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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Twenty-sixth Ordinary Session

Geneva, October 29, 1992

**EXAMINATION OF THE CONFORMITY OF THE LAWS
OF FINLAND WITH THE 1978 ACT
OF THE UPOV CONVENTION**Document prepared by the Office of the UnionIntroduction

1. By letter dated October 8, 1992, Mr. Antti Hynninen, Ambassador, Permanent Representative of Finland to the International Organizations in Geneva, requested, pursuant to Article 32(3) of the 1978 Act of the UPOV Convention (hereinafter referred to as "the 1978 Act"), the advice of the Council of UPOV on the conformity of the Law on Breeders' Rights of Finland with the said Act. An English translation of that Act was attached to the letter. The letter is reproduced in Annex I to this document, and the Law, in Annex II.

2. Finland did not sign the 1978 Act. Under Article 32(1)(b) of that Act, it must deposit an instrument of accession to become a member of UPOV on the basis of that Act. Under Article 32(3), an instrument of that kind can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the 1978 Act and if the decision of Council embodying the advice is positive.

Legal Basis for the Protection of New Plant Varieties in Finland

3. The protection of new plant varieties will be governed in Finland by the Law of August 21, 1992, on Breeders' Rights (hereinafter referred to as "the Law") and its implementing regulations. The Law entered into force on October 15, 1992. Pursuant to the legal principles governing the hierarchy of legal instruments, the implementing regulations will only supplement the Law, consistent with its provisions.

4. An analysis of the Law is given hereinafter in the order of the substantive law provisions of the 1978 Act. The analysis has been submitted to the Finnish authorities; their observations have been incorporated in this document.

Article 1(1) of the 1978 Act: Purpose of the Convention

5. Article 1(1) of the 1978 Act provides that "the purpose of this Convention is to recognize and to ensure to the breeder of a new plant variety or to his successor in title ... a right." Section 1 of the Law provides that "the breeder of a plant variety or the person to whom his right has been transferred (owner of the variety) may, by application for registration, obtain the exclusive right afforded by this law to exploit the variety." The purpose of the Law thus accords with the purpose of the Convention.

Article 2 of the 1978 Act: Forms of Protection

6. The Law provides for the granting of "breeders' rights" which constitute a "special title of protection" in the meaning of Article 2(1) of the 1978 Act. On the other hand, the Patent Law (No. 550 of December 15, 1967, as last amended by Law No. 387 of May 10, 1985) provides that patents are not granted, in particular, for plant or animal varieties or essentially biological processes for the production of plants or animals.

7. The Law contains no provision--permitted by Article 2(2) of the 1978 Act--limiting its application within a genus or a species to varieties with a particular manner of reproduction or multiplication, or a certain end-use.

8. Consequently, Finnish legislation conforms to Article 2 of the 1978 Act.

Article 3 of the 1978 Act: National Treatment; Reciprocity

9. Section 3 of the Law provides, like the Swedish law, that breeders' rights may be granted to a person who has bred the variety in Finland or to his successor in title. Such rights may also be granted to a breeder who is a citizen of a member State of UPOV or to his successor in title.

10. Finland thus intends to apply fully the principle of national treatment, without taking advantage of the possibility offered by Article 3(3) of the 1978 Act of demanding reciprocity in relation to the genus or species concerned. Indeed the explanatory memorandum stated that "the aim is that the rules of UPOV concerning national treatment are applied." However, that aim has not been fully reflected in the Act since it does not refer to the nationals of non-member States having their place of residence or registered office in a member State of UPOV. The Finnish authorities have announced that this defect would be remedied at the next revision. In the meantime, it would be possible to cover the persons concerned by the second provision of Section 3 of the Law, which entitles the Ministry of Agriculture and Forestry to authorize a derogation on the basis of the interest of plant breeding or the importation of the variety in question in Finland.

