was infringed before leave was given to amend one of the claims in the specification, and compensation for the infringement is claimed after the giving of such leave, the Court need not take the giving of leave into account if the claims in the original specification were not drafted in good faith and clearly. Compensation where specification has been amended.
67. Where part of a breeder's right in respect of which an action for infringement has been brought is revoked, such fact shall not by itself debar the plaintiff from receiving compensation for the infringement ; but the Court may refuse to award compensation if the claims in the specification of the original right were not drafted in good faith and clearly. Restriction on the award of compensation in the case of partially revoked breeder's right.

**Compensation  
in the case  
of renewed  
breeder's right.**

68. Where the court is satisfied that there was no just cause for non-payment of the fee under section 74, it may refuse to award compensation for the infringement of a breeder's right committed in the period between the time for payment of the fee under section 74 and its actual payment under section 75. A person who alleges that there was just cause for non-payment of the fee shall bear the burden of proof.

**Declaration  
of non-  
infringement.**

69. (a) A person who intends to do any act in respect of a variety, may apply to the Court for a declaration that such act does not constitute an infringement of a breeder's right specified in the application.

(b) The holder of the breeder's right shall be the respondent to the application.

(c) The Court shall not grant the declaration unless the applicant has given the holder of the breeder's right full particulars of the act or variety in respect of which the application has been filed and has requested of him the declaration for which he is applying to the Court, and the holder of the right has refused to make the declaration or has not made it within a reasonable period ; but the Court shall not dismiss an application by reason only that it was filed before the expiration of such time as, in the opinion of the Court, is reasonable for the making of the declaration by the holder of the right.

(d) The costs of the parties shall be borne by the applicant for the declaration unless the Court otherwise directs.

(e) In proceedings under this section, the plea that the breeder's right is invalid shall not be heard, and the grant or refusal of the declaration shall not be deemed to decide the question of validity.

**Powers of  
Court on  
referral to  
Council.**

70. Where the Court has given the Council permission to consider an application for amendment under section 26 (c) or an application for revocation under section 29(d), it may, for such period and on such conditions as it shall prescribe, stay the proceedings in a case pending before it in respect of the same breeder's right ; but each party may at any time apply to the Court for variation or revocation of the stay order.

#### CHAPTER TEN: FOREIGN APPLICATIONS

**Application  
by non-resident.**

71. Notwithstanding the provision of section 3 (b), the Minister may direct that a person who is not an Israeli national or resident may apply for registration of a breeder's right in the Register of Rights in respect of a variety bred outside Israel if —

(1) it is necessary to do so in order to fulfil obligations relating to international agreements between Israel and another state and

it appears to the Minister that such state accords reciprocity to Israel in this matter, or

(2) The Minister considers that it is in the public interest to do so.

72. Where a breeder files an application for registration of a breeders' right in a variety after he or his predecessor in title has already filed a foreign application in respect thereof, he may apply for a priority right under which, for the purposes of sections 7 and 9, the date of the foreign application should be deemed to be the date of the application filed in Israel, provided that the application in Israel is filed within twelve months after the filing of the foreign application or the coming into force of this section, whichever is later, and that other conditions prescribed by regulations are fulfilled. **Priority right.**

73. Notwithstanding the provisions of sections 72 and 102, the Minister may, by order, apply the provisions of section 72 to any state, whether or not it is a Convention state, if it appears to him that such state accords reciprocity to Israel in this matter. **Extension of application.**

#### CHAPTER ELEVEN: FEES

74. A breeder's right shall be valid if its holder has paid the prescribed fee at the prescribed times. Where the fee is not paid, the right shall lapse at the time prescribed for payment of the fee. **Payment of fees.**

75. Notwithstanding the provisions of section 74, a fee may be paid within six months from the time prescribed for its payment together with an additional fee of a prescribed amount, and where this is done, the fee shall be deemed to have been paid at the time prescribed for payment and the breeder's right shall be deemed not to have lapsed. **Extension of time for payment of fees.**

76. Where the period stated in section 75 has passed without the fee having been paid as provided therein, the Registrar shall publish a notice of the lapse of the breeder's right in *Reshumot*. **Publication of notice of lapse of right.**

77. The holder of a breeder's right which has lapsed by reason of non-payment of a fee in accordance with section 75 may apply to the Registrar, in the manner and form prescribed, for the restoration of the right, provided that on filing the application he pays the prescribed restoration fee. **Application for restoration of lapsed right.**

78. Where the Registrar is satisfied that the fee has not been paid for reasonable cause, that the holder of the breeder's right was not aware of and did not desire the lapse of the right and that the application for restoration of the right under section 77 was filed as soon as possible after the fact of non-payment of the fee had become known **Publication of application for restoration.**

to the holder of the right or the person responsible on his behalf for payment of the fee, he shall direct publication of the application in *Reshumot* after the holder of the breeder's right has paid the outstanding fee.

