

(As published in the UPOV Gazette No. 93, June 2002)

408

ACT

of 25 October 2000

**on the protection of plant variety rights and the amendment to Act No. 92/1996 Coll., on
plant varieties, seed and planting material of cultivated plants, as last amended,
(Act on the protection of plant variety rights)**

The Parliament has adopted the following Act of the Czech Republic:

PART ONE

CHAPTER I

GENERAL PROVISIONS

Article 1

This Act regulates

- a) the rights and obligations with respect to new plant varieties,¹
- b) the powers and role of state administration authorities in the field of plant variety rights to varieties,
- c) the proceedings for the grant of plant variety rights,
- d) the control of variety maintenance, and
- e) the imposition of sanctions for infringement of obligations stipulated by this Act.

Article 2

Definitions

For the purposes of this Act

- a) “plant variety rights” means rights and obligations to plant varieties resulting from an effective decision of the Central Institute for Supervising and Testing in Agriculture (hereinafter “the Institute”),

¹ Article 2 (a) of Act No. 92/1996 Coll., on plant varieties, seed and planting material of cultivated plants, as last amended.

- b) “holder” means the breeder who has been granted plant variety rights to the variety, or his successor in title,
- c) “breeder” means the natural or legal person, who bred, or discovered and improved (hereinafter "created") a variety or the person for whom someone else created a variety as part of fulfilment of tasks in relation to an employment contract or another similar relationship, unless a written agreement stipulates otherwise; legal successor of the breeder shall also be considered as breeder,
- d) “protected variety” means the variety protected by plant variety rights granted pursuant this Act,
- e) “member country” means a Member State of the International Union for the Protection of New Varieties of Plants,
- f) “list” means the list of applications for the grant of plant variety rights to a variety in which the specifications pursuant to Article 9 (a) to (c) shall be entered,
- g) “small grower” means grower operating in agricultural production on arable land at a maximum area set down in Annex 2 of this Act.

CHAPTER II

Conditions for the Grant of the Plant Variety Rights

Article 3

- (1) The plant variety right may be granted to varieties of all plant genera and species, including hybrids between genera and species (hereinafter "varieties").
- (2) The plant variety rights may be granted to the variety which satisfies conditions of
 - a) novelty,
 - b) distinctness,
 - c) uniformity, and
 - d) stability.
- (3) The variety denomination must comply with the conditions laid down by this Act (Article 7).
- (4) Plant variety rights shall be granted and obligations relating to their grant shall be stipulated by the Institute, if the criteria specified by this Act are satisfied.

² Article 1 (2) of the Communication of the Ministry of Foreign Affairs on accession of the Czech and Slovak Federal Republic to the International Convention for protection of new varieties of 2 December 1961, in the wording revised in Genova 10 November 1972 and 23 October 1978

Article 4

Novelty

(1) The variety shall be deemed to satisfy the condition of novelty if, at the day of filing of the application for grant of plant variety rights the propagating material³ or material from the variety harvest (hereinafter the "harvested material") has not been sold or otherwise disposed of to others by or with the consent of the breeder, for purposes of exploitation of the variety

a) in the territory of the Czech Republic earlier than one year before the application has been filed, or

b) outside the Czech territory earlier than four years before the application has been filed or, in the case of trees or of vines, earlier than six years before the application has been filed.

(2) The following shall not be deemed to be a disposal of the variety to others within the meaning of paragraph 1:

a) if the breeder supplies propagating or the harvested material of the variety

1. in order to fulfil statutory duties,⁴ or

2. to others based on a contractual relation solely for the purpose of production, propagation, conditioning or storage, provided the breeder preserves the exclusive right of disposal of the variety material; should, however, the propagating material of the variety be repeatedly used for the production of a hybrid variety, the material of which is sold or otherwise disposed, such use of the propagating material of the variety shall be deemed to be a disposal of the variety to others for purposes of exploitation of the variety, or

b) if the breeder sells or otherwise provides, without reference to the variety, to a third person propagating or harvested material which has been produced from plants grown for experimental purposes or for the creation of other varieties and which is not used for further propagation, or

c) if the breeder had displayed the variety at an international exhibition in compliance with an international treaty.⁵

Article 5

Distinctness

(1) The variety shall be deemed to satisfy the condition of distinctness if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge as

³ Article 2 (g) of Act 92/1996 Coll.