11. The Law contains no provision imposing particular conditions or formalities on a breeder from abroad, except for the obligation to designate an agent in Finland which applies, as usual, to applicants and rights owners (whatever their nationality) having no place of residence or registered office in Finland (Section 36 of the Law).

12. In conclusion, on the basis of a reasoned implementation of the Law in the case of certain nationals of non-member States, Finland will conform to Article 3 of the 1978 Act.

Article 4 of the 1978 Act: Botanical Genera and Species Which Must or May be Protected

13. According to its Section 2, the Law applies to the genera and species which, when cultivated in or imported to Finland, may have commercial significance there. This is a provision which may be interpreted very broadly. A similar provision appeared formerly in the law of Germany and had been recommended by the plant variety protection authorities of that country as a provision offering to breeders the possibility of requesting an extension of protection to a particular species.

14. The list of genera and species under the Law will be defined by decree. At the 1991 Diplomatic Conference, the Delegation of Finland stated that it was intended to apply the Law initially to some 50 species (see paragraph 283 of the Summary Minutes, in the Records of the said Conference). A first draft of the list has been submitted to the Office of the Union; it comprises 68 entries.

15. There is therefore no doubt that Finland will conform to Article 4 of the 1978 Act.

Article 5 of the 1978 Act: Rights Protected; Scope of Protection

16. The rights protected are defined in Chapter 3 of the Law (Sections 6 to 8). According to Section 6, the effect of the exclusive right of the breeder is that his prior authorization is required for the production or importation of material of the variety to be used as reproductive or vegetative propagating material, or for the offering for sale of propagating material or for the marketing of material for purposes of propagation. These provisions enable Finland to conform to the first sentence of Article 5(1) of the 1978 Act.

17. The second sentence of Article 5(1) of the 1978 Act is explanatory; it has not been taken over in the Law. The provision of the third sentence of Article 5(1) of the 1978 Act has been taken over in Section 7 of the Law.

18. As provided in Article 5(3) of the 1978 Act, the use of a protected variety with a view to creating new varieties does not require, under Section 8 of the Law, the authorization of the breeder. Such authorization is required, however, for the exploitation--under the conditions set out in Section 6 and, by implication, Section 7 of the Law--of certain varieties, the description of which has been derived from Article 14(5)(a) of the 1991 Act of the Convention (essentially derived varieties, indistinguishable varieties and varieties whose commercial production requires repeated use of the protected variety). In view of the fact that the extension of the right of the breeder to essentially derived varieties will enter into force separately, according to Section 41, first paragraph, of the Law, Finland will conform to Article 5(3) of the 1978 Act.

19. In conclusion, Finland will be able to conform to Article 5 of the 1978 Act.

Article 6 of the 1978 Act: Conditions Required for Protection

20. Sections 4 and 5 of the Law provide for the conditions of distinctness, homogeneity and stability, and also novelty, in terms conforming to Article 6(1)(a) to (d) of the 1978 Act. The requirement of a proposed variety denomination appears in Section 10 of the Law, which contains supplementary conditions which all come under the formalities referred to in Article 6(2) of the 1978 Act, and also the obligation to pay an application fee. The Law therefore conforms to Article 6 of the 1978 Act.

Article 7 of the 1978 Act: Official Examination of Varieties; Provisional Protection

21. The examination of the application is referred to in various Sections of Chapter 4 of the Law. The examination of the variety, and also the possibility of relying on cooperation in examination, is provided for in Section 18 of the Law in terms which conform to Article 7(1) and (2), and Article 30(2), of the 1978 Act.

22. Provisional protection is provided for in Section 33 of the Law; basically, its effect is that, if breeders' rights are granted, the breeder may assert his rights on the basis of the provisions on the protection under private law. The provisions in question are similar to those of Article 39 of the Swedish law.

23. In conclusion, the Law conforms to Article 7 of the 1978 Act.

Article 8 of the 1978 Act: Period of Protection

24. Under Section 21 of the Law, the breeders' rights last until the end of the twentieth year which follows the year in which they were granted. That period exceeds the minimum periods set out in Article 8 of the 1978 Act.