- Opposition to restoration.** 79. Any person may, within three months from the date of publication under section 78, file with the Registrar reasoned opposition in writing to the application for restoration of the right.
- Order for restoration.** 80. (a) Where no opposition has been filed under section 79 or where opposition has been filed but has been dismissed, the Registrar shall make an order for restoration of the breeder's right (in this section referred to as "the order"), and he may make restoration subject to conditions, including, *inter alia* —
- (1) the payment of compensation to any person adversely affected by the order ;
  - (2) permission for a person who utilised the registered variety in respect of which the order is made to continue utilising it in the course of his business only, with or without consideration, for such period as the Registrar shall prescribe.
- (b) A person who considers himself aggrieved in respect of compensation under subsection (a) (1) or in respect of consideration for permission to continue utilising the variety under subsection (a) (2) may, instead of appealing under section 86, lodge objection with the Breeders' Rights Committee.
- Transfer of right of utilisation.** 81. The right to utilise a breeder's right under section 80 is not capable of transfer, devolution or transmission by way of inheritance, save together with the business in which the registered variety was used as aforesaid.

#### CHAPTER TWELVE: PENALTIES

- Infringement committed knowingly.** 82. A person who knowingly infringes a breeder's right registered under this Law is liable to imprisonment for a term of one year or a fine of 25,000 pounds or, if he has once before been convicted of an offence under this section, imprisonment for a term of two years or a fine of 30,000 pounds.
- Act in respect of variety prior to registration.** 82. A person who, in the period between publication under section 22 and the registration of the breeder's right, knowingly commits an act in respect of the variety which, had the variety been a registered variety at the time, would have constituted an infringement of a breeder's right is liable to imprisonment for a term of six months or a fine of 15,000 pounds or, if he has once before been convicted of

an offence under this section, imprisonment for a term of one year or a fine of 15,000 pounds.

84. A person who does not fulfil any duty imposed on him by section 13(c), 19, 34, 45, 50, 52, 53 or 54 or who discloses any part of deliberations of the Breeders' Rights Committee under section 49 held *in camera* is liable to imprisonment for a term of six months or a fine of 2,000 pounds. Non-fulfilment of duty.

85. The court competent to try offences under this chapter shall be the District Court of Jerusalem. Competent court.

#### CHAPTER THIRTEEN: JURISDICTION, PROCEDURE AND PRACTICE

86. A person who considers himself aggrieved by a decision of the Council or the Registrar not open to contestation or opposition under this Law may appeal against it to the District Court of Jerusalem, and a person who considers himself aggrieved by a decision of the Breeders' Rights Committee may appeal against it to the Supreme Court, within thirty days from the day on which the decision came to his knowledge as prescribed. Appeal.

87. An appeal against a decision of the Registrar dismissing an application under section 15 (d) shall be heard *in camera* unless the Court, on the application of the appellant, otherwise directs. Proceedings in camera.

88. The Court which hears the appeal may take evidence, both evidence already taken by the Registrar or Council and other evidence, and may require that such evidence be presented by affidavit or in such manner as it may think fit. Where evidence is presented by affidavit, the Court shall, upon request, permit the deponent to be cross-examined unless it sees reasonable cause not to permit it. Evidence on appeal.

89. (a) In proceedings under this Law, the Court may appoint a scientific adviser, who shall assist it in taking evidence and advise it, but shall not take part in giving judgment. Scientific adviser.

(b) The remuneration of the scientific adviser shall be fixed by the Court and shall be paid out of the Treasury.

90. In any civil proceedings under this Law, the Court may, on the application of the holder of the breeder's right, direct an amendment of the specification for one of the reasons stated in section 26 (a) or 99, and the provisions of sections 26 (a) and (b) and 27 shall *mutatis mutandis* apply thereto. Power to direct amendment of specification.