⁴ E.g. Act No. 92/1996 Coll. as amended.

⁵ Convention on International Exhibitions concluded in Paris on 22 November 1928 and published in the Collection of Laws and Orders of Czechoslovak Republic under No. 46/1932.

of the date of the filing of the application for grant of plant variety rights by reference to the expression of at least one characteristic resulting from its genotype or combination of genotypes.

- (2) The following varieties shall be deemed to be of matter of common knowledge
- a) protected in the Czech Republic or abroad,
 - b) entered in the official plant variety register⁶ in the Czech Republic or a similar register abroad,
 - c) in respect of which an application for grant of plant variety rights or for entry in the plant variety register has been filed in the Czech Republic provided the application will led to the granting or entering,
 - d) in respect of which an application for grant of plant variety rights or for entry in the plant variety register has been filed abroad, provided the application will led to the grant or entry, or
 - e) offered for sale or sold in the Czech Republic or abroad

Article 6 Uniformity and Stability

The variety shall be deemed to satisfy the conditions of uniformity and stability if it meets the features stipulated in a special legal regulation⁴.

Article 7 Variety Denomination

- (1) The same variety denomination shall be used for an identical variety in the Czech Republic and any other contractual⁷ or member country. It shall not be applicable if the denomination contradicts the provisions of paragraph 2.
- (2) A designation may not be used as a variety denomination if
- a) it consists solely of figures, except where this is an established practice for designating varieties,
 - b) it is identical or may be confused with the denomination of another variety of the same or of a closely related species in the Czech Republic, a contractual or a member country,
 - c) it is liable to mislead evoking false impressions concerning the value, characteristics or origin of the variety or the identity of the breeder,

⁶ Article 11 (1) of Act 92/1996 Coll.

⁷ Article 2 (f) of Act 92/1996 Coll.

- d) it is identical to or may be confused with a trademark, appellation of origin or geographical indication for the same or similar products or otherwise infringing the rights or safeguarded interests of other persons,
- e) it is unsuitable for linguistic reasons.

CHAPTER III

PROCEEDINGS IN MATTERS OF PLANT VARIETY RIGHTS TO PLANT VARIETIES

Article 8

- (1) Breeder who is a citizen of the Czech Republic or is a legal person having its registered office in the Czech Republic or who is a national or a legal person having its registered office in a member or contractual country (hereinafter "the applicant") shall be entitled to file an application for a grant of plant variety rights to a variety (hereinafter "the application"). An application may be filed jointly by several applicants.
- (2) The Institute may grant the eligibility for filing the application to persons who do not qualify under the provisions of paragraph 1, provided:
 - a) they are citizens of a country which provides similar protection of varieties of the same botanical taxon to persons from member or contractual countries, or
 - b) they are legal persons having a registered office in a country which provides similar protection of varieties at the same level of botanical classification to persons from member or contractual countries.

Article 9

The application must contain the following

- a) the applicant's name, surname and permanent residence address provided he is a natural person or in case of a legal person, its business name, registered office and legal form.
- b) Latin and Czech name of the species, or another botanical taxon, if appropriate,
- c) a proposed denomination or provisional designation of the variety,
- d) information on all previous applications for protection for the variety in question,
- e) information on previous exploitation of the variety,
- f) a description of the variety.

Article 10

Plant variety rights to a variety may be granted to a breeder who filed an application for grant of such rights with the Institute. Should more than one breeder have jointly participated in the variety creation, the granted plant variety rights to such protected variety shall be shared equally, unless stipulated otherwise in a written agreement between them.