Article 9 of the 1978 Act: Restrictions in the Exercise of Rights Protected

25. The provisions of Section 24 of the Law relating to compulsory licences conform to Article 9 of the 1978 Act. They are similar to the provisions of Articles 26 to 29 of the Swedish law.

Article 10 of the 1978 Act: Nullity and Forfeiture of the Rights Protected

26. The provisions relating to premature termination of the breeders' rights appear in Sections 26 (express or implicit--through non-payment of the annual fee--renunciation of the breeders' rights), 27 (nullity of the rights) and 28 (forfeiture of the rights) of the Law.

27. The rights are declared null and void in the cases--contemplated in Article 10(1) of the 1978 Act--where the condition of distinctness or the condition of novelty was not complied with. In view of the references to Sections 2 and 3 appearing in Section 27, the right may also be annulled where registration resulted from an error of the authority as to the classification of the variety in a genus or species under the Law or as to the entitlement of the applicant to protection under the provisions relating to national treatment and the status of breeder or successor in title. Although they are not mentioned

in Article 10(1) of the 1978 Act, these grounds are perfectly legitimate. The annulment of a breeder's right granted to a person who had no title thereto is foreseen in many member States. Moreover, the annulment decided by the judiciary to correct errors of the register authority offers to breeders greater guaranties than an administrative procedure.

28. It is to be noted that Sections 15 and 16 of the Law provide for the possibility of transferring the application from the non-entitled applicant to the entitled person. The procedure is either administrative or judicial, depending on the decisiveness of the evidence adduced.

29. Section 28 of the Law provides for the possibility of declaring breeders' rights forfeit in the cases contemplated in Article 10(2)--which provides for mandatory forfeiture--and in Article 10(3)(a)--which provides for possible forfeiture--of the 1978 Act. On the other hand, the case contemplated in Article 10(3)(b) of the 1978 Act is covered in Section 26 of the Law as an implicit renunciation, through non-payment of the annual fee, of the breeders' rights. Those differences do not prevent Finland from conforming to Article 10 of the 1978 Act. It is to be noted in this respect that the 1991 Act no longer provides for an obligation, but simply a possibility, to declare a breeder's right forfeit (to cancel it).

Article 11 of the 1978 Act: Free Choice of the Member State in Which the First Application is Filed; Applications in Other Member States; Independence of Protection in Different Member States

30. The Law contains no provision which would be contrary to Article 11 of the 1978 Act or would authorize the introduction of such a provision by decree.

Article 12 of the 1978 Act: Right of Priority

31. The principle of the right of priority and its practical effect--that is, that the application filed in Finland will be considered as having been filed at the same date as the application whose priority is claimed--are set out in Section 12 of the Law. The possibility of deferring the examination of the variety is provided for in Article 18, third paragraph, of the Law, but without the possibility of requesting anticipated submission of the documents and material where the application whose priority is claimed is rejected or withdrawn. This provision, and also the other secondary provisions of Article 12 of the 1978 Act, will certainly be made by decree.

Article 13 of the 1978 Act: Variety Denomination

32. The provisions regarding variety denominations appear in Sections 10 (obligation to propose a denomination in the application for breeders' rights), 11 (characteristics of the denomination), 22 (use of the variety denomination) and 31 and 35 of the Law (damages and penal sanction in the case of misuse of a variety denomination). These provisions set a detailed frame enabling Finland to conform, in the implementation of the protection system, to Article 13 of the 1978 Act; however, the second paragraph of Section 22, which authorizes re-use of a denomination, will have to be applied restrictively, for instance on the basis of the criteria applied in Germany (where the variety whose denomination is re-used must no longer be registered and also no longer grown, and where the denomination must not have acquired any particular importance). The Finnish authorities have confirmed that the provision would indeed be applied restrictively.

