

PARLIAMENT OF THE REPUBLIC OF MOLDOVA

**LAW
on the Protection of Plant Varieties**

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Law No.162 of 30.07.2015, OM 241-246/28.08.15 Art.469

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Law No.85 of 13.04.2012, OM 120-125/15.06.12 Art.392

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The Parliament hereby adopts this organic Law.

This Law establishes the necessary legal framework for the application of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, the Council Regulation (EC) No. 2100/94 of July 27, 1994 on the Establishment of a Community Policy for the Protection of Plant Varieties, as published in the Official Journal of the European Union No. L 227 of September 1, 1994, the Council Regulation (EC) No. 2470/96 of December 17, 1996 on the Extension of Time Limits for Community Protection of Plant Varieties for the Potato, as published in the Official Journal of the European Union No. L 335 of December 24, 1996, the Directive No. 98/44/EC of the European Parliament and of the Council of July 6, 1998 on the Legal Protection of Biotechnological Inventions, as published in the Official Journal of the European Union No. L 213 of July 30, 1998, the Directive No. 2004/48/EC of the European Parliament and of the Council of April 29, 2004 on the Enforcement of Intellectual Property Rights, as published in the Official Journal of the European Union No. L 157 of April 30, 2004, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), concluded on April 15, 1994.

Chapter I

GENERAL PROVISIONS

Article 1. Scope and Purpose of the Law

(1) This Law shall govern the relations arising out of the creation, legal protection and use of plant varieties of any genera and species.

(2) The purpose of this Law shall be the establishment of a legal framework for the organization and functioning of the system of protection of plant varieties.

Article 2. Legal Framework

(1) The relations arising out of the creation, legal protection and use of plant varieties shall be governed by the Constitution of the Republic of Moldova, the Civil Code, the Code on Science and Innovations, the Customs Code, the international treaties to which the Republic of Moldova is a party, this Law and other normative acts.

(2) If an international treaty to which the Republic of Moldova is a party has established norms other than those contained in this Law, then the norms of the international treaty shall be applied.

Article 3. Definitions

For the purposes of this Law, the terms and expressions below are defined as follows:

“*breeder*” means a person who has bred, or discovered and developed, a variety;

“*variety*” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are

fully met, can be

- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- distinguished from any other plant grouping by the expression of at least one of the said characteristics and
- considered as a unit with regard to its suitability for being propagated unchanged;

“*categories of a variety*” means clone, line, or hybrid;

“*material of a variety*” means seeds, whole plants or various parts of plants which are capable of reproducing the whole plants;

“*applicant*” means a natural person or legal entity who applies for the grant of a variety patent;

“*patent owner*” means a natural person or legal entity to whom a plant variety patent belongs;

“*genetically modified organism*” means any living organism which has a new combination of genetic material obtained with the assistance of contemporary biotechnology.

Article 4. Legal Protection of a Variety

(1) Rights in a variety shall be obtained and protected on the territory of the Republic of Moldova by means of a plant variety patent (hereinafter referred to as “*patent*”), granted by the State Agency on Intellectual Property in accordance with this Law and sub-regulatory normative acts, and with the international treaties to which the Republic of Moldova is a party.

(2) The scope of the legal patent protection shall be determined by the sum of essential characteristics of the variety, as specified in the official description thereof.

Article 5. Authorities Responsible for the Legal Protection of Varieties

(1) The authorities implementing the state policy in the field of legal protection of varieties are the State Agency on Intellectual Property (hereinafter referred to as *AGEPI*) and the State Commission for Plant Varieties Testing (hereinafter referred to as *State Commission*). State policy on the use of new varieties in breeding shall be implemented by the State Commission.

[[Art.5 paragraph \(1\) amended by Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392](#)]

(2) AGEPI is the national office in the intellectual property protection field and is the sole authority in the Republic of Moldova that provides for the legal protection of new varieties of plants.

(3) AGEPI:

a) develops drafts of legislative and other normative acts in the field of protection of plant varieties and ratifies acts of a procedural nature which are essential for it to perform functions established by Law;

b) registers and examines patent applications, grant and issue patents on behalf of the State, publishes official data in the Official Bulletin of Intellectual Property(hereinafter referred to as *BOPI*);

[[Art.5 paragraph \(3\) b\) amended by Law No.101 of 26.05.16, OM 169-183/24.06.16 Art.355](#)]

c) maintains and administers the National Collection of Plant Variety Patents and exchanges information with international organizations and administrations for the protection of plant varieties of other countries;

d) keeps the National Register of Plant Variety Patent Applications (hereinafter referred to as “*the National Register of Applications*”) and the National Register of Plant Variety Patents (hereinafter referred to as “*the National Register of Patents*”), establishes and approves the procedure by which they are to be maintained.

(4) AGEPI and State Commission shall represent the Republic of Moldova in the International Union for the Protection of New Varieties of Plants (hereinafter referred to as “*UPOV*”), as well as in other international and intergovernmental organizations for the protection of plant varieties, shall maintain relations of bilateral and multilateral cooperation with them in this field.

(5) The State Commission is the authority which carries out the testing of plant varieties in its variety testing centers, experimental stations, specialized institutions and laboratories applying methodologies and within the time limits prescribed by international standards, in order to determine their compliance with the conditions of patentability, namely distinctness, uniformity and stability, and also the testing of varieties in order to determine their agronomical value. The State Commission maintains the Catalogue of Plant Varieties, including varieties approved for production and sale in the Republic of Moldova.

[[Art.5 paragraph \(5\) amended by Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392](#)]

Chapter II SUBSTANTIVE PATENT LAW

Part 1

Patentability of a Variety

Article 6. Conditions for Patentability of a Variety

(1) The plant variety shall be patentable only where it is:

- a) distinct;
- b) uniform;
- c) stable, and
- d) new

(2) The variety shall be designated by a denomination in accordance with the provisions of Article 36.

Article 7. Distinctness

(1) The variety shall be deemed to be distinct if it is clearly distinguishable by the presence of at least one or more relevant features stipulated by a certain genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge at the date of registration of the patent application with the AGEPI, or at the date of the claimed priority, as the case may be.

(2) The distinctness of a variety shall be determined by features which can be recognized and described precisely.

(3) The variety shall be deemed to be notorious if at date of filing of the application:

- a) it is protected in the Republic of Moldova or in another country and has been entered into an official register of protected varieties;
- b) it has been entered in the Catalog of Plant Varieties of the Republic of Moldova or in similar registers and catalogs of other countries;

[Art.7 paragraph (3) b) in the wording of Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392]

c) a registered application exists in the Republic of Moldova for the grant of protection for the variety or for its entry in the Catalog of Plant Varieties, provided that the application leads to the granting of protection or to the entering in the catalog;

[Art.7 paragraph (3) c) in the wording of Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392]

d) a registered application exists in another state for the grant of protection for the variety or for its entry in a catalog of plant varieties, provided that the application leads to the granting of protection or to the entering in the catalog.

[Art.7 paragraph (3) d) in the wording of Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392]

Article 8. Uniformity

The variety shall be deemed to be uniform if, taking into account the differences that may be expected from the particular features of its propagation, plants of the variety remain sufficiently uniform in the expression of characteristics included in the examination of distinctness of the variety, and also of other characteristics used to describe the variety.

Article 9. Stability

The variety shall be deemed to be stable if its relevant characteristics for the determination of its distinctness and any other features used to describe the variety remain unchanged after repeated propagation or at the end of each cycle of propagation.

Article 10. Novelty

(1) A variety shall be deemed to be new if, at the date of filing of the patent application with the AGEPI or at the date of the claimed priority, propagating or harvested material of the variety has not been sold or otherwise disposed of to third parties, by or with the consent of the breeder, for purposes of exploitation of the variety:

- a) in the territory of the Republic of Moldova – earlier than one year before the filing date of the patent application;
- b) in the territory of other States, – earlier than four years before the filing date of the patent application, and in the case of trees and of vines – earlier than six years before the filing date of the patent application.

(2) The following shall have no bearing on the novelty of a variety, within the meaning of

paragraph (1), if:

- a) the material of the variety is disposed of to an official body in the context of certain legal obligations or third parties on the basis of an agreement, or in the context of any other legal relations, for the purposes of production, reproduction, propagation, conditioning or storing, provided that the breeder is not deprived of the exclusive right to dispose of the material of the variety and provided that the material of the variety has not been disposed of for commercial purposes previously, except where such material of the variety was used repeatedly to obtain hybrids and if the material of the hybrid and the harvested material of the hybrid were sold;
- b) the material of the variety is disposed of by a company or firm to another company or firm of which it is a subsidiary, or if both companies or firms are wholly owned by a third company or firm, provided that there was no earlier disposal;
- c) are disposed of without reference to the variety, the material of the variety or the harvested material of the variety, obtained from plants which have been cultivated for experimental purposes or for the purpose of creation or discovery and development of a variety and which have not been used for the purpose of a new reproduction or propagation;
- d) the material of the variety is disposed of with the view of presentation of the variety by the breeder in an exhibition which is officially recognized in accordance with the Convention on International Exhibitions;
- e) the material of the variety is disposed of in an agreement between the breeder and a third party, according to which the breeder authorizes the production of propagating material under his supervision

Part 2

Entitlement to Apply For and Obtain a Patent

Article 11. Right to a Patent

(1) The right to a patent shall belong to the breeder or his successor-in-title.

(2) Where the variety has been bred or discovered and developed jointly by two or more breeders, the right to a patent shall belong to them all or to their successors-in-title. The mode of exercising the rights in the variety shall be determined by a written contract between the breeders. This provision shall also be applied in cases where one or more breeders discovered the variety, but others developed said variety.

