

LAW NO. 99-42 OF 10 MAY 1999 ON SEED, SEEDLINGS
AND NEW PLANT VARIETIES

TITLE I

GENERAL PROVISIONS AND DEFINITIONS

Article 1

This Law applies to all seed, seedlings and new plant varieties used in the production of plants.

It lays down the conditions for their production, propagation, import, marketing and the protection of the relevant rights.

Article 2

For the purposes of this Law:

- (1) “Seed and seedlings” means all seeds, plants, parts of plants such as grafts, tubers, bulbs and stubs.
- (2) “Nurseries” means planted plots and fields reserved for the production of seed and seedlings of fruit trees, ornamental trees, forestry trees and vegetables and others.
- (3) “Reproduction plots” means fields reserved for the production of selected seed.
- (4) “New plant varieties” means new plant varieties created or discovered and resulting from a particular genetic process or a particular composition of hereditary processes and different from all other plant groups and which constitute a unit from the standpoint of their suitability for multiplication.
- (5) “Variety” means the group of plants from a plant varietal unit of the lowest known rank.
- (6) “Breeder” means any natural or legal person who breeds, discovers or creates one of the plant varieties or his successor in title.
- (7) “Breeder’s right” means the exclusive right of the breeder to exercise the rights afforded by this Law in relation to new plant varieties.
- (8) “New plant variety certificate” means the certificate issued by the competent authority to the holder of the plant variety.
- (9) “Competent authority” means the services responsible for the protection of plants and new plant varieties under the Ministry of Agriculture.

TITLE II

SEED AND SEEDLINGS

CHAPTER I

CLASSIFICATION OF SEED AND SEEDLINGS AND ENTRY OF THEIR VARIETIES

Article 3

Seed and seedlings of all species and varieties of agricultural plants shall be classified in the following categories:

- basic seed and seedlings
- certified seed and seedlings
- standard seed and seedlings.

The conditions for classifying seed and seedlings in the above categories shall be laid down by decree.

Article 4

There is created an official catalogue in which shall be entered plant varieties that are distinct, stable, uniform and have considerable agricultural value.

The competent authority shall keep the official catalogue.

Entry in the catalogue shall be made on a request submitted by the person concerned to the competent authority, accompanied by a detailed description of the variety and a sample of its seed or seedlings.

The form of the catalogue and the procedure for entry shall be laid down by decree.

Article 5

The official catalogue shall record the principal morphological and physiological specific features and the other characteristics enabling a distinction to be made between the various plant varieties entered.

However, the basic elements of hybrid plants and of compound varieties shall remain secret if their breeders so request.

Article 6

There is established a Technical Committee for Seed, Seedlings and New Plant Varieties.

This Committee shall have the following tasks:

- Propose measures suitable to develop and guide the seed, seedlings and new plant variety sector.
- Issue opinions on requests for entry of varieties and new plant varieties in the official catalogue.
- Issue opinions on applications for the granting of ownership of new plant varieties.

The composition and working procedures of the aforementioned Committee shall be laid down by decree.

CHAPTER II

PRODUCTION OF SEED AND SEEDLINGS

Article 7

Any person may produce seed and seedlings and propagate them directly or through third persons in accordance with specifications approved by decree.

Article 8

To ensure the quality of seed and seedlings and protect them from diseases and insects that are liable to be propagated within their environment, each producer or propagator shall be required to have a disease-free woodyard and to establish a protection area around the nursery or the fields reserved for the production and propagation of seed and seedlings, of which the width shall be laid down by order of the Minister responsible for agriculture.

The nurseries and production and propagation fields shall also be subject to inspection by the competent authority to ensure that they are free of quarantine organisms and any other plant disease and to ensure the purity and originality of the variety.

In addition, the Minister responsible for agriculture may, by order and each time required by the need, specify special methods for the production of certain seed and seedlings in accordance with the nature and degree of their affection by their production environment.

CHAPTER III

MARKETING OF SEED AND SEEDLINGS

Article 9

Only those seed and seedlings of plant varieties entered in the official catalogue in one of the categories referred to in Article 3 of this Law may be marketed.

The use of any notice or sign or any other signal such as to cause confusion in the mind of the acquirer with regard to the designation of seed and seedlings or their purity or their origin or their age or their phytosanitary status shall be prohibited.

