

From the Ministry of Agriculture and Rural Affairs:

Directive for Protection of Plant Breeders' Right of New Varieties

SECTION ONE Goal, Content, Legal Basis and Descriptions

Goal

Article 1- The goal of this Directive is to regulate the procedures and principles for protection of plant breeders' right of new varieties.

Content

Article 2- This Directive contains the principles for protection of new varieties and of plant breeders' right of these new varieties.

Legal Basis

Article 3- This Directive is prepared based on the Law on the Protection of Plant Breeders' Right of New Varieties 5042, dated 8/1/2004.

Descriptions

Article 4- In this Directive;

- a) **Ministry:** Ministry of Agriculture and Rural Affairs
- b) **General Directorate:** General Directorate of Protection and Control
- c) **Law:** Law on the Protection of Plant Breeders' Right for New Varieties
- d) **Plant Breeder:** The person who breeds, finds and grows a new plant variety,
- e) **Holder of Right:** Plant breeder or his legal successors
- f) **Variety:** Irrespective of the fulfillment of the necessary conditions for the provision of the plant breeders' right, the plant class that is in the smallest taxonomic section which is accepted as the unit in accordance with the conformity to the unchanging multiplication, and which differentiates between the other genotypes in the same species with at least one typical feature, and which is described with the emergence of some of the characteristics developed by one or more than one genotype.
- g) **Seed:** Vegetative and generative plant sections that are utilized for the multiplication of the plants.
- h) **Multiplication or propagation:** Acquisition of the next generation plants which have the same characteristics with the main or parent plants
- i) **Production and reproduction:** Plant cultivation in order to obtain product or multiplication material.
- j) **Multiplication material:** Whole plant or some parts of the plant that are utilized for the multiplication of plants.
- k) **Registration:** Entering the varieties within the framework of the Law concerned, in the Plant Breeders' Right Register.
- l) **Bulletin:** National List Bulletin
- m) **Register:** Records where the matters on the application of plant breeders' right and the registration of right are entered.
- n) **Catalogue:** The list published, which contains the varieties subjected to trade within the framework of the related legislation.
- o) **UPOV Act:** Act of International Union for the Protection of New Varieties of Plants
- p) **Distinctness:** On the application date of a variety, a variety being distinct from the commonly known varieties with at least one of the features that is essential for the registration,
- q) **Uniformity:** During the multiplication of a variety, the variety being sufficiently homogeneous or being uniform with respect to the other characteristics except for the expected variations in line with the multiplication method,
- r) **Stability:** The variety being stable after repetitive productions or at the end of certain multiplication periods on condition that the related characteristics remain exactly same
- s) **Organization:** The organization that executes the implementation related to the duty for the protection of plant breeders' right of the new varieties on behalf of the General Directorate.
- t) **DUS:** Distinctness, uniformity and stability
- u) **CPVO:** European Union Community Plant Variety Office

- v) **Submitted sample for storage:** The sample preserved by the organization or plant breeder/ holder of right to be utilized as proof after the variety is protected,
- w) **Regional Trial Organization:** It is the organization that executes the technical trials via the cooperation with the organization.

SECTION TWO

Conditions of Protection, Beneficiaries of Protection and Duration of Protection

General Conditions

Article 5- The plant varieties which are identified new, distinct, uniform and stable according to the provisions of this Directive are protected by giving plant breeders' right on condition that the other conditions in this Law and this Directive are fulfilled and that the fee which is identified by the Ministry is paid.

Beneficiaries of Protection

Article 6- As foreseen in the Law, the citizens of the Republic of Turkey, or the physical or legal persons who reside or who has work place within the borders of the Republic of Turkey, or the persons who have the right to apply according to the provisions of UPOV Act shall be able to benefit from the variety protection right.

Although the conditions of the first paragraph of this article are not met, persons with the citizenship of the Republic of Turkey and the physical or legal persons with the citizenship of the countries that are legally or actually granting variety protection shall benefit from the protection right according to the principle of reciprocity.

If the other countries provide the protection right to the varieties of the citizens of the Republic of Turkey or if the other countries notify to do so in black and white, this shall be admitted as the principle of reciprocity.

Duration of Protection

Article 7- The duration of variety protection is twenty five years as of the registration date of plant breeders' right.

This period is thirty years for trees, vine and potato. The end of protection period is calculated as of the end of calendar year.