Article 11

- (1) The Institute shall enter the application in the list of applications in succession by delivery date and will examine whether the variety may be subject to plant variety rights, whether there are no obstacles hindering further proceedings for the grant of plant variety rights and whether an administrative fee has been paid.
- (2) Should the application not comply with the details and requirements stipulated by this Act or should obstacles exist hindering further proceedings, the Institute will call the applicant to make corrections. If the applicant fails, within the time limit, to correct defects, the Institute shall stay the proceedings, provided the applicant has been notified of such consequence in the above call.

Article 12

- (1) If more applications for the grant of the plant variety rights to the same variety have been filed with the Institute, such right may only be granted to one applicant, i.e. the one, whose application was submitted first; the right of priority resulting from an earlier filing of the application in any member country must be honoured, provided further conditions specified by this Act have been met.
- (2) Should the applicant file an application in another member country prior to filing an application in the Czech Republic, he will enjoy the priority right in respect of filing for the same plant variety in the Czech republic over a period of 12 months of filing his previous application in another member country, provided such right has been exercised in the application filed with the Institute. The right of priority will not be taken into account unless within three months of filing the application with the Institute, the applicant submits a certified copy of his previous application filed in another member country.

Article 13

- (1) The Institute will publish the following information in the Bulletin of the Ministry of Agriculture (hereinafter "the Bulletin"):
 - a) information on applications filed in succession by filing date including information regarding the applicants [Article 9 (a)],
 - b) change to the proposed variety denomination or the proposed variety denomination, if the application included only a provisional designation [Article 9 (c)].
- (2) Anyone may object with the Institute against:
 - a) a filed application, by the latest until the decision under Article 11 (2) or Article 16 has been issued,
 - b) the proposed variety denomination, by the latest within three months of its publication in the Bulletin.

(3) Objections under paragraph 2 will be resolved by the Institute by the latest until the decision under Article 11 (2) or Article 16 has been issued. The Institute makes the decisions on objections; no appeal lies against such decision.

Article 14

(1) After all details and requirements under Article 11 (1), have been complied with, the Institute will examine whether the variety meets the conditions of being novelty, distinctness, uniformity and stability and whether the proposed variety denomination complies with the conditions stipulated under Article 7. Compliance with the requirements of distinctness, uniformity and stability is ascertained using field and laboratory tests. When examining varieties to ascertain compliance with the conditions, the Institute may use the results of examinations of distinctness, uniformity and stability performed by professional institutions abroad.

(2) The applicant shall be obliged

- a) to provide to the Institute the plant material necessary for the examination of the variety according to paragraph 1, within a reasonable period prescribed by the Institute,
- b) to reimburse the Institute for expenses incurred in connection with the performance of special acts during the proceedings for the grant of plant variety rights.

Article 15

Transfer of Application

In the course of the proceeding for the grant of plant variety rights the application can be transferred to another person only with consent of the applicant.

Article 16

Breeder's Certificate

(1) The Institute shall grant the applicant the plant variety rights to the variety and shall approve the proposed variety denomination by the issuance of a breeder's certificate, provided all conditions stipulated by this Act have been met; otherwise the proceeding shall be terminated.

(2) The breeder's certificate shall include the denomination of the species to which the variety belongs, variety denomination, name, surname, permanent residence address or business name, registered office and legal form of the holder. The certificate will also include the variety description prepared on the basis of the results of tests of distinctness, uniformity and stability.

Article 17

Using the Variety Denomination

- (1) Everyone offering or providing for use material of the protected variety or variety under Article 19 (4), is obliged to use the approved variety denomination. Should this variety denomination be used in a written form together with a trademark, brand or other specification, it must be clearly distinguishable from such specification.

- (2) Denomination of a protected variety or a variety protected in another member country or denomination, which may be confused with such denomination, may not be used for another variety of the same or related species.

- (3) The provisions of paragraph 1 and 2 shall apply also for the period after the termination of the plant variety rights.