**Extension  
of times.**

91. (a) The Registrar may, if he sees reasonable cause for doing so, extend any time prescribed by this Law or by regulations made thereunder for doing anything otherwise than before the Court, except the time prescribed by section 23, 72, 74 or 75 : Provided that the Registrar may extend the time under section 72 if he is satisfied that the application in Israel was not filed in time because of circumstances over which the applicant and his representative had no control and which they could not have prevented.

(b) The Registrar may grant an extension of time subject to such conditions as he may think fit.

(c) An application for extension of time may be filed either within or after the time originally allowed.

**Collection  
of evidence.**

92. The Council, its committees, the Breeder's Rights Committee and the Registrar may collect evidence to the extent deemed necessary by them for the carrying out of their functions and the exercise of their powers.

**Proceedings  
in contested  
case.**

93. (a) In any contested case brought before the Council, its committees, the Breeders' Rights Committee or the Registrar under this Law, the parties shall be given an opportunity to produce their evidence and to present their arguments in writing and orally in such manner and form and at such times as shall be prescribed.

(b) The payment of reasonable expenses may be ordered —

(1) by the Registrar in proceedings before him or before the Council or its committees ;

(2) by the Breeders' Rights Committee in proceedings before it ;

they may also direct by order which of the parties shall pay the expenses and how they shall be paid.

(c) An order under subsection (b) shall be enforceable as if it were a court judgment.

(d) Subject to the provision of subsection (a), the Minister of Justice may by regulations prescribe the rules of procedure for any contested case under this Law.

**Special  
representation.**

94. (a) The Minister of Justice and the Minister of Agriculture may issue a permit to represent a person for the purpose of any proceeding under this Law, except a proceeding before a court.

(b) The Minister of Justice and the Minister of Agriculture shall, with the approval of the Economic Committee of the Knesset, prescribe the conditions of eligibility for holding a permit under this section.

(c) The provisions of this section shall not derogate from the right of representation granted to an advocate by the Chamber of Advocates Law, 5731—1961<sup>1)</sup>.

95. (a) All documents in the possession of the Registrar, the Council or the Breeders' Rights Committee relating to the examination of an application for a breeder's right or to the validity of, or any rights in or connected with, a breeder's right or to any other matter likely to affect the validity of, or any rights in or connected with, a breeder's right shall be preserved for at least seven years from the day on which the validity of the breeder's right expires. Preservation of documents.

(b) The provisions of subsection (a) shall not apply to internal correspondence of the members of the Council, its employees and the Registrar among themselves or to other documents otherwise provided for by regulations.

96. (a) The documents to be preserved under section 95 shall be open for inspection by the public except — Inspection by public and receipt of certified extracts.

(1) documents relating to any application for registration of a breeder's right which has not yet been published under section 22 or to deliberations of the Breeders' Rights Committee under section 49 ;

(2) documents specifying the denominations of the parents of a hybrid variety which are not indicated in the Register of Rights, unless the Council otherwise decides or the breeder otherwise requests.

(b) Every person shall on application in the prescribed manner and payment of the prescribed fee be entitled to receive a certified extract, with the Registrar's seal, from anything contained in the Register of Rights or from the documents open for inspection under this section.

97. (a) A person to whom any rights in a variety have been transferred, whether it be a registered variety or a variety in respect of which an application for registration of a breeder's right has been filed, may apply to the Registrar for registration as the holder of those rights, and if the transfer has been proved to the satisfaction of the Registrar and the prescribed fee paid, the transfer of the rights shall be registered in the Register of Rights or in the application file, as the case may be. Registration of transfer of rights.

(b) The Minister of Justice may prescribe procedure for the service of judgments prescribing a transfer of rights as referred to in this section, and when he has done so and a judgment is served upon

<sup>1)</sup> *Sefer Ha-Chukkim* of 5721, p. 178 ; *LSI* vol. XV, p. 196.

the Registrar in accordance with such procedure, the Registrar shall, notwithstanding the provisions of subsection (a), register the transfer prescribed by the judgment.

**Amendment of records and documents.**

98. (a) The Registrar may, on the application of an interested person, filed in the manner and form prescribed, amend an entry in the Register of Rights or in any document issued by him or filed with him or with the Council, if in his opinion the Register of Rights or document does not reflect the facts and if no other procedure for making the amendment is prescribed by this Law.

(b) The Registrar shall publish in *Reshumot* a notice of any application under this section and shall also give notice thereof to every person who in his opinion is likely to be adversely affected by the amendment, calling upon him to submit to him, within the prescribed time, his arguments as to such amendment; and he shall not decide upon the application before the expiration of that time.