SECTION THREE

Conditions for Application and Examination of Application

Designated Authority to Apply

Article 8- In order to benefit from the protection right provided by this Law, the variety owner shall apply to the General Directorate with the file composed of information and documents mentioned in the Article 9 of this Directive.

Information and Documents to be attached to the Application

Article 9- The applicant who demands the registration of plant breeder's right shall completely fill in the Plant Breeders' Right Application Form prepared by the Ministry and shall submit the file composed of information and documents mentioned below to the General Directorate:

a) This file shall include;

1) Approved document containing country and organization of first application, application date and number, and the variety name of first application, if the right of priority is demanded because of the previous application related to the same variety.

2) Variety id document showing technical characteristics of the variety prepared by the organization, and if necessary, the other documents related to the morphologic/ molecular characterization describing the variety.

3) Information and documents related to the utilization purpose of the variety, the amount utilized and the date when the variety has been subjected to trade, if there has been any previous commercial activity related to the variety applied for the plant breeders' right.

- 4) Document showing that the fee for application and technical examination is paid.
 - 5) Signature circular attested by the notary, if the applicant is a legal person.
 - 6) If demanded, the information on all types of pictures, slides or materials which are useful to describe the variety.
 - 7) Proxy statement attested by the notary who is approving that the proxy is authorized by the applicant to make the application, if the application is made by proxy.
- b) Other issues related to the application;
 - 1) The persons who do not reside in Turkey have to appoint a proxy having residence in Turkey in order to make their application for the plant breeders' right for their variety and to have it registered.
 - 2) If some of below-mentioned documents are in foreign language they have to be translated by the translation offices attested by notary public and the Turkish translations of these documents have to be attached to the application form.
 - 3) The application form and all of the attached documents must be stamped with seal and signed by the applicant.
 - 4) The paper size of the documents to be attached to the application form shall be A4 and the writings must be legible and the content and the quality of the documents must not create any hesitation.

Examination of the Application

Article 10- The General Directorate shall establish a commission in order to examine the application in form and in essence. This commission shall be composed of three persons: a field expert from the organization who is knowledgeable on plant type, a legal consultant from the Legal Consultancy, and a field expert from the General Directorate. If necessary, a consultant member who is a field expert from the Ministry or outside the Ministry shall be invited. The commission shall work with the full participation of all members and the decisions are taken with unanimity vote. The reporter of the commission is the General Directorate.

Formal Examination of the Application

Article 11- The commission examines the below-mentioned matters for formal examination of the application:

- a) Conformity of the application according to the formal conditions mentioned in Article 32, 33, 34, 35 and 46 of the Law, and the adequacy of the information stated in the application form,
- b) Sufficiency of the information and the documents mentioning the technical characteristics of the variety,
- c) The information and documents related to previous commercial activities on the variety, if there is any previous commercial activity
- d) Sufficiency of information and documents, if the right of priority is demanded,
- e) Documents stating that the application fee is paid.

If the commission identifies, as a result of the formal examination, that the application lacks necessary information or the application is incorrect the General Directorate informs the applicant of the situation on written basis and gives a period of thirty days to meet the lack. If the applicant does not meet the lack within the period given, he is considered as if he has not applied. If the applicant meets the identified lack in the period given his application for plant breeders' right shall be definite as of the first application date. If the lack on the right of priority is not met the applicant shall only be deprived of the right of priority.

Examination of the Application in Essence

Article 12- For the examination of application in essence, the commission examines the below-mentioned matters:

- a) Whether the variety of which the application is made for the provision of plant breeders' right is new within scope of the provisions of Article 5 of the Law.
- b) Whether the applicant has the right to make the application or is authorized to make the application for the variety for which the plant breeders' right is demanded.
- c) Whether the name proposed for the variety is in line with the Article 20 of this Directive or with the Article 9 and paragraph (a) of the Article 42 of the Law.

If the commission identifies, as a result of the examination of the application in essence, a situation that prevents the provision of plant breeders' right the General Directorate rejects the application. Within thirty days as of the date of rejection, the General Directorate informs the applicant of the situation with the motives.

According to the paragraph (c) of this article, if the application is rejected on the grounds that the name proposed for variety is non-compliant to the related articles of the Law the General Directorate informs the applicant of the situation and the applicant is requested to inform, within thirty days, whether he is going to propose any new name. If the applicant does not propose a new name for the variety within thirty days the process in the second paragraph of this Article shall be executed.