Article 18

Variety Maintenance Control

- (1) The holder shall be obliged to ensure the maintenance of the protected variety over the entire period of the plant variety rights duration to make sure that the characteristics specifying the variety remain unchanged.

- (2) The Institute performs verification testing to control the maintenance of the protected variety. The execution of this control is regulated by a special Act⁸, unless this Act stipulates otherwise.

- (3) The employees of the Institute entrusted with the execution of control are entitled to enter grounds, companies and their branch offices, premises, establishments and facilities in which the holder or a person entrusted by him handles the protected variety, and request from such persons necessary documentation, information and co-operation for a smooth and fast performance of control including allowing them to take necessary quantity of control samples of material of the protected variety. Samples are provided free of charge.

- (4) Upon request by the Institute, the holder is also obliged to deliver free of charge and within reasonable time limit specified by the Institute, material of the protected variety required for the performance of control tests.

⁸ Act No. 552/1991 Coll., on state control, as amended.

CHAPTER IV
SCOPE OF PLANT VARIETY RIGHTS

Article 19

(1) The holder has the sole authority to use the protected variety consisting of the right to exploit the propagating material of such variety as follows:

- a) production or propagation,
- b) conditioning for the purpose of propagation,
- c) offering for sale,
- d) sale or other marketing,⁹
- e) export,
- f) import,
- g) stocking for the purposes specified under letters a) to f).

(2) The holder may provide his consent with the use of the protected variety (hereinafter "the license") to a third person; the license is provided in writing and must include an agreement on the license charge.

(3) The provisions of paragraph 1 and 2 also relate to the harvested material of the protected variety, including whole plants and their parts, if obtained from the propagating material of the protected variety without a license provided by the holder who could not exercise these rights in respect of the above propagating material.

(4) The provisions of paragraph 1 to 3 also relate to:

- a) varieties essentially derived from the protected variety,
- b) varieties which are not distinct from the protected variety,
- c) varieties whose production requires the repeated use of the protected variety.

(5) If the protected variety itself is a essentially derived variety, the exclusive right to such variety held by the holder does not include varieties derived from such variety.

(6) Varieties shall be considered as essentially derived from another variety (hereinafter "the initial variety"), if:

- a) they are predominantly derived from the initial variety or from a variety which itself is essentially derived from the initial variety,
- b) are distinct from the initial variety, and

⁹ E.g. Article 151 (b), 628 of the Civil Code, as amended.

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

(7) Essentially derived varieties may be obtained, in particular, by the selection of a natural or induced mutation or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering methods.

(8) If a essentially derived variety is a protected variety, then the right of the holder right to the initial variety is limited with respect to this essentially derived variety to the extent of providing the license for the variety use to the holder to this variety. The holder to a essentially derived variety may use this variety only provided he has a license issued by the holder to the initial plant variety.

(9) The following exploitation of the propagation material shall not constitute a breach of the plant variety rights (paragraph 1)

- a) performed for research,
- b) performed with the aim to create additional varieties including exploiting such varieties except for varieties under paragraph 4,
- c) performed for own use of a natural person.

(10) In respect of plants specified in Annex 1 of this Act, persons¹⁰ ~~operating in agricultural production (hereinafter "the growers") shall be entitled to exploit, for the purpose of propagation, without holding a license issued by the holder, to ensure production in their own business¹¹ on arable land owned, leased or subleased by them, harvested material acquired on such land through the cultivation of propagating material³ of a protected variety, except for a hybrid or synthetic variety (hereinafter "farm saved seed").~~

(11) When exploiting farm saved seed under paragraph 10

- a) growers are not limited as to the quantity of their plant production produced on land used by them for the needs of their business,¹¹
- b) growers may process farm saved seed for further sowing and planting either themselves or by suppliers of processing services,¹⁰ (hereinafter "seed processors"); the alteration must be performed in a manner ensuring that the product submitted for processing is identical with the resulting product,

¹⁰ Article 2 of the Commercial Code, as amended.