Article 10

The Minister responsible for agriculture may, during exceptional circumstances, authorize the marketing of seed and seedlings meeting special conditions laid down following the opinion of the Technical Committee for Seed, Seedlings and New Plant Varieties.

The Minister responsible for agriculture may also authorize the marketing of seed and seedlings that have been recently bred on condition that they be entered on a waiting list held by the competent authority.

Entry in that list shall be made under conditions laid down by decree.

Article 11

Subject to the statutory provisions in force, the importing and marketing of seed and seedlings shall be effected in accordance with the specifications approved by decree.

Article 12

Marketed seed and seedlings shall satisfy the general standards for storing, packaging and labeling laid down by decree.

CHAPTER IV

INSPECTION OF SEED AND SEEDLINGS

Article 13

Produced seed and seedlings shall be subject to inspection by the competent authority to ensure their quality and their phytosanitary status.

To that end, and in addition to the measures laid down by the legislation on the protection of plants, the competent authority shall inspect the nurseries and fields and shall carry out laboratory tests to check compliance with the standards for each category of seed and seedlings.

Those standards and the inspection procedures shall be laid down by decree.

Article 14

The sworn agents of the competent authority designated by the Minister responsible for agriculture shall be empowered to visit all nurseries, propagating plots and premises for processing, storage and marketing in order to carry out the necessary inspection.

However, access to living premises effectively reserved for living shall be carried out in accordance with the search procedures laid down by the code of penal procedure.

TITLE III

NEW PLANT VARIETIES

CHAPTER I

PROTECTION OF NEW PLANT VARIETIES

Article 15

The competent authority shall ensure the protection of new plant varieties where their breeders or successors in title so request.

Protection for a new plant variety may be requested by any person of Tunisian nationality, by any foreign person subject to application of the principle of reciprocity.

The application for protection shall be filed by the breeder, by his representative or by his successor in title directly with the competent authority or by registered letter with acknowledgement of receipt.

Article 16

The application for protection shall be accompanied by a detailed description of the new plant variety, its proposed denomination, a sample for conservation and by all the data liable to assist the competent authority in taking the measures of protection.

Article 17

Where there is agreement as to the application, the applicant shall receive a new plant variety certificate.

Article 18

The competent authority shall keep a national catalogue of new plant varieties, comprising two parts:

- A first part in which shall be entered the applications for new plant variety certificates.
- A second part in which shall be entered the new plant variety certificates.

The lists of plants eligible for protection, the data and the method of entry of applications and certificates in the aforementioned catalogue shall be laid down by an order of the Minister responsible for agriculture.

Article 19

The new plant varieties, the relevant applications and the new plant variety certificates issued in respect of them shall be published in the Official Journal of the Tunisian Republic.

CHAPTER II

RIGHTS ARISING FROM APPLICATIONS AND PLANT VARIETY CERTIFICATES

Article 20

An application for a new plant variety certificate filed with the competent authority in accordance with the provisions of this Law shall afford the following rights:

- priority for obtaining a new plant variety certificate in the event of more than one application for that variety;
- transfer of the application to third parties;
- provisional protection of the variety against infringement;
- exploitation of the variety that is the subject matter of the application.

Article 21

A new plant variety certificate shall afford to its holder the right to produce the variety that has been bred and to dispose of it.

Article 22

The breeder's right shall cover:

- the protected plant variety;
- any variety that is not clearly different from the protected variety;
- any variety essentially derived from the protected variety if the latter is predominantly essentially derived from another variety;
- any variety whose production requires the repeated use of the protected variety.

Article 23

The breeder's right shall not extend to:

- acts done privately for experimental purposes without being of a commercial nature;
- operations carried out as part of teaching or scientific research for the purpose of the creation of new varieties.

Article 24

Notwithstanding the provisions of Articles 21 and 22 of this Law, certain new plant varieties of extreme importance for the life of man or animals may be subject to a compulsory authorization to exploit.

A compulsory authorization to exploit shall be given by an order of the Minister responsible for agriculture.

As from publication of the order concerned, the competent authority may allocate exploitation of the new plant variety that is the subject matter of the certificate to specialized public establishments or to organisms or to private persons having the necessary technical and professional capabilities in that field.

The holder of the breeder's right shall be awarded equitable compensation for the exploitation of the variety concerned or the transfer of revenue received from private persons in that same respect.

In either case, the amounts shall be agreed amicably. In the event of disagreement, the competent judicial authority shall lay down the amounts concerned.