If the commission comes to a decision that there is no lack in the application it accepts the application for the plant breeders' right and gives an application number for every application file. The date when the application file is submitted to the General Directorate becomes definite as application date.

Registration of Application and Announcement in the Bulletin

Article 13- The General Directorate enters every complete and proper application in the register and gives a number for application register. The date when the file which is composed of all information and documents is submitted to the General Directorate is accepted as the application date. The General Directorate sends the documents related to the accepted application to the organization in order to have it entered in the Plant Breeders' Right Register.

Within thirty days beginning from enter of the application in the register; the General Directorate announces the below-mentioned information which is related to the applicant in the bulletin:

- a) Applicant's or if present, proxy's name, surname and address
- b) Name, surname and address of the plant breeder and the information mentioning how the right is acquired from the plant breeder, if the applicant is not the plant breeder himself
- c) Turkish and Latin name of the variety in the botanical classification
- d) Name proposed for the variety or a temporary name utilized by the plant breeder
- e) The country, date, number and office of first application, if the right of priority is demanded because of the previous application

Objection to the Application

Article 14- Within three months as of the publication date of the application in the bulletin, the appeals can be made to the General Directorate on the grounds that the variety is not new, distinct, uniform and stable or that the applicant is not the holder of right, or that the name proposed for the variety is not in conformity with the Article 20 of the Directive and with the provisions of paragraph (a) of Article 42 and Article 9 of the Law. The objector who is against the application must submit his petition to the General Directorate together with the information and documents being motives to his objections.

Examination of Appeals against Application

Article 15- The commission convenes within at least fifteen days upon the appeals and examines the information and documents in the petition and in its annex. The General Directorate sends a copy of each documents related to the appeal to the applicant. The General Directorate requests the applicant to inform within three months whether he shall continue to be the applicant towards the appeal or whether he shall make any change in the application conditions. The applicant may demand from the General Directorate for additional period of time because of the reason that the information period of three months is not sufficient. The General Directorate examines the written demand of the applicant which is on additional period. If the General Directorate comes to a decision as a result of the examination of the demand on additional period, that the applicant has appropriate motives it gives two months maximum in addition to the information period.

At the end of the period given, if the applicant does not make necessary information towards the appeal, which is mentioned in the first paragraph the application is deemed withdrawn.

Within this period of time, if the applicant informs that he shall sustain the first form of the application or if he informs that he shall make the necessary changes in his application according to the motives of appeal, the General Directorate requests the objector to inform within thirty days whether he shall sustain

his appeal. The objector cannot make any change in the appeal topics within this period of time. He may inform whether he shall sustain his objection.

If the objector notifies within thirty days that he shall not cease from his objection the following process shall be treated:

a) The General Directorate shall initiate the examination on the matters objected if the objection alleges that the variety does not have the novelty provisions mentioned the Article 5 of the Law, and that the applicant is not the holder of right, or if the objection alleges that the name proposed for the variety is non-compliant to provisions of Article 20 of the Directive and to the paragraph (a) of the Article 42 and the Article 9.

b) If the objection to the application is based on the allegation which is that the variety is not distinct, uniform and stable the organization makes the examination on these matters within the framework of the provisions of the Article 39 of the Law during the technical examination of the variety. In order to make the objected matters more clear the Organization itself identifies the method of technical examination by taking objection topics into consideration. The General Directorate, if it deems it necessary, may request the objector to submit more information, documents or materials supporting his objection.

c) As a result of the General Directorate's examination of the appeal which is based on the allegation that the applicant is not the real holder of right, if the applicant is found that he is not the real holder of right, the General Directorate admits the objection and it notifies the applicant and the objector of the decision on the admission of the appeal. Within thirty days beginning from the notification of the decision concerning the admission of the objection, the real holder of right who makes an application for the same variety may demand the application date of the rejected application be accepted as the date of his application. This demand is accepted by the General Directorate and the previous application date is entered as the application date of the real holder of right.