Article 14 of the 1978 Act: Protection Independent of Measures Regulating Production, Certification and Marketing

33. The Law contains no provision whereby protection is subject to some measure regulating production, certification or marketing. It conforms therefore to Article 14 of the 1978 Act.

Article 30(1) of the 1978 Act: Implementation of the Convention on the Domestic Level

34. Appropriate legal remedies for the effective defense of the rights deriving from the breeders' rights are foreseen in Chapters 8 and 9 of the Law (Sections 29 to 35). It is to be noted in this respect that Section 31 of the Law institutes, in favor of the holder of breeders' rights, civil law protection against abusive use of the variety denomination. Such use is also sanctioned under penal law by virtue of Section 35 of the Law. A similar system also exists, for example, in Switzerland.

35. Section 37 of the Law enables any interested party to appeal against a decision which is unfavorable to him and has been taken in the course of the consideration of an application for breeders' rights.

36. The plant variety protection system will be administered, according to Section 9 of the Law, by a Plant Variety Board.

37. The publication of information on protection is foreseen by Sections 17 (publication of the application) and 20 (publication of the decision on the application) of the Law. Further information will also be published in accordance with the practice of the majority of the member States.

38. In conclusion, the Law contains the elements enabling Finland to conform to Article 30(1) of the 1978 Act.

General Conclusion

39. In the opinion of the Office of the Union, the Law essentially conforms to the 1978 Act and will enable Finland to "give effect to the provisions of this Convention" as provided by Article 30(3) of the said Act.

40. The Council is invited to:

(i) take a positive decision on the conformity of the Law on Breeders' Rights of Finland with the provisions of the 1978 Act, in accordance with Article 32(3) of that Act;

(ii) authorize the Secretary-General to inform the Government of Finland of that decision.

[Annexes follow]

PERMANENT MISSION OF FINLAND
IN GENEVA

No. 2304

Geneva 8 October 1992

Mr. Secretary-General,

With reference to the provisions of Article 32(3) in the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972 and on October 23, 1978, I have the honour, on behalf of the Government of Finland, to request for the advice of the Council of the International Union for the Protection of New Varieties of Plants on the conformity of the attached Law on Breeders' Rights with the provisions of the aforementioned Convention.

Accept, Sir, the assurances of my highest consideration.



Antti Hynninen
Ambassador
Permanent Representative



Mr. Arpad Bogsch
Secretary-General
The International Union
for the Protection of New Varieties
of Plants (UPOV)
34, Chemin des Colombettes
1211 Genève 20

[Annex II follows]

LAW ON BREEDERS' RIGHTS
at Helsinki 21 August 1992

According to the decision of Parliament be it enacted as follows:

Chapter 1

General provisions

Section 1

Breeders' rights

The breeder of a plant variety or the person to whom his right has been transferred (*owner of the variety*) may, by application for registration, obtain the exclusive right afforded by this Law to exploit the variety.

Section 2

Scope of application

Breeders' rights may be granted in respect of a plant variety that belongs to a genus or species which, when cultivated in or imported to Finland, may have commercial significance here.

Further provisions shall be issued by decree on the plant genera or species of those plant varieties in respect of which the breeders' rights may be granted.

Chapter 2

Conditions for protection

Section 3

Conditions in respect of the breeder

Breeders' rights in a plant variety may be granted to

(1) the person who has bred the variety in Finland or the party to whom his right has been transferred or

(2) a plant breeder who is a citizen of a member State of the union established for the international protection of new plant varieties, UPOV (Union), or his successor in title.

Notwithstanding the provisions of paragraph (1), breeders' rights may also be granted in other cases if the Ministry of Agriculture

and Forestry deems it justified in view of Finnish plant breeding or the import of the plant variety.

Section 4

Conditions in respect of the variety

Breeders' rights may be granted only to a variety:

- (1) which is clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time an application is filed,
- (2) which is sufficiently homogenous and
- (3) the essential characteristics of which are stable when the variety is reproduced in the manner proposed by the breeder.