(3) The right to a patent shall likewise belong jointly to a breeder and any person (or any persons) if the breeder and person (or persons) have declared in writing that they have agreed to share such a joint right.

(4) Where the right to a patent belongs jointly to two or more persons, in accordance with paragraphs (2) and (3), one person or several of the said persons may, by means of a written statement, entitle the other person to apply for the grant of a patent.

[Art.11 paragraph (4) in the wording of Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(5) If two or more persons have bred or discovered and developed the same variety independently of each other, the right to a patent shall belong to the person whose patent application has the earlier date of filing or priority, assuming it has been recognized. This provision shall only be applied in the case where the first application has been published in accordance with Article 44.

(6) In the procedures conducted before the AGEPI, the applicant shall be the person who exercises or is entitled to exercise the right to a patent.

[Art.11 paragraph (6) in the wording of Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

Article 12. Varieties Bred or Discovered and Developed by Employees:

(1) The right to a patent for a variety bred or discovered and developed by a breeder in the accomplishment of his duties, in the exercise of an employment contract or a research contract, shall belong to the employer, unless otherwise provided by the contract between the breeder and the employer, the breeder shall be entitled to an equitable remuneration, as prescribed by the contract. The amount of remuneration shall be determined on the basis of the profit obtained from the use of the variety during the term of the patent, as well as the economic value of the variety, and may not be less than 15 per cent from the profit derived from the use of the variety, including returns derived from the sale of licenses.

(2) A variety shall be deemed to have been bred in the accomplishment of duties if, in breeding the variety, the breeder:

- a) carried out duties entrusted to him by virtue of his position;
- b) carried out duties specifically entrusted to him for the purpose of breeding a new variety;
- c) made use of material or financial means made available to him by the employer or a person who commissioned the breeding of the variety, as well as of knowledge and expertise gained during the employment.

(3) Where the employer, within 60 days after having been notified by the breeder of the breeding of the new variety, has not filed an application for a patent, has not assigned his right to file an application to another person or has not instructed the breeder in writing to keep the newly bred variety secret, the breeder shall acquire the right to file a patent application and to obtain a patent in his own name. The employer shall in that case have a preferential right to a non-exclusive license to use the variety.

(4) Where the employer has obtained a patent for a variety bred in accordance with paragraph (1), the employee shall have a preferential right to a non-exclusive license to use the variety.

(5) If the parties fail to reach agreement on the amount of the remuneration due to the employee or on the price of the license, the amounts shall be determined by the courts, depending on the contribution made by each party to the breeding of the variety and on its commercial value.

(6) The procedure for the breeding and use of varieties by the employees shall be established by the Regulations on Intellectual Property Objects Created in the Accomplishment of Duties, as approved by the Government.

[Art.12 paragraph (6) amended by Law No.101 of 26.05.16, OM 169-183/24.06.16 Art.355]

Article 13. Entitlement to File a Patent Application

(1) The following shall be entitled to file a patent application:

- a) natural and legal persons domiciled or with a place of business in the Republic of Moldova;
- b) natural and legal persons domiciled or with a place of business on the territory of a State Member of the international treaties to which the Republic of Moldova is a party;
- c) natural and legal persons of any other country, provided that said country grants natural and legal persons domiciled or with a place of business in the Republic of Moldova, a protection for varieties of the same botanical taxon which is equivalent to the protection granted by this Law.

(2) A patent application may be filed jointly by two or more persons complying with the requirements stipulated in paragraph (1). The refusal of one or more breeders to obtain a patent shall produce no effects on others, where they have acted in accordance with this Law.

Article 14. Patent Application Filed by a Non-Entitled Person

(1) Where, prior to the granting by the AGEPI of a patent, it is adjudged by a final court decision that a person other than the applicant is entitled to the right of a patent, in accordance with Article 11 paragraph (1), that person may:

- a) continue, within a period of 3 months after the decision has become final, the prosecution of the patent application as his own application in place of the applicant;
- b) if the patent application has been withdrawn or refused, file, within one month as from the date of withdrawal or refusal of the application, a new patent application in respect of the same variety, while preserving the filing date of the original application;
- c) request that the patent application be refused.

(2) A copy of the court decision shall be submitted to the AGEPI by the interested party. The court's decision shall be entered in the National Register of Applications and shall be published in BOPI.

Part 3

Effects of Patent Protection

Article 15. Rights of the Patent Owner

(1) The patent owner shall have the exclusive right in the patent and in the variety protected by the patent, including the right to exploit the variety, the right to dispose of the patent and variety, and the right to prevent third parties from performing, without his authorization, the following acts in respect of the material of the variety or the harvested material of the protected variety:

- a) production or reproduction (multiplication);
- b) conditioning for the purpose of propagation;
- c) offering for sale;

d) selling or other marketing;

e) exporting;

f) importing;

g) stocking for any of the purposes mentioned in items (a) to (f).

(2) The provisions of paragraph (1) shall apply in respect of harvested material of the protected variety only where it has been obtained through the unauthorized use of material of the protected variety, unless the patent owner has had reasonable opportunity to exercise his right in relation to the said material.

(3) The provisions of paragraphs (1) shall also apply in respect of products made directly from the material of the protected variety, if these products have been obtained through the unauthorized use of the propagating material of the protected variety and if the patent owner has not had the opportunity to exercise his right in relation to the said propagating material.

(4) The provisions of paragraphs (1)-(3) shall also apply in relation to:

a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;

b) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety;

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

(5) For the purposes of subparagraph (a) of paragraph (4), a variety shall be deemed to be essentially derived from another variety (hereinafter referred to as "*the initial variety*") when:

a) it is predominantly derived from the initial variety, or from a variety that is, in turn, predominantly derived from the initial variety;

b) it is clearly distinguishable from the initial variety in accordance with Article 7;

c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(6) Where there are several owners of the same patent, their mutual relations in relation to the use of the protected variety shall be determined by agreement between them. Where no such agreement exists, each of the patent owners shall be fully entitled to use the variety at his own discretion and to institute patent infringement proceedings against any person who uses the variety without the authorization of the patent co-owners, but shall not be entitled to surrender the patent without notification of same, or to enter without their consent into license or assignment agreements.

(7) The exercise of the patent owner's rights may not infringe any provisions of public authorities, adopted for reasons of morality and public order, public security, protection of health and life of humans, animals or plants, protection of the environment, protection of industrial or commercial property or for the protection of competition, trade and agricultural production.

Article 16. Limitation of Patent Owner's Rights

(1) The patent owner's right shall not extend to:

a) acts done privately and for non-commercial purposes;

b) acts done for scientific research and experimental purposes;

c) acts done for the purpose of breeding or discovering and developing other varieties, and, except where the provisions of Article 15(4) apply, to acts referred to in Article 15(1) to (3) in respect of such other varieties.

(2) Farmers may use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the propagating material of a protected variety, except hybrids, synthetic varieties, varieties of trees, shrubs and vines, in accordance with the Regulations on the procedures of filing and examination of an application, grant and maintenance of patent for a plant variety, approved by Government (hereinafter referred to as "*the Regulations*").

[Art.16 paragraph (2) introduced by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(3) The patent owner shall be entitled to receive equitable remuneration for use under paragraph (2) of the harvested product of a protected variety, which can be established by contract, but which must be less than the price charged for the licensed production of the propagating material for the same variety.

[Art.16 paragraph (3) introduced by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(4) Farmers shall, at the request of the patent owner, furnish information about the quantity of

the harvested material used in accordance with paragraph 2”.

[Art.16 paragraph (4) introduced by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]; Unique Article becomes paragraph (1)]

Article 17. Exhaustion of Patent Owner’s Rights

The patent owner’s rights shall not extend to acts concerning any material of the protected variety, or of varieties covered by the provisions of Article 15(4), which have been marketed by the breeder or with his consent, unless such acts:

- a) involve further propagation of the variety in question, except where such propagation was envisaged in the context of marketing of the corresponding material;
- b) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

Article 18. Use of a Variety Denomination

(1) Any person who offers for sale or assigns to third parties for commercial purposes the material of a protected variety or one of the varieties to which the provisions of Article 15(4) refer, shall be obliged to use the denomination of that variety conferred on it in accordance with Article 36. The denomination of a variety must be easily recognizable and reproducible in writing.

(2) Any person who performs the acts referred to in paragraph (1) in relation to any material of the variety must indicate the denomination of the variety at the request of any authority, customer or person having a legitimate interest.

(3) The provisions of paragraphs (1) and (2) shall be applicable even after the expiry of patent protection.

Article 19. Limitation of Use of a Variety Denomination

(1) The patent owner who holds a right granted to him for a designation identical to the denomination of the protected variety may not use this right to hamper the free use of this denomination in connection with the variety, even after the expiration of patent protection.

[Art.19 paragraph (1) in the wording of Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(2) A third party may use a right granted to him for a designation identical to the denomination of the protected variety for the purpose of hampering the free use of this denomination only where such right was granted before the conferral of the variety denomination in accordance with Article 36.

[Art.19 paragraph (2) in the wording of Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(3) The denomination conferred on a variety patented in the Republic of Moldova or a Member State of UPOV, and any other denomination with which the denomination of the variety might be confused may not be used in the territory of the Republic of Moldova in relation to another variety of the same plant species or of a closely related species or for the material of this other variety.

Part 4

Term of Validity and Termination of Patent Protection

Article 20. Term of Patent Protection

(1) The term of patent protection for a plant variety shall extend up to 25 years or, in the case of varieties of vine, potato and trees – up to 30 years, as from the date of publication of the mention of the grant of the patent in BOPI.

