

Translation from Finnish

Legally binding only in Finnish and Swedish

Ministry of Agriculture and Forestry

Plant Breeder's Rights Act

(1279/2009; amendments up to 724/2016 included)

Chapter 1

General provisions

Section 1

Scope of application

This Act applies to the protection of a plant breeder's right (plant variety right). A plant breeder's right may be granted to varieties of all botanical genera and species.

Section 2

European Community legislation

Provisions on plant variety rights of the European Community are laid down in Council Regulation (EC) No 2100/94 on Community plant variety rights.

The same protection of a plant breeder's right holder as laid down by this Act applies to a Community plant variety right holder, unless otherwise specified in the Act.

Section 3

Definitions

In this Act:

- 1) *essentially derived variety* means a variety produced by utilising a protected variety in an essential way;
- 2) *plant breeder's right* means the exclusive right of a breeder to the professional exploitation of the variety as laid down in this Act; a plant breeder's right also applies to:
 - a) varieties which are not clearly distinct from a protected variety;
 - b) essentially derived variety if the variety itself is not an essentially derived variety; and
 - c) varieties whose production requires repeated use of a protected variety;
- 3) *plant breeder's right holder* means the breeder of the variety or the successor to this title; the plant breeder's right holder is the person who has last been entered to the register of plant

breeder's rights referred to in section 22 as the plant breeder's right holder, unless otherwise shown;

- 4) *variety* means a plant grouping within a botanical taxon of the lowest known rank which can be:
 - a) defined by the expression of characteristics of a given genotype or combination of genotypes;
 - b) distinguished from any other plant grouping by at least one characteristic; and
 - c) considered as a unit on the grounds of its suitability for being propagated unchanged;
- 5) *hybrid* means the progeny of parents with different genotypes;
- 6) *propagating material* means all plant parts which can be used for propagating plants;
- 7) *material of a variety* means;
 - a) propagating material of a variety;
 - b) crop, whole plants and parts of plants harvested from the plantation of the variety; and
 - c) all produce directly manufactured from the harvested crop;
- 8) *marketing* means sale or other handing over against compensation, storage for sales purposes, offering for sale, handing over without reimbursement for commercial exploitation, as well as placing on the market against charge or free of charge within the European Union for distribution or use within the Union territory.

Chapter 2

Plant breeder's right

Section 4

Content of plant breeder's right

A plant breeder's right holder has the exclusive right to exploit the propagating material of the variety in professional production and marketing.

The following measures concerning propagating material require the authorisation of the plant breeder's right holder subject to conditions determined by the holder:

- 1) propagating;
- 2) conditioning for the purpose of propagation;
- 3) marketing, export and import; and
- 4) storage for use for purposes referred to in 1–3.

Measures referred to in subsection 2 above may not be performed to crop obtained through unauthorised exploitation of the propagating material of a protected variety without the authorisation of the plant breeder's right holder if the plant breeder's right holder has not had a reasonable opportunity to exercise his or her right to the propagating material concerned.

Section 5

Exceptions to a plant breeder's right

Plant breeder's right does not restrict the use of a variety:

- 1) privately for purposes other than commercial ones;
- 2) for experimental and research purposes; or
- 3) for breeding new varieties;
- 4) subject to the conditions laid down in section 6, for the production of sowing seed for the farm's own use.

Section 6

Right to cultivate a protected variety and obligation to pay remuneration for it

Subject to payment of remuneration, a farmer has the right to use or produce propagating material of protected varieties for propagation purposes on his or her own holding. This right applies to the cultivation of varieties of the following plant species, except for hybrids: oats, barley, rye, wheat, triticale, turnip rape, swede rape, flax, pea, field bean, potato and buckwheat.

The remuneration shall be substantially lower than the royalty payable in the marketing of the propagating material of the variety. A contract may be concluded between the plant breeder's right holder and the farmer or between organisations representing them on a reasonable amount of remuneration payable to the plant breeder's right holder. Where such contract has not been concluded or does not apply, the farmer has the obligation to pay to the plant breeder's right holder a remuneration of 50 per cent of the sum payable for the marketing of the propagating material of the variety.