¹¹ Article 5 of the Commercial Code, as amended.

c) growers are obliged to pay to the holder only reasonable remuneration for the use of farm saved seed which is significantly lower than an arms length price of a licence; the obligation to pay reasonable consideration for the use of farm seed does not apply for small growers.

(12) The holder is entitled to request necessary information in writing from growers and seed processors in relation to the farm saved seed of the variety exploited or altered by them for which plant variety rights have been granted to the holder.

(13) Growers and seed processors are obliged, upon request, to provide to the holder, information in writing about their name, surname, permanent residence address and identification number in case of natural persons, and business name, registered office, identification number and legal form in case of legal persons.

(14) Seed processors are obliged, upon request, to provide to the holder information in writing about the quantity of farm saved seed delivered to them for processing, as well as the resulting quantity of processed seed, the date and location of processing and identification of the person for whom the processing was performed.

(15) Growers are obliged, upon request, to provide to the holder, information in writing about the scope of use of farm saved seed.

(16) The holders are obliged, upon request, to provide to the breeders information in writing regarding the amount of reimbursement to be requested under paragraph 11 (c) .

Article 20

(1) Plant variety rights do not extend to acts concerning any material of the protected variety or of a variety under Article 19 (4), which was sold or otherwise marketed in the territory of the Czech Republic by the holder or with his consent or the exploitation of any material derived therefrom, unless this represents

a) further propagation of such varieties, or

b) export of material of such varieties which enables their further propagation into a country that does not protect plant varieties of the same plant genus or species to which this variety belongs; this does not apply provided such material is designed for final consumption.

(2) Material of plant variety under paragraph 1 shall be understood as

- a) any propagating material of the protected variety,
- b) harvested material of the protected variety.

Article 21

Compulsory License

(1) Upon request, the Ministry of Agriculture (hereinafter "the Ministry") may grant a compulsory license for the exploitation of a protected variety in a manner specified under Article 19 (1) to one or more persons, if the holder refuses to issue a license for such exploitation in the required scope and if such exploitation is in public interest. The Ministry shall inform the Institute about the grant of a compulsory license.

(2) When granting a compulsory license, the Ministry shall stipulate the conditions, time limitation and scope of the exploitation including the payment of an appropriate royalty to the holder in respect of such license.

(3) On the expiry of one year after the grant of the compulsory license, each participant of the proceeding for the grant of the compulsory license may request the Ministry in writing to cancel or amend the decision on the grant of the compulsory license. Only a change of circumstances on the basis of which the decision was made may constitute a reason for such request.

(4) The Ministry may grant a compulsory license in respect of an essentially derived variety based on a proposal of the holder to this variety if the holder of the initial variety refuses to provide a license for the exploitation of the essentially derived variety and if such exploitation is in public interest.

CHAPTER V

SANCTIONS

Article 22

(1) Any person who violates an obligation stipulated by this Act or who obstructs the execution of control performed under this Act shall be liable to a fine imposed by the Institute, not exceeding CZK 500,000.

(2) When determining the amount of the fine the Institute shall take into account the importance, manner, duration, consequences of the wrongful act and circumstances under which such act occurred.

(3) Proceeding on imposing penalty may be opened by the latest within one year of the day when the Institute established the violation.

(4) Fines are imposed and collected by the Institute. The revenue from the fines represents the Czech Republic's state budget revenue. Fines are levied by the financial office with territorial jurisdiction.¹² Enforcement is performed in accordance with a special legal regulation.¹³

CHAPTER VI COMMON, TRANSITORY AND FINAL PROVISIONS

Article 23

Duration of the Plant Variety Rights

(1) The plant variety rights may be maintained until the end of the twenty-fifth year after the year in which the grant of such rights came into effect; for protected varieties of trees, hops, vines and potatoes, the plant variety rights may be maintained until the end of the thirtieth year following the year in which the grant of such rights came into effect.