Article 25

The breeders' rights shall subsist for 20 years for ordinary varieties and for 25 years for varieties where development of the production elements necessitates longer timescales.

Those periods shall begin to run as from the grant of the new plant variety certificate.

Article 26

Ownership of a new plant variety created by a public research official in the execution of his duties shall belong to the State, represented by the public establishment to which he belongs. The name of the official who has created the variety shall be entered on the new plant variety certificate.

The public establishment alone shall be entitled to file a request for entry of the new plant variety in the national catalogue referred to in Article 18 of this Law.

Article 27

In the event of joint ownership of a new plant variety certificate, the provisions of the code of rights *in rem* concerning joint ownership shall be applied.

CHAPTER III

TRANSFER AND LOSS OF RIGHTS

Article 28

The rights relating to an application for a new plant variety certificate or to a new plant variety certificate may be transferred in whole or in part.

Transfer of rights in whole or in part shall be established in writing on pain of absolute nullity.

Article 29

Rights shall be transferred with the exception of the right to the amounts accruing from the compulsory authorization to exploit under Article 24 of this Law.

Article 30

Rights may be transferred to others on expiry of a period of three years as from grant of the new plant variety certificate or a period of four years as from the filing of the application to obtain the certificate in the event of the owner of the certificate or applicant or his successor in title omitting, without good reason, to do the following:

- to begin to exploit the plant variety that is the subject matter of the certificate or make serious and effective preparation for so doing.
- to market the plant variety.
- to relinquish exploitation of the plant variety for a period of more than 3 years.

Article 31

Transfer of rights in the manner referred to in Article 30 of this Law may be made for the benefit of any person satisfying the conditions laid down in Article 15 of this Law on a request submitted to the competent authority and in which the requester proves that he has not been able to obtain an authorization to exploit from the owner of the certificate or from the applicant and that he is in a position to exploit the plant variety concerned in a serious and effective manner.

Article 32

The State may, at any time and for reasons of general interest, obtain authorization to exploit the plant variety that is the subject matter of the certificate or the application, directly or on its behalf.

The compensation arising therefrom shall be computed in accordance with Article 24 of this Law.

Article 33

The holder of a plant variety certificate shall forego his right in the following cases:

1.- where the competent authority ascertains that the protected variety no longer satisfies the conditions on the basis of which the new plant variety certificate was issued;

2.- where the holder of the certificate is no longer able to prove at any time the plant components used for the production or propagation of the plant variety and which are such as to reproduce the protected variety with its morphological and physiological characteristics that have been specified in the new plant variety certificate;

3.- where the holder of the certificate does not permit inspections carried out by the competent authority with a view to checking the precautions taken to safeguard the variety;

4.- where the annual fee laid down in Article 47 of this Law has not been paid within the prescribed time limits.

Article 34

Cancellation shall be pronounced by an order of the Minister responsible for agriculture after hearing the person concerned and on the basis of a reasoned opinion from the Technical Committee for Seed, Seedlings and New Plant Varieties. The order shall be published in the Official Journal of the Tunisian Republic.

The holder of the new plant variety certificate may file an appeal against the cancellation order within a period of one month as from the date of its publication.

To that end, he shall be required to support his appeal, where appropriate, with the results of an expert examination carried out by a reference laboratory within a period of one month as from filing of the appeal.

In the event of the expert opinion being favorable to the petitioner, the latter shall recover all his rights in the plant variety that is the subject matter of the cancellation order.

A list of the reference laboratories shall be laid down by an order of the Minister responsible for agriculture.

Article 35

The holder of a new plant variety certificate may relinquish, at any time, all or a part only of his rights deriving from the plant variety that is the subject matter of the new plant variety certificate.

Relinquishment shall be effected by means of a written declaration to be transmitted to the competent authority.

However, relinquishment concerning a certificate encumbered with third party rights may not be accepted unless accepted by the holders of the rights concerned.

CHAPTER IV

PROTECTION OF BREEDERS' RIGHTS

Article 36

Any violation of the rights of a holder of a new plant variety certificate shall be qualified as infringement liable to sanctions in accordance with the applicable legislation and shall further imply the civil liability of the offender.

However, such violation may not be considered as such unless it has been committed knowingly.

Thus, the use of the protected variety for basic variation for the breeding of a new variety shall not be deemed a violation.