Section 5

Novelty

Breeders' rights may not be granted if the cultivation material of the variety has, with the consent of the breeder or his successor in title, been offered for sale or marketed

- (1) in this country before the application was filed;
- (2) abroad for longer than six years before the application was filed in the case of a vine, fruit tree, forest tree, ornamental tree or the rootstock thereof;
- (3) abroad for longer than four years when the variety in question is a plant other than one referred to in item (2).

Chapter 3

Scope of protection

Section 6

Protected varieties in general

Under the exclusive right of the breeder, no person other than the owner of the variety may, without the authorization of the owner, use the variety for commercial purposes

- (1) by producing or importing the material of the variety for use as reproductive or vegetative propagating material or

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(2) by offering the reproductive or vegetative propagating material for sale and marketing it for reproductive or vegetative propagating purposes.

Section 7

Ornamental plants

Breeders' rights shall also extend to the seedlings of ornamental plants or the parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

Section 8

Exploitation of the variety in plant breeding

The authorization of the owner of the variety shall not be required for the exploitation of a protected variety in the breeding of new varieties.

The authorization of the owner of the variety shall be required for the acts referred to in Section 6

(1) if the acts concern a variety that has been essentially developed from a protected variety (a *derived variety*), unless the protected variety is itself a derived variety,

(2) if the acts concern a variety that is not clearly distinguishable from the protected variety or

(3) if the repeated use of propagating material of the protected variety is needed for the commercial production of another variety.

Chapter 4

Application for registration and its consideration

Section 9

Register authority

The register authority is the Plant Variety Board, which shall maintain the plant variety register.

The Plant Variety Board shall be appointed by the Ministry of Agriculture and Forestry. The Board shall have a chairman, a deputy chairman and at most ten members. Each member shall have an alternate. The Board shall be appointed for a term of three years at a time. Further provisions on the Board shall be laid down by Decree.

Section 10

Application

Applications for breeders' rights shall be made in writing to the register authority.

The application shall contain a description of how the variety in question differs from other varieties, and a variety denomination. The application shall state the name of the breeder. If a person other than the breeder of the variety applies for the breeders' rights, such applicant shall demonstrate his right to the variety. The applicant shall state that the variety has not, before the application was filed, been offered for sale or marketed in the manner referred to in Section 5.

The applicant shall pay the application fee.

The date on which the application documents have been furnished to the authority and the application fee has been paid shall be entered as the date of application.

Section 11

Variety denomination

The variety denomination must enable the variety to be identified.

A denomination shall not be accepted for a variety:

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(1) if it consists solely of figures, except where this is an established practice for designating the varieties in question;

(2) if it is liable to mislead the public;

(3) if it is against the law, public policy or morality;

(4) if it is liable to cause confusion with the denomination of a variety that belongs to the same or to a closely related plant species that has been entered or proposed for entry in the official register of varieties or that is used for reproductive material of such a variety;

(5) if it is liable to cause confusion with a trademark, name, company name or other identifying mark that a person other than the applicant has protected and that would be a bar to the registration of the variety name as a trademark of the reproductive material of the plant variety or of similar products;

(6) if it liable to cause confusion with the trademark of plant variety material or of similar products that the applicant has protected.

Section 12

Period of priority

If the owner of the variety has previously applied for breeders' rights in a member State of the Union, the application, if it is filed within twelve months of the filing of the earlier application (*the period of priority*), shall be deemed to have been filed in Finland at the same time.

Section 13

Supplementing the application

If the applicant has not followed the provisions and instructions issued on the filing of the application or if there is another reason why the application cannot be considered, the applicant shall be invited by an interim decision to make a statement or to supplement the application.

If the applicant has not made a statement or supplemented the application to remedy the defect within the specified period, the application shall be rejected. This consequence shall be mentioned in the interim decision.