(2) For the period from filing the application until the grant of plant variety rights to the variety becomes legally effective, the holder is entitled to a reasonable compensation from each person who during such period exploited the variety in a manner which would require granting a license by the holder after such rights have been granted.

Article 24

Transfer of the Plant Variety Rights

(1) The holder may transfer the plant variety rights to the protected variety to a third person based on a written contract. If plant variety rights to the same protected variety belong to more persons, the share in such rights may be transferred to any of the co-holders without consent of the rest of them; a co-holder may transfer his share to a third person only provided none of the other co-holders accepts his written offer for transfer within one month upon its delivery.

(2) Unless this Act stipulates otherwise, the relations between the co-holders shall be governed by the Civil Code.

(3) A contract on the transfer of the plant variety rights to the protected variety or on the transfer of a share of the plant variety rights to the protected variety becomes effective on the

¹² Act No. 531/1990 Coll., on financial offices with territorial jurisdiction, as amended.

¹³ Act No. 337/1992 Coll., on the administration of taxes and fees, as amended.

day of its entry to the Register of Protected Varieties kept by the Institute. The Institute will make the entry after the administrative fee under special legal regulation¹⁴ has been paid.

Article 25

Termination and Cancellation of the Plant Variety Rights

- (1) The plant variety rights shall terminate upon the expiry of the period stipulated by this Act or if the holder fails to pay the administrative fee as per the special legal regulation¹⁴ even after a written notification by the Institute within a period specified by the Institute, or if the holder renounces his plant variety rights in writing to the Institute.

- (2) Before the expiration of the plant variety rights the Institute shall terminate such rights if the protected variety no longer meets the condition of uniformity and stability or if the holder fails to comply with his obligation under Article 18 (1) or (2).

- (3) If it is revealed that at the time of the issue of the breeder's certificate effectively granting the plant variety rights, not all the conditions for their granting have been met, the Institute shall cancel such breeder's certificate; in such case the plant variety rights granted shall be regarded as null and void.

Article 26

- (1) The grants issued, termination, cancellation of plant variety rights, transfer of or any change to plant variety rights to the protected plant variety, compulsory license, change of name, surname, business name, permanent residence address or registered office of the holder, shall be entered in the Register of Protected Varieties kept by the Institute; information about the above facts shall publish the Ministry in the Bulletin.

- (2) Upon request of a contracting party, licenses concluded under Article 19 (2) may also be entered in the Register of Protected Varieties.

Article 27

Resolution of Disputes

- (1) Disputes resulting from legal relations established on the basis of this Act shall be discussed and decided by courts.

- (2) In case of an infringement of a right protected under this Act, the person whose right has been threatened or infringed may claim from the infringer to refrain from such acting and

¹⁴ Act No. 368/1992 Coll., on administrative fees, as amended.

correct the defect. If the infringement caused a damage, the damaged is entitled to compensation. In case of non-property damages the damaged is entitled to reasonable satisfaction which may consist of pecuniary compensation.

(3) Upon request by the damaged person, the respective court may decide that the plant propagating material or harvested material to which the infringement of the exclusive rights of the holder relates and which is held by the person infringing the exclusive rights of the holder shall be destroyed unless the infringement of the right may be corrected in another manner and destruction of plant material would be inadequate to such infringement.

Article 28

(1) Unless this Act stipulates otherwise, ~~the decision-making under this Act shall be governed by the Rules of Administration¹⁵~~

(2) The Institute is entitled to stay the proceedings indefinitely if requested by the applicant for serious reasons.

(3) The decision on the grant of the plant variety rights will be made by the Institute within three months

a) after the completion of tests required for the decision or after the receipt of the test results performed by other professional institutions, and

b) after the expiration of the deadline for filing of objections under Article 13 (2) (b).

(4) Appeals against the Institute's decisions shall be decided by the Ministry.

Transitional Provisions

Article 29

(1) Proceedings in the matters of plant variety protection not completed before the effective day of this Act shall be completed in accordance with this Act.