(2) At the request of the patent owner, the term of patent protection may be extended for further five years following the expiry of the terms specified in paragraph (1).

Article 21. Nullity of the Patent

A patent may be declared null and void when it is established:

- a) that the conditions laid down in Articles 7 or 10 were not complied with at the time of grant of the patent;
- b) that, where the grant of the patent has been based upon information and documents furnished by the applicant, the conditions laid down in Articles 8 or 9 were not complied with at the time of grant of the patent;
- c) that the patent has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

Article 22. Nullity Action

- (1) Proceedings for nullity of the patent may be instituted at any time during the term of validity of the patent and must only be predicated on the grounds mentioned in Article 21.
- (2) Any person may institute proceedings for nullity of the patent with the court. For the cases referred to in Article 21(c), the nullity action may only be brought by a person entitled to be entered in the National Register of Patents as patent owner or jointly by other persons entitled to be entered in the Register as co-owners under Article 11 paragraph (2).
- (3) Proceedings for nullity of the patent may be instituted even if the rights conferred by the patent have terminated or if the patent is surrendered.
- (4) A decision for nullity of the patent shall be communicated to the AGEPI by the interested person and shall be entered in the National Register of Patents. Mention of the nullity of the patent shall be published in BOPI.

Article 23. Effects of Nullity

- (1) Effects of protection referred to in Articles 15-19 shall be considered to be null and void, as from the date of grant of the patent, to the extent that the patent has been so declared null and void.
- (2) The retrospective effect of the nullity of a patent shall not extend to:
 - a) final and irrevocable decisions in actions related to the infringement of rights, which have come into effect prior to the adoption of the decision for nullity;
 - b) contracts concluded prior to the adoption of the decision for nullity, to the extent of their execution degree before such decision. For reasons of fairness, reimbursement of amounts paid under the contract may be claimed.

Article 24. Forfeiture of Patent Owner's Rights

- (1) AGEPI shall declare the forfeiture of patent owner's rights with effects *in futurum* where it establishes that the conditions laid down in Articles 8 and 9 are no longer fulfilled. Where it is established that these conditions are no longer fulfilled at a date earlier than the date of forfeiture, the forfeiture of rights may have effect from this earlier date.
 - (2) AGEPI shall declare the forfeiture of patent owner's rights if, within a time limit prescribed by the AGEPI, the patent owner:
 - a) refuses to furnish, at the request of the State Commission, the information, documents or material of the protected variety deemed necessary for its control testing;
 - b) does not propose, where the denomination of the variety no longer complies with the conditions laid down in Article 36, another denomination for the variety and does not pay the fee referred to in Article 62;
- [Art.24 paragraph (2) b) amended by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]*
- c) fails to pay the patent issuance and maintenance fees;
 - d) the patent owner or his successor-in-title no longer complies with the conditions laid down in Articles 13 and 87.
- (3) Forfeiture of patent owner's rights for failure to pay the annual fee in due time or, where appropriate, the additional fee, shall be deemed to have effect from the date of expiration of the time limit established for payment of such fee.

- (4) AGEPI shall publish the mention of the forfeiture of patent owner's rights in BOPI.

Article 25. Surrender of Patent

- (1) The patent owner may surrender the patent by submitting a written declaration to that effect to the AGEPI, subject to payment of the prescribed fee.
- (2) Surrender of patent by one of the patent owners shall not terminate the validity of the patent, which shall remain in the ownership of the other patent owners.
- (3) Surrender of patent shall only take effect upon introduction of the corresponding entry in the National Register of Patents, the mention of which shall be published in BOPI.
- (4) Surrender of patent shall be entered in the National Register of Patents only with the consent of the beneficiary of a real right entered in the Register.
- (5) Where the patent forms the subject of a license contract, entered in the National Register of Patents, surrender of patent shall be entered in the Register only where the patent owner provides evidence of the fact that he informed the licensee of his intention to surrender the patent. In such case, the licensee shall have a preferential right to obtain the patent in his name within 3 months as from the date on which the patent owner has informed him in writing of his intention to surrender the patent.
- (6) The patent owner shall be required to inform the breeder, at the same time as he submits

his written request to the AGEPI, of his intention to surrender the patent. In such case, the breeder shall have a preferential right to obtain the patent in his name within 3 months as from the date on which the patent owner has informed him in writing of his intention to surrender the patent.

Part 5

Patent Application and Patent as an Object of Property

Article 26. Rights Conferred by a Patent Application after Publication

(1) A patent application shall, from the date of its publication and up to the grant of the patent, provisionally confer upon the applicant the same rights as those conferred upon the patent owner in accordance with Article 15.

(2) Infringement of rights by third parties referred to in paragraph (1) shall bring to the guilty party the obligation of compensation according to law, the order for payment of damages shall be enforceable after the grant of the patent. The amount of compensation shall be determined by agreement between the parties. If the parties have not agreed on the amount of compensation, shall be determined by the court.

(3) The effects of a patent application referred to in paragraph (1) shall be deemed null and nonexistent if the patent application has been withdrawn or refused.

Article 27. Transfer of Rights

(1) A patent application and a patent may be transferred to one or more successors-in-title.

(2) Transfer of a patent application or a patent under an assignment contract may only have effect for a successor-in-title who satisfies the conditions specified in Articles 13 and 87.

Assignment shall be in writing and signed by the contracting parties except where the transfer is adjudicated by a court decision or any other final document of a legal procedure. Otherwise, the assignment shall be deemed null.

(3) Without prejudice to the cases referred to in Article 61, the transfer of rights shall not affect the rights obtained by third parties prior to the date of transfer.

(4) Transfer of rights shall take effect before the AGEPI and shall be enforceable against third parties only after the presentation of documentary evidence provided and following their entry in the National Register of Applications or the National Register of Patents.

Article 28. Real Rights

(1) A patent may, independently, be pledged or become the subject-matter of any other real right.

(2) Pledge of patents shall be entered in the Register of Corporal Pledges of Movables according to the Law on Pledge. Other real rights in patents shall be, on request of any of the parties, entered in the National Register of Patents and shall become enforceable against third parties from the time of registration, and the data concerning these rights shall be published in BOPI.

[Art.28 paragraph (2) in the wording of Law No.173 of 25.07.14, OM 231-237/08.08.14 Art.531; effective from 08.11.14]

Article 29. License Contracts

(1) A patent application and a patent may be the subject of a license contract. The licenses may be exclusive or non-exclusive.

(2) The applicant or patent owner may claim rights conferred by the patent application or the patent against a license owner who has infringed one of the conditions or limitations stated in the license contract under the paragraph (1).

Article 30. Co-ownership

In case of co-ownership of a patent, the provisions of Articles 27 to 29 shall apply *mutatis mutandis* in relation to the appropriate parts of the co-owners, where such parts are determined by contract.

Article 31. Compulsory Licenses

(1) The courts may grant compulsory, non-exclusive licenses for the use of a protected variety to one or more persons who have filed an application on expiry of the period of 3 years after the grant of the patent, under the following conditions:

a) authorization for such use shall be given where it is in the public interest;

b) such use may be authorized only where prior to such use the proposed user has made efforts to obtain authorization from the patent owner on reasonable commercial terms and by acceptable means, although, regardless of his best efforts, he has not been successful within a reasonable period of time. The derogation from this provision shall only be permissible in the

case of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In such instances, the patent owner shall be notified as soon as reasonably practicable;

c) the scope and duration of such use shall be limited to the purposes for which it was authorized;

d) such use shall be non-exclusive and non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

e) any such use shall be authorized predominantly for the supply of the domestic market;

f) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if the circumstances which led to it cease to exist and are unlikely to recur. The judicial authority shall have the authority to review the case, upon reasonable request, where these circumstances persist;

g) the patent owner shall be paid an adequate remuneration appropriate to each individual case, taking into account the economic value of the authorization;

h) the validity of any decision relating to authorization of such use, and any decision relating to remuneration stipulated in relation to such use, may be subject to judicial review or other independent review by higher authorities;

i) the provisions specified in items (b) and (e) shall not apply where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration payable in such cases. The courts shall have the authority to refuse termination of authorization where the circumstances which led to such authorization are likely to recur.

(2) A compulsory license shall only be granted to a person who is in a position to use the variety in accordance with the license, which shall confer on its owner the right to receive initial material of the variety from the patent owner.

(3) A compulsory license shall not prevent the patent owner from using the protected variety or granting licenses to others.

(4) A compulsory non-exclusive license for the use of a protected variety may be granted, upon request, to a patent owner for a biotechnological invention, subject to payment of an equitable remuneration where:

a) he unsuccessfully has made efforts to obtain a license contract from the plant variety patent owner;

b) the invention involves an important technical advance of considerable economic significance in relation to the protected variety.

(5) Where the plant variety patent owner has been granted a compulsory non-exclusive license for the use of the patented invention, a reciprocal non-exclusive license for the use of the variety may be granted, on request, to the patent owner on reasonable terms.

(6) A compulsory license may be granted to the patent owner for an essentially derived variety, under the provisions of paragraph (1). The conditions for granting the compulsory license may include payment of fair remuneration to the owner of the initial variety patent.

(7) The holder of the license shall notify the AGEPI the decision of the judicial authority to grant or, where appropriate, to terminate a compulsory license, entered in the National Register of Patents and published in BOPI.

(8) If the holder of a compulsory license has not undertaken any effective and serious preparation for exploiting the variety within one year following the grant of the license, the compulsory license may be cancelled by the decision of the court. In any event, a compulsory license shall terminate if its holder has not begun exploitation of the variety within 2 years following the date on which the license was granted to him.