A farmer who holds an arable area of less than 10 hectares is entitled to use the propagating material of a protected variety in the manner referred to in subsection 1 without paying remuneration. However, in such a case remuneration shall be paid for the cultivation of a protected potato variety if the cultivation area of the variety is larger than two hectares or if the area of early potato cultivated under covering is larger than one hectare.

A farmer is obliged to provide, upon request, the authority and the plant breeder's right holder with the necessary information for establishing the payment obligation.

Section 7

Right to obtain cultivation information concerning a protected variety

For the enforcement of the payment obligation laid down in section 6, the plant breeder's right holder is entitled to access the following information from the information system referred to in the Act of the Information System of the Rural Business Authorities (284/2008):

- 1) name and contact information of the farmer;
- 2) code of the holding;
- 3) arable land area held by the farmer if this is more than two hectares in the case of a protected potato variety, one hectare in the case of early potato cultivated under covering, and 10 hectares in the case of other varieties;
- 4) cultivation area of varieties protected by a plant variety right of the European Community if this exceeds the calculated area needed for the production of 92 tonnes of cereal;
- 5) cultivation area of potato varieties protected by the plant variety right of the European Community if this exceeds the calculated area needed for the production of 185 tonnes of potato;
- 6) cultivation areas by variety sown with seed of varieties protected under this Act produced on farmer's own holding.

A plant breeder's right holder may use information disclosed under subsection 1 only for the enforcement of the right to receive payment referred to in section 6. The plant breeder's right holder is not entitled to disclose the information to another party.

A condition for the disclosure of information under subsection 1 is that the plant breeder's right holder and farmer or organisations representing them have agreed on the remuneration payable to the plant breeder's right holder under section 6.

Section 8

Destruction of cultivation information concerning a protected variety

A plant breeder's right holder shall destroy information obtained under section 7 within one year from the end of the calendar year concerned in the enforcement of the payment obligation referred to in section 6 for which the information has been disclosed.

Section 9

Exhaustion of plant breeder's right

Plant breeder's right does not apply to actions relating to the marketing of a protected variety or material of varieties referred to in section 3, subsection 7, paragraphs a–c in Finland if such measures are not taken with a view to:

- 1) further propagation of the variety; or
- 2) export of material of the variety to a country which does not protect the varieties of the plant genus or species to which the variety belongs, except where the exported material is intended for consumption.

Chapter 3

Conditions for granting a plant breeder's right

Section 10

Conditions concerning the applicant

A plant breeder's right may be applied for by a natural person, legal entity or body which may be treated as a legal entity under the legislation concerning these. A plant breeder's right may be applied for by two or several persons jointly.

If a party other than the breeder of the variety applies for the plant breeder's right, that party shall prove its right to the variety.

Section 11

Conditions concerning the variety

A plant breeder's right is granted if the variety is novel, distinct from other known varieties, uniform as regards plant growth, and stable as regards its relevant characteristics.

A variety is not considered novel if propagating or harvested material of the variety has been sold or otherwise handed over with the consent of the plant breeder's right holder for the purpose of exploitation:

- 1) in Finland for more than one year before the filing of the application;
 - 2) abroad for more than six years before the filing of the application in the case of a tree or vine;
- or

3) abroad for more than four years in the case of a plant other than those referred to in point 2.

A plant breeder's right shall not be granted if the variety is covered by Community protection under Council Regulation (EC) No 2100/94 on Community plant variety rights.

Chapter 4

Approval of a plant breeder's right

Section 12

Competent authority

The Finnish Food Safety Authority (Evira) is responsible for the approval, registration and publication of a plant breeder's right and maintaining of the register of plant breeder's rights.