(2) Unless this Act stipulates otherwise, legal relations that arose before its effective date shall be governed by this Act; however, the inception of such legal relations and claims arising from them before the effective day of this Act shall be resolved in accordance with the existing regulations.

¹⁵ Act No. 71/1967 Coll., on administrative procedures (Administrative Procedure Code), as amended.

(3) On the effective day of this Act rights and obligations under this Act shall become effective for the owner of breeder's certificate granted under the existing regulations; the duration of such breeder's certificate, however, shall be counted as per Act No. 132/1989 Coll. in the wording of Act No. 93/1996 Coll. The exclusive right of the holder to a variety, which under this Act is considered as an initial variety, shall not relate to varieties for which the breeder's certificate has been granted under the existing regulations and which can be considered as essentially derived varieties under this Act.

Article 30

Plant variety rights may also be granted to varieties the propagating material or harvested material of which was not sold or provided for use to third persons by the breeder or with his consent for more than four years and in case of trees for more than six years before the effective date of this Act, if the varieties are varieties of genera or plant species or their hybrids not covered by the existing regulations. In such case the application for the grant of plant variety rights must be filed by the latest within one year of the effective day of this Act and at the time of the application filing the variety must be registered in the State Variety Book (National List) under a special legal regulation⁶ or must enjoy a variety protection in a member country. The duration of plant variety rights specified in Article 23 (1) shall be shortened in such case by the time calculated from the day of the entry of the variety in the State Variety Book until the effective date of the grant of the plant variety rights to variety or by the time calculated from the day of grant the plant variety rights to variety in the member country until the effective date of the grant the plant variety rights to variety under this Act.

Article 31

If before the effective date of this Act a third person, to which the existing regulations on the protection of rights to varieties do not apply, exploits the variety of plant genera and species or the hybrids thereof, the holder under this Act is obliged to allow such third person free of charge further exploitation of this variety until the end of the year, or, in case of trees, until the end of the second year following after the year in which this Act became effective; after the expiration of the above period, the holder is obliged to allow such third person to further exploit the variety for an usual license charge.

PART TWO

Amendment of Act No. 92/1996 Coll., on plant varieties, seed and planting material of cultivated plants, as amended

Article 32

Act No. 92/1996 Coll. on plant varieties, seed and planting material of cultivated plants, in the wording of Act No. 357/1999 Coll. and Act No. 153/2000 Coll., shall be amended as follows:

1. In Article 2 (a) shall be as follows:

“a) “variety” means a plant grouping within the lowest rank of botanical classification, which can be defined by expression of characteristics resulting from a certain genotype or combination of genotypes, distinguishable from any other plant grouping by the expression of at least one of these characteristics and considered as a unit with regard to its suitability being propagated unchanged.”.

2. In Article 8 (2) and (3) shall be as follows:

"(2) The variety shall be deemed to be uniform if it is sufficiently uniform in characteristics which are included in the examination for distinctness, as well as characteristics used for the variety description, subject to the variation that may reasonably be expected from the particular features of its propagation.

(3) The variety shall be deemed to be stable if the expression of the characteristics included in the examination of distinctness as well as characteristics used for the variety description, remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle".

3. In Article 21, a new paragraph 3 shall be inserted after paragraph 2 as follows:

"(3) For the purpose of import and marketing, ornamental varieties of species listed in the list of species shall be considered as varieties of species not listed in the list of species."

The existing paragraph 3 shall become paragraph 4.

4. In Article 22 (2), the following sentence shall be added at the end of subparagraph g): "For fruit trees, hops and vines the maintainer of variety not protected under special legal regulation³ must express his consent only in respect of the certification of the mother stocks, buds and rootstocks."

5. In Article 31, a new paragraph 3 shall be inserted after paragraph 2 as follows:

"(3) For species not listed in the list of species, the registration obligation under paragraph (1) shall not relate to a person producing or putting into market commercial propagating material of ornamental species."

The existing paragraph 3 and 4 shall become paragraph (4) and (5).