Chapter III PATENT APPLICATION

Part 1

Requirements for Filing a Patent Application

Article 32. Filing of an Application

A patent application shall be filed with the AGEPI by the person entitled under Article 13, in person or via a patent attorney, in accordance with Article 87.

Article 33. Requirements to Be Met by a Patent Application

(1) A patent application shall contain:

- a) a request for the grant of a patent;
- b) a specification of the botanical taxon;
- c) information about the applicant (applicants);
- d) information about the breeder (breeders);
- e) a proposal for a denomination of the variety;
- f) a technical description of the variety (technical questionnaire);
- g) a declaration by which the applicant assumes responsibility for confirming that the variety for which protection is sought conforms with the provisions of Article 10;
- h) information relating to any other application filed for the variety, along with such applications.

(2) The following shall accompany the application:

- a) proof of payment of the filing fee;
- b) a priority document, where appropriate;
- c) a power of attorney, where the application is filed through a patent attorney;
- d) necessary documentary proof of acquisition of the right to a patent, where the applicant is not the breeder or is not the sole breeder;
- e) photographs or drawings, as necessary;
- f) the results of variety testing, carried out by a competent authority, as necessary;
- g) permission for introduction into the environment granted by a competent national authority under the law on biological safety, where the variety is a genetically modified organism.

(3) A patent application shall relate to one variety only or to one category of variety.

(4) The breeder shall be entitled to be mentioned in the application, patent, and in AGEPI publications concerning the application or patent. The breeder shall likewise be entitled to refuse mention of his name in the patent and relevant AGEPI publications. A request to this effect shall be filed in writing with the AGEPI.

(5) Other requirements which the application must satisfy shall be established in the Regulations.

[Art.33 paragraph (5) in the wording of Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

Article 34. Language of Procedure

(1) A patent application shall be filed with the AGEPI in the state language.

[Art.34 paragraph (1) amended by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(2) The filing of the application and related documents in another language shall be permitted, except the elements referred to in Article 33(1) a)-(e).

(3) Where the application and related documents are filed in another language, the applicant shall, for the purposes of examination, be obliged to submit a translation into the state language within 2 months following the filing date of the application. Otherwise, the application shall be declined.

[Art.34 paragraph (3) amended by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

Article 35. Filing Date of the Application

(1) The filing date of a patent application shall be the date of filing with the AGEPI an application containing at least the elements referred to in Article 33(1)(a)-(g).

(2) Where the requirements referred to in Article 33(1)(a)-(g) are not satisfied, the filing date of the application shall be the date on which these conditions were satisfied.

(3) The elements of the application referred to in Article 33(1)(h) and paragraph 2, except those from (b) and (g), may be submitted by the applicant within 2 months of the application filing date.

(4) Permission to introduce a genetically modified organism into the environment shall be provided simultaneously with the filing of the application or within 2 months of the date of completion of the substantive examination.

Article 36. Variety Denomination

(1) The variety shall be designated by a generic denomination which will enable it to be identified.

(2) Variety denominations:

- a) must be easily identifiable and reproducible by users and may not consist solely of figures except where this is an established practice for designating specific varieties;

- b) must not be liable to mislead or to cause confusion concerning the characteristics, value or

identity of the variety or the identity of the breeder;

c) must be different from or may not be confused with the denomination of another variety of the same plant species or of a closely related species, entered in an official catalog of varieties or marketed in any UPOV Member State, except when this other variety no longer exists and its denomination has not acquired special significance;

[Art.36 paragraph (2) c) amended by Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392]

d) must be used even after the expiration of the term of the patent;

e) must be different from or may not be confused with other denominations used for the marketing of goods or which may not be used by virtue of other normative acts.

f) must not contravene the morality and public order.

(3) If a variety is already entered in an official catalog of plant varieties and the material of the variety has been marketed in a Member State of UPOV, the denomination of the variety in the patent application for the same variety filed in the Republic of Moldova must be the same.

[Art.36 paragraph (3) amended by Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392]

(4) If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (5), is obliged to use it, AGEPI may require the applicant to submit another denomination for the variety.

[Art.36 paragraph (4) amended by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(5) Any person who, within the territory of one of the UPOV Member States, offers for sale or markets the material of a variety protected within the territory of said State shall be obliged to use the denomination of that variety even after the expiration of the term of the patent for that variety, except as provided in paragraph (4).

(6) A variety denomination which fulfills the requirements referred to in paragraphs (1)-(5) shall be entered in the National Register of Patents at the same time as the patent is granted and shall be published in BOPI.

(7) The conditions for conferral of the denomination to the variety shall be prescribed in the Regulations.

Part 2 **Priority**

Article 37. Right of Priority

(1) The priority of an application shall be determined by its filing date. Where several applications have the same filing date, their priority shall be determined by the order in which they were received.

(2) Any person or his successor-in-title who has filed, in accordance with the law, a plant variety patent application in any Member of the UPOV or any Member of the World Trade Organization shall, for the purpose of filing an application for the same variety, enjoy a right of priority for a period of 12 months from the filing date of the earlier application; the day of filing shall not be included in the period.

(3) The applicant shall enjoy a right of priority of the earlier application, provided that such application exists on the filing date.

(4) The right of priority shall be recognized in relation to any filing that is equivalent to a regular national filing.

(5) The applicant shall be allowed a period of two years following the expiration of the term of priority or, where the initial application is rejected or withdrawn, an appropriate period after such rejection or withdrawal, in which to furnish all the information, document or material required for the purpose of the examination.

Article 38. Claiming Priority

(1) An applicant desiring to take advantage of the priority of a previous application shall file a declaration of priority, a copy of the previous application and, where appropriate, a translation thereof in the state language.

[Art.38 paragraph (1) amended by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(2) Priority shall be claimed when filing the application or within 2 months from the filing date of the patent application and shall be justified by a priority document.

(3) Claiming a right of priority has no effect if the applicant fails to submit to the AGEPI, within 3 months from the filing date, the copies of the earlier applications certified by the competent authorities.

(4) Where the earlier application is not made in the state language, AGEPI shall be entitled to request a certified translation thereof.

Article 39. Re-Establishment of Priority Right

(1) Where the priority of an earlier application is claimed in a subsequent patent application which was filed after the expiration of the time limit referred to in Article 37 paragraph (2), but not later than 2 months after the expiration of that time limit, AGEPI may re-establish the priority right, if at the time of filing the application the applicant submits a request, which confirms that the due diligence required by the circumstances was exercised or that non-compliance with the time limit was unintentional.

(2) The request for re-establishment of rights shall be filed within 2 months of expiry of the priority time limit referred to in Article 37 paragraph (2) and shall be accompanied by the evidence of payment of the prescribed fee; otherwise the request shall be deemed not to have been filed.

(3) If the copy of the earlier application has not been submitted to the AGEPI within the time limit referred to in Article 38 paragraph (3), the AGEPI may re-establish the priority right where the following conditions are fulfilled cumulatively:

a) the applicant has made a request in that matter with the AGEPI before the expiration of the time limit specified in Article 38 paragraph (3);

b) the applicant has submitted to the AGEPI a confirmation of the request made with the office which registered the earlier application, certifying that the copy of the earlier application was requested within a period not exceeding 14 months following the filing date of such earlier application;

c) the certified copy of the earlier application was submitted to the AGEPI within one month from the date on which the office with which was registered the earlier application issued the respective copy to the applicant.

Article 40. Effect of the Right of Priority

(1) The consequence of the right of priority is that, when applying Article 7 and 10, the filing date of the earlier application will have the filing date of the patent application.

(2) Filing of another patent application, publication of information on the variety or use of a new variety, which was the subject-matter of an initial application, within the time limit referred to in Article 37 paragraph (2), may not serve as grounds for refusing the subsequent application and the emergence of rights of third parties.

(3) Non-compliance with the terms laid down in paragraphs (2) and (3) of Article 38 and non-payment of the priority claiming fee shall result in the refusal to acknowledge the claimed priority.

Chapter IV

PROCEDURE FOR GRANT OF A PATENT

Part 1

Examination Up to Grant of a Patent

Article 41. Examination of the Application

(1) AGEPI and the State Commission shall verify whether the patent application and the variety which forms the subject-matter of the patent meet the requirements stipulated by the Law. For that purpose, AGEPI shall undertake a formal examination, a preliminary examination and a substantive examination of the patent application. The State Commission shall undertake a technical examination of the patent application.

(2) AGEPI may invite the applicant to furnish additional materials that are considered to be essential for identification of the applicant or breeder, the constituted regular national filing or compliance with the patentability requirements.

(3) The conditions for submitting additional materials, indicated in paragraph (2), shall be established by Regulations.

Article 42. Formal Examination

(1) In the formal examination, AGEPI shall, within two months, check whether the patent application meets the conditions for accordance of a filing date under Article 35 paragraph (1).

(2) If the application complies with the requirements prescribed in Article 33(1)(a)-(g), AGEPI shall enter the relevant data in the National Register of Applications.

(3) If the application does not comply with the requirements prescribed in Article 33(1)(a)-(g), AGEPI shall give the applicant an opportunity to correct the deficiencies within the term prescribed in the notification.

(4) If the applicant fails to furnish the required information or fails to meet the requirements referred to in Article 33(1)((a)-(g) within the prescribed time limit, the application shall be deemed not to have been filed and the applicant shall be notified of the fact.