Section 13

Application

An application concerning the granting of a plant breeder's right shall be filed to Evira in writing in the Finnish, Swedish or English language. The application shall present:

- 1) name, contact information, personal or business identity code and place of domicile of the applicant of the plant breeder's right and possible agent, as well as the name and contact information of the breeder;
- 2) proposal for variety denomination and account of the use of the variety denomination, as well as breeder's reference;
- 3) plant genus and species;
- 4) information on the origin of the variety, protection in another state and test results;
- 5) information on whether right of priority is applied for, as well as where and when earlier applications have been filed;
- 6) assurance that the variety has not been marketed in a way referred to in section 11, subsection 2 prior to the filing of the application; and
- 7) An account of whether the variety has been approved under the Gene Technology Act (377/1995) or Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed.

The date when the application documents are filed to Evira and the application fee is paid shall be entered as the date of application. As minimum information for assigning the application date the

application shall present the name and contact information of the applicant, plant genus and species, variety denomination and breeder's reference.

If the applicant has not provided all information referred to in subsection 1, Evira shall request the applicant to correct the shortcomings within a set time period. If the applicant does not correct the shortcomings within the set time period, the application is not examined.

An application which has been left unexamined is taken up for examination if this is requested by the applicant within one month from the expiry of the time limit set by Evira and if the applicant takes measures to correct the shortcomings and pays the re-examination fee within the same time period.

If the proposed variety denomination may be confused with a brand name, denomination, business name or other indication concerning the material of the variety or similar goods to which the applicant has a right of priority, an extract from the register from the National Board of Patents and Registration shall be attached to the application, showing that the brand name, denomination, business name or other indication has been removed from the relevant register. If such an indication has not been registered, the applicant shall attach to the application an account that the applicant has relinquished or is prepared to relinquish the right to use this indication.

Further provisions on the information to be presented in an application under subsection 1 may be issued by Decree of the Ministry of Agriculture and Forestry.

Section 14

Provisional protection

Provisional protection starts as from the date of application and continues until a plant breeder's right has been granted. Provisional protection ceases to exist if a plant breeder's right is not granted.

Section 15

Right of priority

The right of priority of plant breeder's right applications is determined on the basis of the date of application. If several applications have the same date of application, their mutual right priority is determined on the basis of the time of receipt of the application. If the right priority cannot be established on the basis of the time of receipt of the application, the applications have the same

right of priority.

If the applicant for a plant breeder's right has previously applied for a plant breeder's right in a territory which is in the jurisdiction of a member of the International Union for the Protection of New Varieties of Plants or the World Trade Organization, an application filed within 12 months of the filing of the previous application shall be considered to have been filed here at the same time.

A precondition for determining the right of priority under subsection 2 is that the right of priority is specifically claimed upon filing the application and copies of the previous application concerning the variety and the related document are delivered to Evira within three months from the filing of the application. The copies shall be certified by the authority which received the first application concerning the variety in question.

The applicant shall deliver the information, documents and materials necessary for examining the application to Evira within two years from the expiry of the period of validity of the right of priority under subsection 2. If the first application has been rejected, the applicant shall be granted enough time to deliver the information, documents and materials necessary for examining the application to Evira.

Further provisions on making the request concerning the right of priority may be issued by Decree of the Ministry of Agriculture and Forestry.

Section 16

Publication of an application

Evira shall reserve the general public the opportunity to make claims concerning the application by publishing the identification information of the application.

Claims concerning the application shall be filed to Evira in writing within a set time period of three months from the publication of the application.

Further provisions on the publication of an application and the identification information to be published may be issued by Decree of the Ministry of Agriculture and Forestry.

Section 17

Claim for a better right

If a third party claims that it has a better right to a variety than the applicant, the party concerned shall file a written claim on this to Evira. If the matter is unclear, Evira shall by an interim decision advise the party concerned to institute proceedings at a court of law within a set time period. If court proceedings are not instituted within the set time period, the claim is ignored, which shall be mentioned in the interim decision.

If a civil matter over a better right to a variety is pending at a court of law, the examination of the application shall be suspended until the matter is finally resolved.

Section 18

Transfer of an application

If a party proves to Evira that it has a better right to a variety than the applicant Evira shall, upon claim by the party, transfer the application to that party. The transferee shall pay the application fee at the same time.