A rejected application shall be reconsidered if, within one month of the end of the term specified in the interim decision, the applicant so requests or undertakes to supplement the application and, within the same period, pays the reapplication fee.

Section 14

Rejection of the application

If the application cannot be approved even after the applicant has made a statement or supplemented the application, the application shall be rejected, unless there is cause to issue the applicant a new interim decision.

Section 15

Claim to a better right

If a party claims to the register authority that he has a better right to the variety than the applicant and the matter is in doubt, the authority shall invite him in an interim decision to institute an action in court within the period determined by the authority. If the claim is not filed within that period, the claim shall be disregarded in the consideration of the application, and that fact shall be mentioned in the interim decision.

If the issue of a better right is under consideration by a court, the consideration of the application may be postponed until the issue has been decided on a final basis.

Section 16

Transfer of the application

If a person demonstrates to the register authority that he has a better right to the variety than the applicant, the register authority shall transfer the application to his name if he so

requests. The party to whom the application is transferred shall pay a new application fee.

Until a decision is finally made on the request for transfer, the application may not be withdrawn, rejected or approved.

Section 17

Publication of the application

If the application meets the requirements, the register authority shall, through publication of the application, provide the public with an opportunity to file claims regarding the application.

Claims regarding the application shall be filed in writing with the register authority within the period determined by it.

Section 18

Examination of the variety

The register authority shall arrange for an examination of the plant material of the variety. The examination may be made in part or may be omitted if another official examination has previously been made of the variety.

The applicant shall supply the necessary plant material and the necessary information to the entity carrying out the examination.

An applicant who has requested priority on the basis of an application filed in another country shall have four years from the end of the period of priority to supply the plant material and the necessary data.

Section 19

Decision on the application

After the period provided for the filing of claims has ended and the necessary examination of the variety has been carried out, the application shall be subjected to continued consideration and the register authority shall decide on the registration of the variety.

The applicant shall be given the opportunity to make a statement on the comments that have been made and the examination that has been carried out.

Section 20

Registration of the breeders' rights

After the decision of the register authority referred to in Section 19 is no longer subject to ordinary channels of appeal, the variety shall be entered in the plant variety register. The registration shall be published. The applicant shall be given a certificate of registration.

A decision on the rejection of an application shall be published after it is no longer subject to ordinary channels of appeal.

Chapter 5

Period of protection of the breeders' rights and use of the variety denomination

Section 21

Period of protection

The breeders' rights shall be valid from the date on which the register authority has taken its decision on the approval of the variety for registration. The breeders' rights may be maintained through payment of an annual fee for twenty years from the beginning of the year following the taking of the decision.

Section 22

Use of the variety denomination

When reproductive or vegetative propagating material of a registered plant variety is offered for sale, its registered denomination shall be used even after the period of protection has ended or the breeders' rights have otherwise ended.

The registered variety denomination or a denomination that is easily confused with it may not be used for a variety belonging to the same species or to a closely related species or for

the reproductive or vegetative propagating material of such a variety as long as the variety denomination is registered.

Chapter 6

Licenses, compulsory licenses and notations in the register

Section 23

Licence

If the owner of the variety has granted permission to another person to use the registered variety on a professional basis (*license*), such other person may transfer his right to a third person only if agreed.

If the license belongs to a company, it may be transferred in connection with the transfer of the company, unless otherwise agreed.

Section 24

Compulsory licenses

If the reproductive or vegetative propagating material of a registered variety is not placed on the market under reasonable conditions and to a sufficient extent in view of the food economy or other public interest, a person who wishes to exploit the variety in Finland on a professional basis may obtain a compulsory license to do so, unless the owner of the variety has an acceptable reason for his actions. The compulsory license shall also include the right to receive a sufficient quantity of reproductive or vegetative propagating material of the variety from the owner of the variety.

A compulsory license may be granted only to a person who is deemed to have the prerequisites for exploiting, in an acceptable manner and under the conditions determined in the compulsory license, the variety that is the subject of the breeders' rights.