Article 43. Preliminary Examination

(1) In the preliminary examination AGEPI shall, within 3 months of the filing date of the patent application, check whether:

a) the application meets the requirements laid down in Article 33 and, where appropriate, Article 34;

b) the contents of the application documents complies with the requirements prescribed in the Regulations;

c) the priority claiming complies with provisions of Articles 37 and 38;

d) the requirements of Article 87 have been satisfied;

e) the application filing fee has been paid within the prescribed time limit.

(2) Where AGEPI notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them within the term prescribed in the notification. Where the specified time limit is not observed or in the absence of a request for extension of the time limit, the patent application shall be refused.

Article 44. Publication of an Application

(1) On expiry of a period of 3 months as from the filing date of the application, AGEPI shall publish a notice concerning the application in BOPI. The particulars to be published shall be established by Regulations.

(2) Simultaneously with the publication of the application in BOPI, AGEPI shall publish the application documents as filed by the applicant.

(3) Patent applications withdrawn or refused prior to the termination of the technical preparations for publication shall not be published.

Article 45. Substantive Examination

(1) In the substantive examination, AGEPI shall, within 6 months from the filing date of the patent application, check whether:

a) the variety meets the requirements laid down in Article 10;

b) the variety denomination meets the requirements laid down in Article 36.

(2) AGEPI shall be entitled to request from the applicant any missing corroborative documents or clarifying materials which he must submit within a time limit specified in the notification of AGEPI. Where the time limit is not observed or in the absence of a request for extension of the time limit, the patent application shall be refused.

(3) If the examination reveals that the variety denomination does not comply with the requirements laid down in Article 36, the applicant shall be offered the opportunity to submit to the AGEPI a new variety denomination, subject to the payment of the prescribed fee, within the time limit specified in the notification. Where the time limit is not observed or in the absence of a request for extension of the time limit and failure to pay the prescribed fee, the patent application shall be refused.

[Art.45 paragraph (3) in the wording of Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(4) If the patent application complies with the prescribed requirements, AGEPI shall notify the applicant to this effect.

(5) Upon completion of the substantive examination, AGEPI shall forward a copy of the application documents to the State Commission for the purpose of conducting a technical examination of the variety.

Article 46. Technical Examination of a Variety

(1) Where after examination under Articles 43 and 45, AGEPI finds that there is no obstacle to the grant of the patent, measures shall be taken to conduct a technical examination to determine:

a) whether the claimed variety belongs to the botanical taxon stated by the applicant and identified in the preliminary examination;

b) whether the conditions of distinctness, uniformity and stability according to Articles 7, 8 and 9 are satisfied;

c) whether the description of the new variety enables it to be distinguished from another commonly known variety.

(2) The technical examination of the variety shall be carried out by the State Commission and

shall include the organization of growing tests carried out by:

- a) the State Commission within its variety testing centers;
- b) another authority designated on behalf of the State Commission;
- c) the applicant, at the request of the State Commission, in the case of species for which the State Commission has no reference collections.

(3) In the technical examination, the State Commission may use the results of growing tests which have already been carried out or are being carried out by a competent authority of a Member State of UPOV, furnished by the applicant with the consent and under the conditions imposed by that competent authority, or tests which have already been carried out by the applicant and may take into account the results obtained.

(4) The State Commission shall establish a date and place for the seeds or propagating material, intended for the technical examination, and the reference samples and their required amount to be furnished free-of-charge. Failure to furnish the necessary materials within the prescribed time limit, the application shall be deemed withdrawn.

(5) The State Commission may require the applicant to furnish all the necessary information documents and materials.

Article 47. Conduct of Technical Examination

(1) The State Commission shall conduct a technical examination of the variety in accordance with the guidelines and within the time limits based on international standards.

(2) The applicant shall pay the prescribed fee for the technical examination to be conducted.

(3) Where testing of the variety was carried out by a competent authority of a Member State of UPOV or by the applicant, the State Commission shall analyze its results in order to confirm or deny the validity of tests carried out.

(4) On the basis of the results of the technical examination, the State Commission shall compile a technical examination report and send it to the AGEPI.

Article 48. Technical Examination Report

(1) Where the State Commission considers that the results of the technical examination are sufficient to evaluate the variety, it shall send a technical examination report and the precise official description of the variety to the AGEPI.

(2) If in the course of technical examination it is found that the variety does not comply with the requirements laid down in Articles 7, 8 and 9, the State Commission shall compile a technical examination report and send it to the AGEPI.

(3) AGEPI shall notify the applicant of the results of the technical examination and invite him, within the time limit specified in the notification, to file his observations.

(4) Where it is found that the technical examination report does not contain sufficient grounds to adopt a decision, the State Commission may, on its own initiative and following consultation with the applicant or upon reasonable request of the applicant, stipulate the conducting of an additional examination, subject to the payment of an additional fee. Any additional examination carried out prior to the adoption of a final decision shall be deemed to be part of the examination carried out in accordance with Article 46(1).

(5) The results of the technical examination shall be used exclusively by the AGEPI and may only be used later with its consent.

Article 49. Objections to a Patent Application

(1) Any person may file written objections to a patent application. Objections must be reasonable and relate exclusively to non-compliance with the requirements stipulated in Articles 6-10 and Article 36, and may be filed:

a) within 3 months from the publication of the application or the proposed variety denomination, where the proposed denomination does not comply with the requirements laid down in Article 36;

[Art.49 paragraph (1) a) amended by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

b) in the period after the publication of the application and prior to the adoption of a decision, where the requirements laid down in Articles 6 to 10 are not met.

(2) The applicant shall be notified of the objections and offered the opportunity to respond within 2 months. The objections and responses filed shall be taken into account when adopting the decisions referred to in Article 50.

Article 50. AGEPI Decisions

(1) Within 3 months as from the date of receipt of the technical examination report and the

precise official description of the variety, AGEPI, where it finds that the results of the examination are sufficient to adopt a decision on the application and that there are no obstacles within the meaning of Article 49 and paragraph (2) of this Article, shall adopt the decision to grant a patent.

(2) AGEPI shall adopt a decision to reject an application:

a) if the applicant has failed to remedy within the prescribed time limit the deficiencies, under Articles 43 and 45;

b) if the applicant has failed to comply with the requirements referred to in Article 46 (1) and Article 47(2);

[Art.50 paragraph (2) b) amended by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

c) if the applicant has failed to propose a variety denomination under Article 36;

d) if, on the basis of the technical examination report, it concludes that the conditions of Articles 7, 8 and 9 are not fulfilled;

e) at the request of a person whose right in the patent was recognized by a court decision.

(3) AGEPI shall notify the applicant of the decision adopted.

Article 51. Motivation of Decisions

(1) AGEPI decisions shall indicate the grounds on which they were adopted.

(2) AGEPI decisions shall only be based on grounds and evidence with which the interested parties were able to get acquainted and upon which they were able to express their opinions, orally or in writing.

[Art.51 paragraph (2) amended by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

Article 52. Publication of a Decision

(1) AGEPI shall publish the mention of its decision to grant a patent or to refuse a patent application in BOPI.

(2) AGEPI shall publish, at the same time as it publishes the mention of the decision to grant a patent, a specification of the patent containing the official description of the variety and, where appropriate, its photographs. The particulars to be published shall be laid down in the Regulations.

Article 53. Withdrawal of Patent Application

(1) An applicant shall be entitled to withdraw the patent application at any time, prior to the date on which a decision concerning that application has been taken.

(2) In the event of more than one applicant, the patent application may only be withdrawn with the agreement of each applicant.

(3) If the applicant is other than a breeder, he shall be obliged to inform the breeder, at the same time as he submits his written request to the AGEPI, of his intention to withdraw the application. In such case the breeder shall have a preferential right to request the continuation of procedures in respect of the application as an applicant within a period of 2 months as from the date of receipt of that notification.

Part 2

Appeals Procedure

Article 54. Requirements for Filing an Appeal

(1) Any decision adopted by AGEPI may be appealed before the Board of Appeals of AGEPI.

(2) An appeal may be lodged by any natural or legal person, subject to Article 87, against a decision of which addressee is or against a decision of which addressee is another person, but which concerns him directly and personally.

(3) The reasoned appeal shall be lodged to the AGEPI in writing, within 2 months as from the date of dispatch of the decision, where it is lodged by the applicant, or otherwise, within 20 months as from the date of publication of the decision.

(4) The appeal shall only be deemed to have been lodged upon payment of the prescribed fee.

(5) The appeal, under paragraph (1), shall have suspensive effect. AGEPI may, where it deems necessary, decide that the appealed decision be not suspended.

Article 55. Examination of an Appeal

(1) Where an appeal is admissible, the Board of Appeals shall examine whether it is reasonable.

(2) In the examination of the appeal, which shall be conducted in accordance with the provisions of the Regulations on the Board of Appeals of AGEPI, the parties shall, as often as necessary, file their observations, within a period to be fixed by the Board of Appeals, on

notifications addressed to them or communications received from other parties.

(3) The parties to the appeals procedure shall be entitled to make oral representations.

Article 56. Decision on Appeal

(1) Following the examination of the appeal, the Board of Appeals shall either adopt a final decision on it, or remit the case for re-examination to the competent AGEPI subdivision or to the State Commission.

(2) Where the Board of Appeals remits the case to the competent AGEPI subdivision or to the State Commission, the grounds and directions contained in the Board of Appeals' decision shall be bound on said subdivision and on the State Commission, provided that the facts of the case are the same.

(3) The decision of the Board of Appeals shall be published in BOPI within 2 months following the date of dispatch thereof.

Article 57. Means of Appealing the Board of Appeals' Decisions

(1) Any decision taken by the Board of Appeals may be appealed before a court in accordance with the provisions of the Code of Civil Procedure. The action at law shall not have suspensive effect.