The application shall not be left unexamined, approved, rejected or cancelled until the transfer claim has been finally resolved.

Section 19

Examination of a variety

Evira organises the examination of the variety upon request by the applicant and according to international procedures to find out whether the variety is distinct, uniform and stable, unless the examination is to be considered unnecessary for special reasons.

The applicant shall deliver the necessary material of the variety and other necessary information to Evira or the party which conducts the examination.

Section 20

Decision on a plant breeder's right

After the expiry of the time period reserved for filing claims, Evira investigates whether the variety fulfils the requirements set in section 11, as well as makes the decision on the approval of the plant breeder's right. Decisions and cancellations concerning the application shall be published and decisions concerning approved applications shall be entered to the register of plant breeder's rights referred to in section 22.

Section 21

Validity

A plant breeder's right is valid as from the date when Evira has made the approval decision. The right may be kept valid for 30 years from the beginning of the year following the approval decision by paying an annual fee by the end of January of each calendar year.

The validity of a plant breeder's right expires if a Community plant variety right to the protected variety is granted to the applicant.

Section 22

Register of plant breeder's rights

The following information on approved plant breeder's rights shall be entered to the register of plant breeder's rights kept by Evira:

- 1) registration number of the plant breeder's right;
- 2) name and contact information, business identity code and place of domicile of the plant breeder's right holder and possible agent, notification of the change of agent, as well as name and contact information of the breeder;
- 3) plant genus and species which the variety belongs to and identification information of the variety description;
- 4) approved variety denomination, date of variety denomination proposal and breeder's reference;
- 5) date of application, number and publication date of the application and approval date of the plant breeder's right;
- 6) right of priority granted and the state in which the previous application concerning the variety has been filed, as well as the date of application when the application has been filed;
- 7) payment of the annual fee;
- 8) compulsory licence, compulsory cross-licence and licence granted;
- 9) lien;
- 10) decisions by Evira which have no legal validity, appeals, executions, seizures and court decisions on the matter
- 11) expiry date of the plant breeder's right.

If the entry to the register cannot be resolved immediately, an entry to the register shall be made that such an entry has been requested. .

Otherwise the provisions laid down in the Act on Information Systems of Rural Business Administration apply to the register of plant breeder's rights and documents included in the register.

Further provisions on the content of entries made in the register under subsection 1 may be issued by Decree of the Ministry of Agriculture and Forestry.

Section 23

Removal of an entry from the register

If it is proven that a licence, lien or compulsory licence has expired, the entry shall be removed from the register.

Personal data of a natural person referred to in section 22, subsection 1, paragraph 2 shall be removed from the register no later than within ten years from the expiry of the validity of the plant breeder's right. The provisions laid down in the Personal Data Act (523/1999) or decisions made under it apply to the removal of information recorded in the register.

Provisions on archiving the information removed from the register are laid down in the Archiving Act (831/1994).

Chapter 5

Variety denomination

Section 24

Selection and use of variety denomination

Variety denomination shall be such that a variety can be distinguished from other varieties of the same or closely related species.

Variety denomination shall not be approved if it can be confused with a brand name, denomination, business name or other indication to which a party other than the applicant has the protection so that this protection of another party is an impediment to the registration of the variety denomination.

The approved variety denomination shall be used when marketing the propagating material of a protected variety. The approved variety denomination shall also be used after the expiry of the validity of the plant breeder's right or the right has otherwise lapsed.

Further provisions on the selection and use of variety denomination may be issued by Decree of the Ministry of Agriculture and Forestry.

Section 25

Cancellation of variety denomination and new variety denomination

Evira shall cancel an approved variety denomination if:

- 1) the variety denomination has been approved in a way that violates this Act and the impediment to the approval continues to exist;
- 2) the plant breeder's right holder demands this and demonstrates good cause for it; or
- 3) a decision of a court of law forbidding the use of the denomination for a certain variety is presented.