**Correction of clerical errors.**

99. The Registrar may, on application in the manner and form prescribed, correct a clerical error in a specification, the Register of Rights or any document issued by him.

**Rectification on the initiative of the Registrar.**

100. The Registrar may make a rectification under section 98 or 99 of his own motion in the manner prescribed for the purposes of the section concerned.

**Restriction on admission of documents attesting to breeders' rights.**

101. (a) No document or deed transferring any right in a variety — whether such variety be registered or whether an application for a breeder's right or an interest has been filed in respect thereof — shall be admitted in court as evidence of title to the variety or the breeder's right or of the transfer of the interest unless the transfer has been registered under section 97 or the Court sees reason to admit such document or deed.

(b) Notwithstanding the provision of subsection (a), documents as aforesaid shall be admitted as evidence in any proceeding concerning a correction of the Register of Rights under section 98.

#### CHAPTER FOURTEEN: MISCELLANEOUS

**Commencement.**

102. (a) This Law, except section 72, shall come into force at the expiration of six months from the date of its publication in *Reshumot*.

(b) Section 72 shall come into force on the date announced by the Minister, by notice in *Reshumot*, at least thirty days in advance.

**Transitional provisions.**

103. (a) Where a breeder files an application for registration of a breeder's right in a variety after he or his predecessor in title, before

the coming into force of this Law, has received a confirmation from a government agency in Israel that the variety is a recommended variety under the Seeds Law, 5716—1956<sup>1)</sup>, he may apply for a priority right by virtue of which, for the purposes of sections 7 and 9, the date of confirmation shall be deemed to be the date of filing of the application for registration under this Law, provided that the application for registration under this Law is filed within six months of the coming into force thereof and other conditions prescribed by regulations are fulfilled. If the application for a priority right is granted, the period of the breeder's right shall be reckoned from the date of confirmation as aforesaid.

(b) Where a breeder files an application for registration of a breeder's right in a variety after a breeder's right in that variety has been registered in a Convention state in his name, or in that of his predecessor in title, before the coming into force of this Law, he may apply for a priority right by virtue of which, for the purposes of sections 7 and 9, the date of the application for the right in that Convention state shall be deemed to be the date of filing of the application for registration under this Law, provided that the application for registration under this Law is filed within twelve months from the date of the coming into force of section 72 and other conditions prescribed by regulations are fulfilled. If the application for a priority right is granted, the period of the breeder's right shall be reckoned from the date of registration of the breeder's right in that Convention state.

(c) Notwithstanding the provisions of subsection (b) and section 102, the Minister may, by regulations, apply subsection (b) in respect of any state, whether or not it is a Convention state, if it appears to him that that state accords reciprocity to Israel in this matter.

(d) Nothing in this Law shall be construed as granting relief for infringement of a breeder's right in respect of the period before the coming into force of this Law.

104. The Minister is charged with the implementation of this Law and may make regulations as to any matter relating to such implementation, including — Implementation and regulations.

- (1) registration procedure;
- (2) procedure in proceedings before the Council or the Registrar under this Law;
- (3) forms for applications under this Law, the mode of drawing up specifications, and the mode of representing a variety in the specification;

<sup>1)</sup> *Sefer Ha-Chukkim* of 5716, p. 97; *LSI* vol. X, p. 99.

- (4) the fees payable in respect of applications filed under this Law, acts of the Registrar or the Council, the registration and renewal of registration of a breeder's right, and other services under this Law ;
- (5) payment for an opinion or the carrying out of research ;
- (6) the preparation, readying for the press, printing, publication and sale of abridgments of specifications, specifications of breeders' rights and other publications by or on behalf of the Council or the Registrar ;
- (7) the issue of certificates under this Law attesting to registration of a breeders' right in the Register of Rights ;
- (8) the payment of expenses incurred by the members of the Council in respect of their participation in the activities thereof ;
- (9) the payment of expenses to witnesses and experts who have given evidence or opinions before the Council or the Registrar ;
- (10) the assignment of experimental plots, and laboratories, for the testing of new varieties, within the framework of farms of the Ministry of Agriculture or otherwise ;
- (11) the circumstances of the discontinuance of the tenure of a member of the Council.

Publication. 105. This Law shall be published in *Reshumot* within thirty days from the date of its adoption by the Knesset.

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