(2) Actions at law in court may be initiated on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Law or any rule of law enforcement or abuse of power.

(3) The decision of the Board of Appeals which, in a proceeding concerning one of the parties, is not final cannot be actionable in court before the adoption of a final decision, except where such decision does not provide for the institution of an action in court.

(4) The court has the power to cancel or amend the appealed decision.

(5) The action may be brought to court within 2 months from the date of dispatch of the decision of the Board of Appeals to interested parties.

(6) The action may be brought by any party to the proceedings which has been affected by the decision of the Board of Appeals.

(7) The court decision shall be communicated to the AGEPI by the person concerned. AGEPI shall enter the amendments following the final and irrevocable court decision in the national register, and shall publish it in BOPI within 2 months from the date of its registration with the AGEPI.

Chapter V
PROCEDURE FOR ISSUANCE AND
MAINTENANCE IN FORCE OF A PATENT

Article 58. Issuance of Patent

(1) If no appeal has been filed against the grant of a patent or if any appeal filed has been rejected, AGEPI shall issue a patent to the entitled person, subject to payment of the prescribed fees, and shall publish the particulars to that effect in BOPI.

(2) The patent shall be issued by AGEPI on the basis of the decision to grant the patent.

(3) The date of issuance of a patent shall be the date on which the mention of the issuance is published in BOPI. The particulars to be published shall be determined by the AGEPI. The date of issuance of the patent shall be entered in the National Register of Patents.

(4) If the prescribed fees for issuance of the patent are not paid after the publication of the mention to grant a patent under the Regulations, the patent shall not be issued, and the mention of the forfeiture of patent owner's rights shall be entered in the National Register of Patents and published in BOPI.

Article 59. Maintenance of Patent

(1) For the maintenance of a patent, annual fees, in accordance with the provisions of Article 92, shall be paid.

(2) The annual fees shall be payable after the publication of the mention of the grant of a patent and shall be deemed to have been paid to all effects, if it is paid within the time limit prescribed in the Regulations.

(3) If an annual fee has not been paid within the prescribed time limit, it may still be paid within 6 months from the expiry of the prescribed time limit, subject to the payment of an additional fee.

Article 60. Patent Granted to a Non-Entitled Person

(1) If a patent is granted to a person who is not entitled to it, then the person who is so entitled may, without prejudice to any other rights or actions, claim that the patent be transferred to his

name.

(2) If a person is entitled only to a part of the patent protection, he may claim under paragraph (1) recognition of the ownership of co-owner.

(3) The actions mentioned in paragraphs (1) and (2) may only be examined in court within 5 years from the date of publication of the decision to grant a patent in BOPI.

(4) Paragraph (3) shall not apply where the patent owner, at the date of grant or issuance of the patent, knew that he had no right or he was not the only person entitled to this patent.

(5) The filing of a claim with the court shall give rise to the entry in the National Register of Patents. A certified copy of the court decision shall be submitted to the AGEPI by the interested party. The final and irrevocable court decision shall be entered in the National Register of Patents and shall produce legal effects for third parties as from the date of its publication in BOPI.

Article 61. . Effects of Change of the Patent Owner

(1) If the patent owner is changed as a result of a court decision, the license contracts and any other rights shall be terminated upon registration of the person entitled to the patent in the National Register of Patents.

(2) If, prior to the institution of an action in the court, the patent owner or the holder of a license has used the variety on the territory of the Republic of Moldova or has made effective and serious preparations for that purpose, he may continue such use, provided he applies for a non-exclusive license to the new patent owner entered in the National Register of Patents. Such application shall be filed within the term provided for in the Regulations. The license shall be granted for a determined period and on reasonable terms and conditions.

(3) In the absence of agreement between the parties, the non-exclusive license, under paragraph (2), may be granted by a court.

(4) The provisions of paragraph (2) shall not apply where the patent owner or the holder of a license has not acted in good faith at the time of starting the use of the variety or preparations for that purpose.

Article 62. Change of Variety Denomination

(1) The denomination of the variety conferred in accordance with Article 36 may be changed where the AGEPI finds that such denomination does not satisfy or no longer satisfies the requirements referred to in this Article and if, in the case of an earlier opposable right of a third party, the patent owner accepts the change or if, by a court decision, is prohibited the use of the variety denomination by the patent owner or by any other person.

(2) AGEPI shall propose the patent owner to submit an amended variety denomination in accordance with Article 36, subject to payment of the prescribed fee.

[Art.62 paragraph (2) amended by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(3) The proposed amended denomination shall be published in BOPI and may be subject to objections under Article 49.

[Art.62 paragraph (3) amended by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(4) Data on change of the variety denomination shall be published in BOPI and entered in the National Register of patents. AGEPI shall, upon request and subject to payment of the prescribed fee, issue a patent specification containing the introduced changes.

[Art.62 paragraph (4) introduced by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

Article 63. Technical Inspection

(1) The patent owner shall be obliged to maintain the protected variety for the entire term of the patent so that it may retain all its characteristics presented in the official description of the variety at the date of grant of the patent.

(2) The State Commission may carry out a technical inspection under Articles 46 and 47 to verify whether the protected variety continues to exist as such, i.e. it retains all its characteristics indicated in the official description of the variety at the date of grant of the patent.

(3) The patent owner shall be obliged to furnish to the State Commission all the information necessary to assess the existence of the variety as such. He shall be obliged to submit the material of the variety and to allow the inspection to determine whether the necessary measures have been taken to ensure the existence of the variety as such.

Article 64. Technical Inspection Report

(1) Where the State Commission finds that the variety is no longer uniform or stable, it shall send to the AGEPI a report containing its conclusions.

(2) If, in conducting the technical inspection, it detects irregularities within the meaning of paragraph (1), AGEPI shall notify the patent owner of the results of the inspection and give him the opportunity to present his observations.

(3) Where the patent owner fails to present his observations, AGEPI shall declare the forfeiture of patent owner's rights conferred by the patent, in accordance with Article 24.

Chapter VI INFORMATION OF PUBLIC

Article 65. Information

AGEPI and the State Commission shall, either by Order of the Director General of AGEPI or by Order of the Chairman of the State Commission, inform ex officio about all decisions and notifications which provide a certain time limit or of which communication is provided by other provisions of this Law.

Article 66. Registers

(1) AGEPI shall keep the National Register of Applications in which are included the following data:

- a) patent applications with an indication of the taxon, the provisional denomination of the variety, the filing date, names and addresses of the applicants, breeders and patent attorney;
- b) all data on completion of the procedure concerning patent applications with the information referred to in paragraph (a);
- c) proposals for the denomination of the variety;
- d) changes relating to the applicant or patent attorney.

(2) AGEPI shall keep the National Register of Patents in which, after the grant of a patent, are included the following data:

- a) the species and the variety denomination;
- b) the official description of the variety or the mention of the document in the possession of AGEPI, which contains this description;
- c) for the varieties which for the production of the material require the repeated use of material of components, the indication of such components;
- d) names and addresses of the patent owner, breeder and patent attorney;
- e) date of commencement and expiry of the of the patent;
- f) on request, any contractual right of exclusive exploitation or any right of compulsory exploitation of the variety, including the name and address of the beneficiary of the right of exploitation;
- g) identification of the variety as initial or essentially derived variety, including the variety denominations and the names of the parties concerned.

(3) AGEPI shall keep the registers referred to in paragraphs (1) and (2) in accordance with the provisions of the Law on Registers and the Regulations.

[Art.66 paragraph (3) amended by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(4) The State Commission shall keep the Catalog of Plant Varieties, which includes the following information about varieties allowed for cultivation in the Republic of Moldova:

[Art.66 paragraph (4) amended by Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392]

- a) registration number;
- b) variety denomination;
- c) name and address of the breeder;
- d) name and address of the holder;
- e) year of admission for cultivation;

[Art.66 paragraph (4) e) amended by Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392]

f) some morphological and production characteristics.

Article 67. Public Inspection

(1) The registers referred to in Article 66(1) and (2) and the catalogue referred to in Article 66(4) shall be open to public inspection.

[Art.67 paragraph (1) in the wording of Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392]

(2) Where there is legitimate interest and in accordance with the conditions of the Regulations, the following shall also be open to public inspection:

- a) documents relating to a patent application;
- b) documents relating to a granted patent;
- c) culture testing of a variety for its technical examination;

d) culture testing of a variety for technical inspection on its maintenance.

(3) In the case of varieties for which the material, consisting of specific components, must be used repeatedly for their production, at the request of the applicant for a patent application, any data relating to components, including their cultivation, shall be excluded from public inspection. Such a request is no longer acceptable after the adoption of the decision on the patent application.

(4) The material submitted or obtained in the tests cannot be transmitted to third parties by the AGEPI or the State Commission, unless the person concerned has given his consent in this regard.

(4¹) The assignment, license, pledge and franchise contracts or other documents annexed to the application for registration of these contracts shall be open to public inspection only with the express consent of the contracting parties or under the court decision, except as provided by applicable law.

[Art.67 paragraph (4¹) introduced by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

(5) AGEPI and the State Commission may issue excerpts from the register and, respectively, the catalog on request and subject to payment of the prescribed fee.

[Art.67 paragraph (5) amended by Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392]

Article 68. Periodicals

(1) AGEPI shall publish the periodical BOPI, containing:

a) the data entered in the National Register of Applications and the National Register of Patents, and any other information whose publication is stipulated by this Law;

b) communications and information of general interest, disposed of by the Director General of AGEPI, and any other information related to this Law and its application.