Evira shall notify the plant breeder's right holder of the demand to cancel the variety denomination and request the holder to submit a proposal for new denomination within 30 days of having received notice of such a demand.

Evira shall examine the proposal concerning new denomination. The new denomination shall be published and registered after Evira has approved it.

Further provisions on the cancellation and changing of variety denomination may be issued by Decree of the Ministry of Agriculture and Forestry.

Chapter 6

Lapse, annulment and forfeiture of a plant breeder's right

Section 26

Lapse of a plant breeder's right

Evira declares by its decision that a plant breeder's right has lapsed if the plant breeder's right holder notifies Evira in writing that the holder waives the plant breeder's right.

If the annual fee has not been paid as laid down in section 21, Evira shall urge the plant breeder's right holder to pay the annual fee within a set time period, subject to the threat that the plant breeder's right lapses. If the plant breeder's right holder has not paid the fee within the set time

period, Evira declares by its decision that the plant breeder's right has lapsed.

If a plant breeder's right has been seized or there is a lien which has been entered to the register on it or a civil matter concerning the transfer of the plant breeder's right is pending, the plant breeder's right may not be cancelled as long as the seizure or lien is effective or the civil matter has not been finally resolved.

Section 27

Annulment

A court of law shall annul a plant breeder's right if, when granting the right:

- 1) the preconditions for the distinctness or novelty of the variety did not exist;
- 2) the preconditions for the uniformity or stability of the variety did not exist and the decision on the approval of the plant breeder's right was essentially based on information provided by the applicant.

A court of law shall annul a plant breeder's right if the right has been granted to an applicant who is not entitled to it, unless Evira transfers the plant breeder's right to a party which is entitled to it.

(Subsection 3 was repealed by Act 115/2013)

Section 28

Forfeiture

Evira declares a plant breeder's right forfeit if:

- 1) the plant breeder's right holder is unable to produce propagating material of the variety with identifying features corresponding to those of the protected variety;
- 2) the plant breeder's right holder does not provide, upon Evira's request and within the set time period, propagating material of the variety, documents and other information which are necessary to examine whether the variety is appropriately maintained; or
- 3) the variety denomination has been cancelled after the plant breeder's right has been granted and the plant breeder's right holder does not propose an acceptable new variety denomination.

Section 29

Registration of expiry of a plant breeder's right

An entry of the expiry of plant breeder's right shall be made in the register if:

- 1) a plant breeder's right has lapsed as laid down in section 26;
- 2) a plant breeder's right has been annulled by a legally valid decision of a court of law as laid down in section 27;
- 3) a plant breeder's right has been declared forfeit by a decision of Evira as laid down in section 28;
or
- 4) validity of a plant breeder's right has expired as laid down in section 21.

Chapter 7

Licence, compulsory licence and compulsory cross-licence

Section 30

Licence

If a plant breeder's right holder has granted another party the right to professional exploitation of a protected variety (*licence*), this may assign the licence to a further party only if this has been agreed on.

If the licence is held by a company, it may be assigned further in connection with the transfer of the company, unless otherwise agreed.

If the plant breeder's right holder notifies of relinquishing the plant breeder's right and a licence concerning the variety has been entered to the register, Evira shall notify the licence holder of the matter to reserve a reasonable time to supervise its rights before Evira declares by its decision that the plant breeder's right has lapsed.

Section 31

Compulsory licence

If propagating material of a registered variety is not produced for the market on reasonable terms and sufficiently as regards the general food supply needs, a party wishing to professionally exploit the variety in Finland may obtain a compulsory licence for this, if there is no acceptable cause for the action by the plant breeder's right holder. Compulsory licence also includes the right to obtain the necessary amount of the propagating material of the variety from the plant breeder's right holder.

Compulsory licence may only be granted to a party who is considered to possess the prerequisites to exploit the variety subject to the plant breeder's right in an acceptable manner and on the terms set in the compulsory licence. Compulsory licence does not prevent the plant breeder's right holder from exploiting the right or from issuing a licence for the variety

Compulsory licence is granted by a court of law, which determines to what extent the protected variety may be exploited as well as confirms the remuneration and other terms of the compulsory licence. The court of law may, upon demand by the plant breeder's right holder, cancel a compulsory licence or confirm new terms for it if required by essential changes in the circumstances.