The compulsory license shall not prevent the owner of the variety from himself using his right or from granting a license to the variety

The compulsory license shall be granted by the court, which shall order to what extent the registered variety may be used and determine the remuneration as well as the other conditions of the compulsory license. The court may, at the request of the owner of the variety, withdraw the compulsory license or determine new conditions if required by essential changes in the circumstances.

Section 25

Notations in the register

When the breeders' rights have been transferred to another or when a license has been granted to another, a notation thereof shall be made in the plant variety register if so requested. The same shall apply to a lien on the breeders' rights. However, the granting of a compulsory license shall always be noted in the register.

If it is shown that the license, lien or compulsory license entered in the register is no longer in force, the notation shall be deleted from the register.

A fee shall be paid for the entry of the notation in the register.

The person who has most recently been entered in the register as the owner of the variety shall be considered the owner of the variety.

Chapter 7

Termination of the breeders' rights

Section 26

Renunciation of the breeders' rights

The owner of the variety may renounce his right by notifying the register authority thereof in writing, in which case the authority shall delete the variety from the register.

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The breeders' rights shall end if the annual fee is not paid within the prescribed period.

Section 27

Nullity of the rights protected

The court shall declare the breeders' rights null and void if the conditions laid down in Sections 2, 3, 4(1) or 5 for the granting of the rights are not complied with.

The court shall ask the register authority for a statement in cases that concern a declaration of nullity of the plant breeder's rights.

In other cases pertaining to the right of the breeder, the court may ask the register authority for a statement if there is reason for this.

Section 28

Forfeiture of the rights protected

The register authority may declare the breeders' rights forfeit if

(1) the owner of the variety is not in a position to produce reproductive or vegetative propagating material of the variety with its characteristics as defined when the protection was granted; or

(2) the owner of the variety does not, after being requested to do so by the register authority, provide reproductive or vegetative propagating material of the variety, the documents and other information deemed necessary for checking that the variety is maintained appropriately or if the owner of the variety does not allow inspection of the measures which have been taken for the maintenance of the variety.

Chapter 8
Protection under private law

Section 29

Prevention of infringements

If anyone infringes the exclusive right under the breeders' rights, the court may prohibit him from continuing or renewing the act.

Section 30

Action for a declaratory judgment

The owner of the variety or the person who, on the basis of a license or compulsory license, has the right to exploit the plant variety protected by the breeders' rights may institute a declaratory action to establish whether, on the basis of the breeders' rights that have been granted to him, he enjoys protection against others, if there is uncertainty regarding this matter and this uncertainty is to his detriment.

A person who exploits or intends to exploit a plant variety that is subject to the protection granted on the basis of the breeders' rights may, under the same conditions, institute a declaratory action against the holder of the breeders' rights to determine whether the granting of the breeders' rights constitutes a bar to such activity.

Section 31

Damages

A person who infringes the breeders' rights or the provisions of Section 22 on the exploitation of the variety denomination, deliberately or negligently, shall be required to pay damages for the exploitation of the variety and to compensate any other loss caused by the infringement. If the negligence is slight, the amount of the damages may be adjusted.

If the infringement of the breeders' rights or the infringement of the provisions of Section 22 on the exploitation of the variety denomination is not deliberate or negligent, the infring-

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er shall be required to pay damages only to the extent deemed reasonable.

Compensation for infringement of the breeders' rights or for a infringement of the provisions of Section 22 on the exploitation of the variety denomination may be claimed only for the five years preceding the institution of the action for damages.

If the breeders' rights have been declared null and void by a court decision that is no longer subject to ordinary channels of appeal, no claim for damages may be brought and no punishment may be pronounced.

In addition to the provisions of this Section on compensation, the provisions of the Damages Act (1974/412) shall apply as appropriate.