(2) The State Commission shall periodically publish the Catalog of Plant Varieties, including varieties and hybrids allowed for production and marketing.

[Art.68 paragraph (2) amended by Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392]

Article 69. Warning Mark

(1) The patent owner shall be entitled to mark the propagating or harvested material of the variety with a warning mark indicating that the variety is patented.

(2) The absence of the warning mark shall not produce legal effects.

(3) If a person falsely indicates, directly or indirectly, that a material of the variety or a harvested material of the variety produced or marketed by him belongs to the variety patented by another person, that person shall be liable under the law.

(4) In the case of placement on the market of a genetically modified plant variety, the material of the variety will be marked accordingly so that on the label and/or accompanying documents to be specified the presence of the genetically modified organism.

Chapter VII

ENSURING OBSERVANCE OF RIGHTS

Article 70. Proceedings for Infringement of Rights

(1) Performance without the authorization of the patent owner of any action referred to in Article 15 shall be deemed to be an infringement of rights arising from a patent application or a patent, as well as of the following actions:

a) incorrect use of the variety denomination or failure to indicate the denomination in contravention of Article 18(2);

b) use in contravention of Article 19(3) of the denomination of a protected variety or a denomination closely related to that of the protected variety so that confusions may be created.

(2) The person who committed the infringement referred to in paragraph (1) shall be obliged to repair the damage incurred by the patent owner. The amount of compensation due to the patent owner may not be less than the advantage obtained by the infringer.

Article 71. Proceedings Preceding the Grant of a Patent

The patent owner may request reasonable compensation from any person who, in the period between the date of publication of the patent application and the date of grant of the patent, has performed an action that would have been prohibited after the grant of the patent.

Article 72. Right to Institute Proceedings for Infringement of Rights

(1) Proceedings for infringement of rights may be instituted by a patent owner.

(2) A licensee may institute proceedings for infringement of rights, unless that possibility was

expressly excluded by agreement with the patent owner, for an exclusive license or by the court, in accordance with Article 31 or 61.

(3) Any licensee shall have the right to intervene in proceedings for infringement of rights instituted by the patent owner in the court, to obtain compensation for damages incurred.

Article 73. Measures to Preserve Evidence up to Institution of Proceedings for Infringement of Rights

(1) Any entitled person, who has presented sufficient evidence sufficient to support his claims for infringement of his rights, may request the court or other competent authority, prior to the institution of proceedings against illegal actions, to apply provisional measures to preserve relevant evidence, subject to conditions which ensure the protection of confidential information. The court may order measures to preserve evidence, provided that a security or a corresponding equivalent assurance is furnished by the plaintiff, necessary to repair the damage caused to the defendant, in case the presence of an infringement is not confirmed.

(2) In terms of the measures to preserve evidence, the court shall have the authority to:

- a) request the detailed description of the variety or its allegedly infringed materials, with or without presentation of specimens;
- b) lay a distraintment upon the infringing products;
- c) lay a distraintment upon the materials and tools used to produce and/or distribute such products, and the documents relating thereto.

(3) The proceedings for the application of measures to preserve evidence shall be performed by the court or other competent authority in accordance with the provisions of the Code of Civil Procedure. Measures to preserve evidence shall be taken with the participation of a court bailiff, who might be assisted by a representative of the AGEPI and a police officer.

Article 74. Preservation of Evidence in Urgent Cases

(1) Measures to preserve evidence may be established without hearing the defendant where any delay is likely to cause irreparable harm to the patent owner or where there is a demonstrable risk of evidence being destroyed. The court decision shall be communicated promptly to the affected party.

(2) The court decision regarding the preservation of evidence may be appealed to the court.

Article 75. Nullity of Measures to Preserve Evidence

(1) Measures to preserve evidence shall be considered null or void:

- a) where the plaintiff does not institute, within 20 working days, court proceedings for infringement of his rights;
- b) as a consequence of any harmful actions or inactions on the part of the plaintiff;
- c) where it is found that there has been no infringement or threat of infringement of a right in the plant variety;
- d) by court decision where other reasons exist provided for in the applicable law.

(2) Where the measures to preserve evidence have caused damage and have been declared null and void, the plaintiff must pay the defendant an adequate compensation.

Article 76. Presentation and Preservation of Evidence in the Proceedings for Infringement of Rights

(1) The court shall have the authority, where a party presents reasonably available evidence to support its claims and specifies evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced in sufficient and reasonable amounts, subject to conditions which ensure the protection of confidential information. Where the infringement is committed on a commercial scale, the court may order the parties to produce additionally the relevant banking, financial or commercial documents.

(2) Where a party to the proceedings voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, the court shall decide on the acceptance or rejection of the brought action on the basis of the information presented to it, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 77. Right to Information

(1) The court shall have the authority, where it is found during the examination of the case that the rights in a variety are infringed, to order that the information regarding the origin and channels of distribution of the materials infringing

The right in the patent be provided by the defendant or any other person which is:

- a) found to possess the infringing materials intended for commercialization;
- b) was indicated by any person mentioned under letter a) as being involved in the production, reproduction or distribution of materials of the variety.

(2) The information mentioned in paragraph (1) include, where appropriate:

- a) the names and addresses of producers, distributors, suppliers and other previous possessors of the variety as well as the target wholesalers and retailers;
- b) information regarding the quantities produced, supplied, received or ordered as well as the prices for the materials of the respective variety.

(3) Paragraph (1) and (2) shall be applied without prejudice to other legal and regulatory provisions which:

- a) entitle the right owner to more detailed information;
- b) regulate the use of the information provided under this article in civil or penal law proceedings;
- c) regulate the responsibility for the abuse of the right to information;
- d) provide the possibility of refusal to provide the information, which prevents the person mentioned in paragraph (1) from admitting his own involvement or that of his close relatives in the actions infringing a patent;
- e) regulate the protection of confidentiality of the information sources or processing of personal data.

Article 78. Measures to Ensure the Proceedings for Infringement of Rights

(1) Where the court establishes the actual or imminently threatening infringement of a patent, it may, upon request of the patent owner, institute certain measures to ensure the proceedings for infringement of rights against the defendant and/or intermediaries, such as to:

- a) issue a provisional ruling to prohibit any activities which constitute an infringement of rights or to permit the continuation of such activities, subject to the provision of a security sufficient to cover the eventual damage to the patent owner;
- b) lay a distraintment upon materials suspected of infringing a patent with the aim to prevent their release into the channels of commerce;
- c) lay a distraintment upon defendant's assets, including the arrest of banking accounts, presentation of banking, financial or commercial documents, where the infringement was committed on commercial scale and there is a risk of the impossibility to recover the incurred damage.

(2) Measures to ensure the proceedings for infringement of rights may be ordered without hearing the defendant, where any delay is likely to cause irreparable harm to the patent owner or where there is a demonstrable risk of evidence being destroyed. The court decision shall be communicated promptly to the affected party.

Article 79. Corrective Measures

(1) The court shall have the authority, where an infringement is stated, to order, upon request of the plaintiff, taking of measures in respect of the goods found to be infringing a patent and, where appropriate, the materials and implements used for the creation and manufacture of such goods. Such measures may include, in particular:

- a) provisional disposal outside the channels of commerce;
- b) final disposal outside the channels of commerce;
- c) destruction.

(2) The measures mentioned in paragraph (1) shall be performed at the infringer's expense, unless this would be contrary to existing substantiated reasons.

(3) In considering the request for application of the corrective measures, the court shall be guided by the principle of equity, the seriousness of the infringement and the remedies ordered as well as the interests of third parties.

Article 80. Enforcement of a Court Decision

Where a court decision is issued stating the infringement of a patent, the court may, upon request of the right owner, take measures to enforce the court decision against the defendant, ordering the latter to terminate any infringing activities. To that end, the court may order the defendant to provide a corresponding security or equivalent assurance. The right owner may request to apply similar measures against the intermediaries whose services are used by a third party to infringe a patent.

Article 81. Alternative Measures

Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the court may order him, upon request of the infringer, to pay certain pecuniary compensation, in place of the measures referred to in Articles 79 and 80, if the application of such measures would cause disproportionate damage and if the plaintiff is reasonably satisfied with the pecuniary compensation.

Article 82. Damages

(1) Upon request of the affected party, the infringer who knowingly, or with reasonable grounds to know, infringed a patent shall be ordered to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement of his rights. In evaluating the damage:

a) due account shall be taken of the respective circumstances, such as the negative economic effect, including the lost profits suffered by the affected party, the benefits received unfairly by the infringer, and other aspects, such as moral damage the affected party has suffered because of the infringement of his rights;

b) alternatively, a lump amount may be fixed on the basis of certain components, such as, at least, the amount of the royalty or fees which would have been payable, had the infringer applied for the authorization to use the respective variety.

(2) When the infringer commits the infringement not knowingly, or with reasonable grounds to know about it, he shall be obliged to repay the lost profits or the damages suffered by the right holder, established by the applicable law.

Article 83. Publication of Court Decisions

(1) In the proceedings for infringement of protected rights, the competent court may order, upon the plaintiff's request and at the expense of the infringer, respective measures to disseminate the information regarding the court decision, including the bill sticking as well as publication of the respective decision in whole or in part.

(2) The competent court may also order additional publication-related measures in line with the particular circumstances, including a large-scale publication.

Chapter VIII

GENERAL PROVISIONS

Article 84. Extension of Time Limits and Re-establishment of Time Limit

(1) Time limits provided for in this Law or in the Regulations related to a patent application or a patent may be extended by a request filed with the AGEPI before the expiry of the prescribed time limit. Any time limit may not be extended for more than 6 months from the date of expiry of the prescribed time limit.