Section 32

Compulsory cross-licence

If a holder of a patent concerning a biotechnological invention cannot exploit the patent without infringing a prior plant breeder's right concerning the variety, the patent holder may apply for a compulsory licence from a court of law for non-exclusive use of the variety protected by the right concerned subject to payment of an appropriate remuneration. If such a compulsory licence is granted to the patent holder, the plant breeder's right holder is entitled to a cross-licence on reasonable terms to use the protected invention.

The applicant for a licence referred to in subsection 1 above shall demonstrate that the applicant has applied unsuccessfully to the plant breeder's right holder to obtain a contractual licence and that the invention constitutes significant technical progress of considerable economic interest as regards the protected variety.

Provisions on the right of a plant breeder to obtain a compulsory licence for the exploitation of an invention protected by a patent are laid down in the Patent Act (550/1967).

Chapter 8

Private law protection

Section 33

Prevention of infringement

If someone infringes an exclusive right arising from a plant breeder's right, a court of law may

forbid the continuation or repetition of the act.

Section 34

Suspension order on an intermediary

When processing a claim referred to in section 33, a court of law may, upon demand by the plant breeder's right holder, order a party maintaining a transmitter, server or other similar device or offering other service that functions as an intermediary to suspend any use that is claimed to infringe a plant breeder's right (*suspension order*), unless this is considered unreasonable taking account of the rights of the alleged infringer of the plant breeder's right, the intermediary and the plant breeder's right holder.

Before bringing proceedings referred to in section 33, the court of law may, upon application by the plant breeder's right holder, issue a suspension order if the preconditions for this under subsection 1 exist and if it is evident that the realisation of the rights of the right holder would otherwise be at serious risk. The court of law shall reserve the opportunity to be heard both for the party to which the issue of the order has been applied for and for the party claimed to have infringed the plant breeder's right. The notice to the party to which the issue of the order has been applied for may be delivered by post, telefax or email.

(115/2013)

A court of law may, upon request, issue the suspension order referred to in subsection as a temporary one without hearing the alleged infringer, if this is imperative due to the urgency of the matter. The order is in force until further notice. The alleged infringer shall be reserved the opportunity to be heard immediately after the issue of the order. When the alleged infringer has been heard, the court of law shall decide without delay whether the order is kept in force or cancelled.

A suspension order issued under this section may not compromise the right of a third party to send and receive messages. A suspension order becomes effective when the applicant lodges with the bailiff security referred to in chapter 8, section 2 of the Enforcement Code (705/2007). Chapter 7, section 7 of the Code of Judicial Procedure provides for the possibility of relief from the lodging of security. A suspension order issued under subsection 2 or 3 above lapses if proceedings referred to in section 33 are not brought at a court of law within a month from the issue of the order.

(115/2013)

The party which demanded the suspension order shall compensate the party to which the order has been issued as well as the alleged infringer for any damage caused due to the enforcement of the order and costs arisen from the matter if proceedings referred to in section 33 are rejected or left unexamined or if the processing of the matter is dismissed without consideration because the plaintiff has cancelled the proceedings or has failed to appear at the court of law. The same applies when a suspension order is cancelled under subsection 3 or lapses under subsection 4. The provisions of chapter 7, section 12 of the Code of Judicial Procedure apply to bringing proceedings concerning the compensation of damages and expenses.

Section 35

Declaratory action

A plant breeder's right holder or a party which is entitled under a licence or compulsory licence to exploit a variety protected by a plant breeder's right may initiate declaratory action concerning whether the party is entitled to protection from another party under the plant breeder's right granted if the matter is unclear and causes harm to the party.

Anyone who exploits or intends to exploit a variety protected by a plant breeder's right may, on the same terms, initiate declaratory action against the plant breeder's right holder concerning whether an impediment to the activity concerned exists due to the plant breeder's right granted.