PART THREE

REPEALING PROVISIONS

Article 33

The following is hereby repealed:

1. Act No. 132/1989 Coll., on the legal protection of new varieties of plants and breeds of animals, as amended by Act No. 93/1999 Coll. and Act No. 206/2000 Coll.
2. Decree No. 133/1989 Coll. implementing some of the provisions of Act No. 132/1989 on the legal protection of new varieties of plants and breeds of animals , as amended by Decree No. 514/1999 Coll.
3. Decree No. 134/1989 Coll. setting out the list of economically significant genera and species of plants and animals, as amended by Decree No. 515/1999 Coll. and Decree No. 118/2000 Coll.

PART FOUR

FORCE

Article 34

This Act shall enter into force on 1 February 2001.

Klaus by own hand

Havel by own hand

Zeman by own hand

Annex No. 1 to Act No. 408/2000 Coll.

Plant Species List [Article 19 (10)]

a) Cereals:

Avena sativa L.	Oats
Hordeum vulgare L.	Barley
Secale cereale L.	Rye
Triticosecale Wittm.	Triticale
Triticum aestivum L. emend. Fiori et Paol.	Common wheat
Triticum durum Desf.	Durum wheat
Triticum spelta L.	Spelt wheat

b) Fodder plants:

Lupinus luteus L.	Yellow lupin
Medicago sativa L.	Lucerne
Pisum sativum L. (partim)	Field pea
Trifolium alexandrinum L.	Berseem/Egyptian clover
Trifolium resupinatum L.	Persian clover
Vicia faba L.	Field bean
Vicia sativa L.	Common vetch

c) Potatoes:

Solanum tuberosum L.	Potatoes
----------------------	----------

d) Oil and fibre plants:

Brassica napus L. (partim)	Swede rape
Brassica rapa L. (partim)	Turnip rape
Linum usitatissimum L.	Linseed (except flax)

Annex No. 2 to Act No. 408/2000 Coll.

Maximum area of arable land [Article 19 (11) (c)]

1.		2.	3.	4.	
Average price category of agricultural land (including arable land) in cadastral areas*		Average yield of cereals in t/ha**	Maximum area (ha) of arable land on which a small grower operates ***	Conversion coefficient (ph)****	
Category denomination	CZK/m ²			Conversion coefficient symbol	Conversion coefficient value
va	less than 3.5	3.40	va 27	ka	1
vb	3.51-4	3.91	vb 23	kb	1.17
vc	4.01-6	4.17	vc 22	kc	1.23
vd	6.01-8	4.73	vd 19	kd	1.42
ve	more than 8	5.51	ve 17	ke	1.59

Maximum acreage calculation formula:

$$va \times ka + vb \times kb + vc \times kc + vd \times kd + ve \times ke = ph$$

Explanation of symbols used in the maximum acreage calculation formula:

- va, vb, vc, vd, ve - maximum land acreage in individual categories according to column 3
- ka, kb, kc, kd, ke - conversion coefficients according to column 4,
- ph - converted value (maximum acreage).

* Decree No. 215/1995 Coll. stipulating the list of cadastral areas and their adjoined average prices of agricultural land in the wording of Decree No. 282/1996 Coll., Decree No. 285/1997 Coll., Decree No. 262/1998 Coll. and Decree No. 298/1999 Coll.

** Average yield is determined based on supporting documentation on actual cereal yield for the period 1995 through 1999.

*** Acreage is determined based on the criterion of maximum harvest production of 92 tons of cereals which is based on Article 14(3) of the Council Regulation No. 2100/94 of 27 July 1994 and the Commission Regulation No. 1768/95 of 24 July 1995.

**** If the price of the arable land on which the small grower is operating falls into more categories, then the acreage of land pertaining to each individual category according to column 1 shall be multiplied by the conversion coefficient. Individual multiples are added and if the summary of acreage of arable land is lower than 27 ha, the maximum acreage of arable land on which a small grower operates, is met.