(2) The request for extension of the time limit shall be deemed to be submitted only upon payment of the relevant fee.

(3) Where the applicant was unable to observe a prescribed time limit for proceedings before AGEPI, he may request re-establishment of the omitted time limit within six months of the expiry date of the prescribed time limit. The omitted procedure must be undertaken within this time limit. The request shall not be deemed to have been filed until the fee for re-establishment of the omitted time limit has been paid; otherwise it shall be rejected.

(4) The provisions of this Article shall not be applicable to the time limits referred to in paragraphs (1) and (3) of this Article, as well as in paragraph (3) of Article 12, paragraph (3) of Article 34, paragraph (3) of Article 35, in Articles 37 to 39, 49, paragraph (3) of Article 54, paragraph (3) of Article 59, and paragraph (2) of Article 85.

Article 85. Re-establishment of Rights (*restitutio in integrum*)

(1) The applicant for or owner of a patent or any party to proceedings vis-a-vis AGEPI who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit, shall have his rights re-established upon request if the non-observance of this time limit has the direct consequence of causing the loss of any other right or means of redress.

(2) The request for re-establishment of rights must be filed in writing within 2 months from the removal of the cause of non-compliance with the time limit, but no later than 12 months following the expiry of the unobserved time limit. If the respective request relates to revalidation of the patent in connection with non-payment of the annual maintenance fee, the period of 12 months shall be deemed to start from the date of expiry of the time limit specified in Article 59(3).

(3) The request for re-establishment of rights must state the grounds on which it is based, and must set out the facts on which it relies.

(4) The request for re-establishment of rights shall not be deemed to have been filed until the fee for re-establishment of rights has been paid.

(5) The provisions of this Article shall not be applicable to the time limits specified in paragraph (2) of this Article, as well as in paragraph (3) of Article 12, paragraph (1) of Article 14, in Articles 37 to 39, 49 and paragraph (3) of Article 54.

Article 86. Right of Subsequent User

Any person who, in the period covered between the loss of rights to a patent application or a patent and the restoration of such rights, has used in good faith or made effective and essential preparations to use a variety which is the subject of a published patent application or enjoys patent protection, may continue using it free of charge within or for the purposes of his business, without exceeding the existing scope of such use.

Article 87. Representation

(1) Subject to the provisions of paragraph (2) below, no person shall be compelled to be represented in proceedings established by this Law before the AGEPI.

(2) Natural or legal persons not having their residence or principal place of business in the Republic of Moldova shall be represented by a patent attorney in proceedings before the AGEPI, except for the following situations:

- a) filing of a patent application;
- b) payment of fees;
- c) filing of an earlier application.

(3) Natural or legal persons not having their residence or principal place of business in the Republic of Moldova may be represented in proceedings before the AGEPI by an employee.

(4) Representation shall be based on a power of attorney registered with the AGEPI, on terms and conditions provided by the Regulations.

(5) Patent attorneys shall act on the basis of a regulation approved by the Government.

Article 88. Ex Officio Examination

(1) AGEPI may, in the proceedings conducted, act upon its own initiative in the examination of the facts to the extent that they are the subject of the examination referred to in Articles 45 and 46.

(2) AGEPI may disregard facts or evidence which are not claimed or submitted within the time limit established by it.

Article 89. Oral Proceedings

(1) Oral proceedings shall be conducted at the AGEPI initiative or at the request of one of the parties to the proceeding.

(2) Without prejudice to the provisions of paragraph (3), oral proceedings before the AGEPI shall not be public.

(3) Oral proceedings before the Board of Appeals of AGEPI, and in particular delivery of the decision shall be public, except for decisions whose public delivery might cause serious and unjustified damage, especially to one of the parties to the proceedings.

Article 90. Taking of Evidence

(1) The following measures may be undertaken for the taking of evidence in any proceedings conducted before the AGEPI, the State Commission or the court:

- a) hearing of the parties;
- b) request for information;
- c) provision of documents and other evidence;
- d) hearing of witnesses;
- e) examination;
- f) visiting the place of business;
- g) written declarations under oath.

(2) Where the AGEPI, the State Commission or the court will consider it necessary for a party to the proceedings, a witness or an expert to give oral testimonial evidence:

- a) that person shall be invited to the appropriate authority;
- b) a request to obtain testimonies from the appropriate person shall be submitted to the court or other competent authority.

(3) A party to the proceedings, a witness or an expert who has been invited before the AGEPI, the State Commission or the court, may request approval to be heard by the competent

authorities. After receiving such a request, or where the person fails to appear, the AGEPI, the State Commission or the court may request the competent authorities to receive the testimonial evidence of said person.

(4) Where a party to the proceedings, a witness or an expert brings testimonial evidence before the AGEPI, the State Commission or the court, that person may request the competent authorities to be heard under appropriate conditions.

Article 91. Suspension of Proceedings in Court

(1) Where the case in court concerns the establishment of the person entitled to obtain a patent and where the decision depends upon an assessment of the patentability of the variety according to Article 6, then such a decision may only be taken after the AGEPI has taken a decision as to the patentability of the variety in accordance with the patent application.

(2) Where the case in court concerns a patent that has already been granted, in relation to which a cancellation or loss of rights procedure has been applied, the procedure may be suspended to the extent that the decision is dependent upon the validity of the patent.

Article 92. Fees

(1) AGEPI shall, according to a regulation approved by the Government, charge fees for the actions carried out in accordance with the Law, and also annual fees for the maintenance in force of the patent throughout the term of protection.

(2) In the case of non-payment of fees prescribed for other actions carried out only at the request of the person concerned, the application shall be deemed not to have been filed if the fee has not been paid within the time limit specified in the notification by which AGEPI invited the person concerned to pay the fee and warned her of the consequences of non-payment.

(3) If some information provided by the applicant may only be verified by a technical examination which exceeds the established amount, the applicant shall pay an additional fee for the technical examination.

(4) Fees shall be paid by the applicant, the patent owner or by any other natural or legal person concerned.

Article 93. Protection and Testing of Varieties Abroad

(1) Natural and legal persons from the Republic of Moldova shall have the right to freely choose the State in which they wish to file the first patent application.

(2) The applicant shall be entitled to apply to other UPOV Member States for the grant of a plant variety patent, without having to wait for the grant of the patent for said variety by an authority of the State in which the first application was filed.

(3) The variety for which protection is sought in the Republic of Moldova may be tested in another State where a corresponding bilateral or international treaty has been concluded with that State.

(4) An applicant who has filed his first application in another State shall be required to provide information on the testing carried out in compliance with the requirements for variety protection in that State.

(5) The cost of protecting a variety abroad shall be borne by the applicant.

Article 94. Competence in Settlement of Disputes

(1) The Board of Appeals of AGEPI shall hear litigation with respect to:

- a) grant or rejection of a patent application;
- b) recognition of a right of priority;
- c) withdrawal of a patent application or surrender of a patent.

(2) The work of the Board of Appeals shall be governed by the Regulations on the Board of Appeals of AGEPI, approved by the Government.

(3) The court in whose jurisdiction is based the AGEPI shall hear litigation on:

[Art.94 paragraph (3) amended by Law No.162 of 30.07.15, OM 241-246/28.08.15 Art.469]

- a) determination of the authorship of breeder;
- b) identification of the person entitled to a patent;
- c) grant of a license for a patent application or a patent;
- d) actions concerning the right of subsequent user;
- e) actions concerning the right to a patent between an enterprise and an employee;
- f) actions concerning the infringement of a patent application or a patent and order of appropriate measures;
- g) patent nullity actions;

h) judgment by a court of first resort of appeals relating to the decisions of the Board of Appeals.

Article 95. Use of Varieties for Production Purposes

(1) Plant varieties may be used in the production process only after said varieties are tested for their agronomical value and use and are entered in the Catalog of Plant Varieties.

[Art.95 paragraph (1) in the wording of Law No.85 of 13.04.12, OM 120-125/15.06.12 Art.392]

(2) Varieties of genetically modified plants shall be used in the production process only after obtaining approval for their introduction into the environment issued by the competent national authority, in accordance with the law on biological safety, as appropriate.

Article 96. National Treatment

Natural and legal persons from Member States of UPOV enjoy the same rights granted by this Law as the natural and legal persons from the Republic of Moldova. The provisions of this Law shall also be applicable in bilateral agreements or reciprocal relations.

Chapter IX

FINAL AND TRANSITIONAL PROVISIONS

Article 97. Entry into Force

(1) This Law shall enter into force 3 months after the date of its publication in the Official Gazette of the Republic of Moldova, except for Articles 73, 74, 75 and 76 to be implemented with the entry into force of the corresponding amendments in the Code of Civil Procedure.

(2) Law No. 915-XIII of July 11, 1996 on the Protection of Plant Varieties, as amended, shall be abrogated upon entry into force of this Law.

(3) It shall be established that:

a) patent applications, for which the examination procedure is not over until the date of entry into force of this Law, shall be examined in accordance with this Law;

b) patents for varieties of plants belonging to botanical genera and species protected on the territory of the Republic of Moldova under the Law No. 915-XIII of July 11, 1996 on the Protection of Plant Varieties, issued before entry into force of this Law, shall be legally assimilated to patents issued in accordance with this Law.

Article 98. Organization of Enforcement

Within 3 months following the entry into force of this Law, the Government shall:

a) submit to the Parliament proposals on bringing the existing legislation into line with this Law;

b) bring its normative acts in accordance with this Law.

CHAIRMAN OF PARLIAMENT

Marian LUPU

Chisinau, February 29, 2008.

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