Section 36

Remuneration and compensation for damages

Anyone who intentionally or through negligence infringes a plant breeder's right or the provision in section 24, subsection 3 on using variety denomination is liable to pay the plant variety right holder a reasonable remuneration for exploiting the variety and compensation for any damage caused by the infringement. If the negligence is minor, compensation for the damages can be adjusted.

If infringement of a plant breeder's right or section 24, subsection 3 referring to the use of a variety denomination is not intentional or caused by negligence, the infringer is liable to pay a reasonable remuneration for exploiting the variety.

Compensation for damages based on infringement of a plant breeder's right or section 24, subsection 3 referring to the use of variety denomination may only be claimed concerning the five-year period preceding the institution of proceedings.

If a plant breeder's right has been annulled by a court decision that has gained legal force, liability for remuneration or compensation for damages does not exist.

The provisions of the Tort Liability Act (412/1974) also apply to the compensation for damages.

Section 37

Farmers' liability for damages

A farmer who neglects the obligation laid down in section 6 is liable to pay compensation to the plant breeder's right holder. The amount of the compensation is determined in accordance with Commission Regulation (EC) No 1768/95 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community Plant Variety Rights.

Section 38

Returning plant variety material

On the institution of proceedings by a party suffering from infringement of the right, a court of law may, within reasonable limits, order that the plant material of the variety concerned in the infringement be surrendered to the injured party against payment. The above does not apply to a party which has obtained plant material of the variety or a special right to it in good faith and has not itself infringed the plant breeder's right.

The plant material of the variety referred to in subsection 1 above may be confiscated if the party suffering the infringement has filed a claim demanding surrender of the plant material of the variety as provided in the Enforcement Code.

Section 39

Infringement of provisional protection

If a party other than the applicant professionally exploits a variety or propagating material of a variety during the time referred to in section 14, the provisions concerning the infringement of a plant breeder's right shall be applied if a plant breeder's right is granted later on.

A punishment referred to in chapter 9 of this Act or chapter 49, section 2 of the Criminal Code (39/1889) cannot be imposed for infringement of a plant breeder's right which has taken place during provisional protection.

Compensation for damage which has arisen before the publication of an application referred to in section 16 may only be ordered under section 36, subsection 2.

If proceedings concerning compensation for damages are initiated within one year from the approval of the plant breeder's right, the provision in section 36, subsection 3 does not apply.

Section 40

Publication of the judgement

In a civil matter concerning the infringement of a plant breeder's right a court of law may order, upon demand by the plaintiff, that the defendant must compensate for costs incurred to the plaintiff for taking appropriate action to publish information on a legally valid judgement in which the defendant has been found to have infringed the plant breeder's right. The order shall not be issued if the dissemination of information has been restricted in other legislation. When considering the issue and content of the order, the court of law shall take account of the general significance of the publication, type and extent of the infringement, costs arising from the publication and other similar matters.

A court of law may order a maximum amount for the reasonable publication costs to be compensated for. The plaintiff is not entitled to compensation if information on the judgement has not been published within the time limit from the judgement becoming legally valid set by court of law.

Chapter 9

Penal provisions

Section 41

Infringement of a plant breeder's right

Anyone who intentionally infringes the exclusive right laid down in section 4 shall be sentenced to a fine for *infringement of a plant breeder's right*, unless the act is to be punished as violation of incorporeal rights referred to in chapter 49, section 2 of the Criminal Code.

Section 42

Violation of a plant breeder's right

Anyone who intentionally or through gross negligence neglects the obligation to provide information

laid down in section 6, subsection 4 or violates the provisions on the use of variety denomination in section 24, subsection 3 shall be sentenced to a fine for *violation of a plant breeder's right*.

Section 43

Misuse of cultivation information concerning a protected variety

A plant breeder's right holder who intentionally or through gross negligence uses information disclosed under section 7 in a way that violates the purpose of use laid down in section 7, subsection 2 or discloses information to another party in a way that violates the said provision shall be sentenced to a fine for *misuse of cultivation information concerning a protected variety*.