Article 37

The holder of the new plant variety certification is entitled to institute civil proceedings. The beneficiary of a compulsory authorization to exploit or any person entitled to appeal may also institute such proceedings if the holder of the certificate does not do so, following formal notice served by a notarial bailiff.

Article 38

Any beneficiary of an authorization to exploit a plant variety that is the subject matter of a plant variety certificate may join the liability proceedings that the holder of the certificate institutes in order to obtain damages for any prejudice he has personally suffered.

Article 39

The applicant or holder of a new plant variety certificate may request the territorially competent court to permit him to seize all propagating elements and any other product resulting from the use of those elements obtained in violation of his rights, after presentation of a detailed description of such elements.

This right shall also apply to the beneficiaries of the exploitation right and the compulsory authorization.

The request shall be made after producing a copy of the new plant variety certificate or a copy of the application for the grant of a new plant variety certificate or of transfer of the rights deriving therefrom.

Article 40

Where infringement has been established, the court shall order transfer of the ownership of the plants, of their parts or of propagating elements obtained in infringement of the rights of the holder of the new plant variety certificate to such holder and, where appropriate, confiscation of the instruments used to that end.

TITLE IV

ESTABLISHMENT OF CRIMES AND SANCTIONS

CHAPTER I

ESTABLISHMENT

Article 41

Crimes relating to seed, seedlings and new plant varieties shall be established by reports drawn up by judiciary police officers as provided in Article 10 of the Code of Penal Procedure, by agents of the competent authority sworn in for that purpose and by economic control agents.

Article 42

All reports, drawn up and signed by the agents referred to in Article 41 of this Law, shall be addressed to the Minister responsible for agriculture, who shall transmit them to the public prosecutor.

CHAPTER II

SANCTIONS

Article 43

Notwithstanding the penalties provided in the Decree of 3 June 1889 relating to trademarks, by the Decree of 10 October 1919 on the repression of fraud in trade with merchandise and falsification of foodstuffs or of agricultural and natural produce, by Law No. 91-44 of 1 July 1999 on the organization of the distribution trade, as amended and supplemented by Law No. 94-38 of 24 February 1991 and by Law No. 92-117 of 7 December 1992 on the protection of consumers:

- any person infringing the provisions of Articles 8, 12 and 13 of this Law shall be liable to a fine of between 1,000 and 10,000 dinars;
- any person infringing the provisions of Articles 7, 9 and 14 of this Law shall be liable to imprisonment of between one month and one year and a fine of between 1,000 and 20,000 dinars or one only of those two penalties.

Article 44

Notwithstanding the penalties provided by the Decree of 3 June 1889, any infringement made knowingly of the rights of an applicant or of a holder of a new plant variety certificate and any claim in a capacity as applicant or holder of a new plant variety certificate shall be punishable by a fine of between 5,000 and 50,000 dinars.

Article 45

In the event of a repeated offense, the penalties provided in Articles 43 and 44 of this Law shall be doubled.

Article 46

In addition to the sanctions provided in Articles 43, 44 and 45 of this Law, the Minister responsible for agriculture may order the seizure of seed and seedlings of plant species subjects of an infringement of the provisions of this Law, destroy them, declassify them or withdraw their approval either temporarily or definitively.

TITLE IV

MISCELLANEOUS

Article 47

The entry of varieties, seed and seedlings and the approval of their production or propagation, together with the entry of applications and new plant variety certificates in the relevant catalogues shall be subject to payment of a fee of which the amount and conditions of payment and utilization shall be laid down by decree.

In addition, after entry, new plant variety certificates shall be subject to the payment of an annual fee of which the amount and conditions of payment and utilization shall be laid down by decree.

Article 48

Contracts for assignment and exploitation of new plant variety certificates shall be registered subject to a fixed fee.

Article 49

Contrary to the provisions of Article 2, item 4, of this Law and for a period of one year as from the entry into force of the latter, the protection of plant varieties offered for marketing or already marketed or distributed inside or outside the country may be requested.

Where protection is granted, the period that has elapsed between the time at which the plant variety concerned was offered for marketing, marketed or distributed for the first time and the time at which the application for protection was filed shall be deducted from the term of protection.

Article 50

Law No. 76-113 of 25 November 1976 on the organization, inspection of production and of marketing of seed and seedlings is hereby repealed.

This Law shall be published in the Official Journal of the Tunisian Republic and executed as a law of the State.