Section 32

Return of reproductive or vegetative propagating material

On application by the person that has suffered an infringement of his rights, the court may order, as it deems reasonable, that the reproductive or vegetative propagating material of the variety that is the subject of the infringement of rights shall be transferred to the infringed person in return for compensation. This shall not apply to a person who has received the reproductive or vegetative propagating material in good faith or who has a special right thereto and has not himself infringed the breeders' rights.

The reproductive or vegetative propagating material referred to in the first paragraph above may be confiscated if the person that has suffered an infringement of his rights has requested transfer of the reproductive or vegetative propagating material as provided in Chapter 7 of the Execution Act.

Section 33

Interim protection

If, after the application referred to in Section 10 has been filed, a person other than the applicant uses on a professional

basis the variety that is the subject of the application for breeders' rights, the provisions on infringement of breeders' rights shall apply correspondingly if the rights are subsequently granted.

The penalty referred to in Chapter 9 of this Act may not be imposed for acts that took place after the application referred to in Section 10 was filed if, although they infringe the breeders' rights, they took place before the breeders' rights had been granted. Damages for an act that took place before publication of the application referred to in Section 17 may be ordered only in accordance with Section 31, second paragraph.

If the action for damages is brought within a year of the granting of the breeders' rights, the provision in Section 31, third paragraph, shall not apply.

Chapter 9

Penal provisions

Section 34

Infringement of breeders' rights

A person who deliberately infringes the exclusive right referred to in Sections 6, 7 or 8 shall be sentenced for *infringement of breeders' rights* to a fine or imprisonment of at most six months.

The public prosecutor may not bring charges for an offence unless the injured party has reported the offence for prosecution.

Section 35

Misuse of a variety denomination

A person who deliberately or negligently infringes the provisions of Section 22 on the use of a variety denomination shall be sentenced, unless the offence is petty, for *misuse of a variety denomination* to a fine.

Chapter 10
Miscellaneous provisions

Section 36

Use of an agent

If the applicant or the holder of the breeders' rights does not reside in Finland, he shall have an agent in Finland authorized to represent him in all matters pertaining to the breeders' rights and to applications for such rights.

Section 37

Appeal

The final decision of the register authority on the breeders' rights shall be subject to appeal by the applicant or the holder of the breeders' rights, if the decision goes against them. A person that had lodged a claim against the application may appeal a decision approving the application despite the proper lodging of the claim against such application. If the person that had entered an appeal withdraws his appeal, the appeal may nonetheless be considered if there are special reasons.

The applicant may appeal a decision by which a request referred to in Section 16 for the transfer of an application has been approved. The person presenting the claim for transfer of an application may appeal a decision rejecting his request.

The decision of the register authority shall be subject to appeal before the Supreme Administrative Court. Appeal shall be filed within 60 days of the date on which service of the decision was made.

Section 38

Forum

The forum for cases dealt with under this Act is the City Court of Helsinki.

Section 39

Fees

The amount of the fees referred to in this Act shall correspond to the total costs for the State of providing the services (*cost price*). However, the amount of the registration fee and the annual fee may be determined so that the total amount collected from these is estimated to correspond to the total costs incurred by the State in maintaining the register.

Fees of equal size may be required for similar services by the Plant Variety Board even when the costs incurred by the State in providing the services differ. In determining the amount of such a fixed fee, the average total costs of the service shall be taken into consideration.

The fee may be set in general at an amount that is above or below the cost price or the fee calculated in accordance with the second sentence of the first paragraph or may be waived entirely, if this is due to international agreements, reasons of trade policy or practical reasons.

In other respects, the provisions of the State Cost Assessment Act (150/92) shall apply to the fees.

Section 40

Supplementary provisions

Further provisions on the implementation of this Act shall be issued by Decree. The Plant Variety Board may issue further regulations on the registration of applications and their examination.

Section 41

Entry into force of the Act

This Act shall enter into force on 15 October 1992. However, Section 8, second paragraph, item 1, shall not enter into force until the date stipulated by Decree.

Measures necessary for the implementation of the Act may be taken before this Act enters into force.