Section 44

Right to institute criminal proceedings

The prosecutor may not bring charges for an offence referred to in sections 41-43 unless the complainant reports the offence for prosecution.

Chapter 10

Miscellaneous provisions

Section 45

Appeal of a decision by Evira

(115/2013)

A decision by Evira under this Act may be appealed to the Market Court as laid down in the Administrative Judicial Procedure Act (586/1996).

Provisions on the consideration of an appeal referred to in subsection 1 above by the Market Court are laid down in the Market Court Proceedings Act (100/2013).

Section 46

Legal venue in civil matters

(115/2013)

The court of competent jurisdiction in civil matters and applications under this Act is the Market Court.

Provisions on the consideration of civil matters and applications by the Market Court are laid down

in the Market Court Proceedings Act (100/2013).

Section 47

Legal venue in criminal matters

(115/2013)

The court of competent jurisdiction in a charge concerning violation of incorporeal rights referred to in chapter 49, section 2 of the Criminal Code that infringes a plant breeder's right and violation referred to in sections 41–43 of this Act is the Helsinki District Court.

The provisions in section 46 above notwithstanding, a claim for remuneration and compensation under section 36 arising from a crime concerned in the charge may be considered in connection with the charge referred to in subsection 1 above.

The court remains competent to examine a claim referred to in subsection 2 despite changes in the circumstances upon which its competence was grounded after the claim was presented.

Section 47a

Opinion from Evira in a criminal matter

(115/2013)

Provisions in chapter 4, section 22 of the Market Court Proceedings Act on the right of the Market Court to request an opinion shall apply to the right of the court of competent jurisdiction referred to in section 47 to request an opinion from Evira.

Section 47b

Expert in a criminal matter

(724/2016)

When considering a matter referred to in section 47, the District Court may be assisted by the maximum of two expert members referred to in chapter 17, section 10, subsection 2 of the Courts Act (673/2016).

The expert shall give a written opinion on the questions posed by the District Court. The expert has the right to pose questions to the parties and witnesses. Before deciding on the matter the District Court shall reserve the parties the opportunity to give their opinion on the expert opinion.

Provisions of the right of the expert to fees and compensation are laid down in chapter 17, section 22 of the Courts Act.

Section 47c

Notification to Evira in a criminal matter

(115/2013)

The provisions in chapter 4, section 23 of the Market Court Proceedings Act on the obligation of the Market Court to provide notice of the decision it has made shall apply to the obligation of the court of competent jurisdiction referred to in section 47 to provide notice of the decision it has made to Evira.

Section 48

Charges to be collected

Charges to the State for tasks undertaken by Evira are collected on the grounds laid down in the Act on Criteria for Charges Payable to the State (150/1992).

Section 49

Agent of an applicant for and holder of a plant breeder's right

If the applicant for or holder of a plant breeder's right has no domicile in Finland, the applicant or holder shall have an agent residing within the European Economic Area who is entitled to represent the applicant or holder in all matters concerning the plant breeder's right.

Section 41

Entry into force

This Act enters into force on 1 January 2010.

This Act repeals the Act on Plant Variety Rights of 21 August 1992 (789/1992) with subsequent amendments and the Act on the Protection of a Plant Variety Right Granted by the European Community under Private and Public Law in Finland of 5 March 1999 (239/1999).

Provisions issued under the repealed Act on Plant Variety Rights remain in force until otherwise provided under this Act.

This Act applies to applications for plant breeder's right pending upon entry into force of this Act and plant breeder's rights granted on the basis of these as well as plant breeder's rights granted before the entry into force of this Act.

The period of validity of plant breeder's rights in force upon entry into force of this Act are extended as laid down in this Act as from the approval decision.

Measures necessary for the implementation of this Act may be undertaken before the Act's entry into force.

If in other law reference is made to the Act on Plant Variety Rights in force upon entry into force of this Act, this Act applies instead.