Technical Examination of the Variety

Article 16- After the technical examination of the variety is found appropriate the variety is subjected to the technical examination for the identification of the below-mentioned matters:

a) This technical examination covers the items below;

1) Confirmation of the fact that the variety belongs to the botanical class mentioned

2) Identification of the fact that the variety is distinct, uniform and stable

3) Preparation of the variety description in case the variety is in conformity with the conditions in the first and second sub-paragraphs of the paragraph (a) of this Article.

The implementation conditions of the examination are identified by the organization and the examination is fulfilled under the observation of the organization. If the DUS tests and the other tests which are necessary for the technical examination are materialized by the competent office of one of the UPOV signatory countries the technical examination can be based on these test results on condition that the test results shall be submitted to the Ministry.

However these tests must be done in the countries which have same or similar agricultural climate conditions with Turkey.

b) In case the examination cannot not be based on these tests results;

1) The General Directorate may have the technical examination made by the main service units or by its connected and affiliated institution or by other organizations. If the General Directorate has the technical examinations made by the other organizations the fee to be established by the Ministry according to the provisions of Article 34 of this Directive shall be paid.

2) The General Directorate may have the technical examination made by the applicant. Upon the demand of the General Directorate, the applicant shall give the results of VCU test and other tests to the General Directorate by doing these tests or by having these done by somebody. Technical examination can be based on these tests' results.

The variety description mentioned in the third sub-paragraph of the paragraph (a) of this Article can be attached with new sections or can be modified in line with the changes in agricultural and botanical information. However the subject of protection is not influenced by this situation.

For the purpose of technical examination, the General Directorate requests all types of information, documents and materials from the applicant. If the applicant does not submit the demanded information, document and material with no proper motive within the period to be determined by the General Directorate, the application shall be rejected.

Conditions for Technical Examination of the Variety

Article 17- After the publication of application in the bulletin, the applicant shall submit within thirty days maximum, the fixed amount of test material to the organization which is materializing the technical examination on behalf of the General Directorate. The amount of the test materials are determined by the Ministry.

The test material must have the minimum germination standards of seed in the lowest certified class based on the species, which is determined by the Ministry. The test material obtained from the variety sample shall be put apart in order to utilize in the DUS tests. The rest of the test material is kept as submitted sample for storage. The trial period of a variety in DUS tests is at least one growing season for ornamental plants, three for perennial field crops and trees, and two for the other species.

In case there is any problem related to the variety in DUS tests these periods can be prolonged.

The principles and the test criteria determined in the Plant Description Forms which are prepared according to UPOV and CPVO technical principles for that plant species are applied in the DUS tests. If there is not a criterion or description form identified by UPOV and CPVO on the plant species for which the application is made, the organization itself defines the examination criteria.

If required, the organization also fulfills certain laboratory examinations related to variety together with the DUS tests.

In order to renovate submitted samples for storage, which belong to varieties of each species the organization may request new sample from the applicant. Within three months as from date of written information made to him by the organization, the applicant must submit the new sample to the organization. In order to check whether the variety sustains genetic purity the sample sent by the applicant and the sample kept in the organization are planted on a juxtaposed manner and compared as to their morphological characteristics. If the variety is proved to sustain its genetic structure the recent sample is kept as submitted sample for storage. The previous sample is given back to the variety owner. If there would be any evident that the variety does not sustain its genetic structure the provisions of Article 24 of this Directive are applied.

Examination Report

Article 18- If the organization which is fulfilling the technical examination on behalf of the General Directorate is of the opinion that it is sufficient to identify the characteristics of the variety the organization sends an examination report to the General Directorate which is comprised of the identification of the matters on distinctness, uniformity and stability, and variety description which is prepared according to the DUS test results.

The organizations which fulfill the technical examinations can utilize the examination results with the permission of the Ministry.

SECTION FOUR

Registration of Plant Breeders' Right and Appeal

Registration of Plant Breeders' Right

Article 19- After the organization sends the examination report to the General Directorate, the General Directorate establishes Plant Breeders' Right Registration Committee which is in consideration of the organizations and which is based on the plant groups.

a) The General Directorate shall invite the Plant Breeders' Right Registration Committee it established to the meeting and shall send the letter of convocation together with the examination report of the varieties sent by the organization and the other documents to the organizations composing the committee.

b) Consultant member can be invited to the Plant Breeders' Right Registration Committee.

c) The Plant Breeders' Right Registration Committee is composed of field expert representatives of the below-mentioned organizations.

<u>Name of the organization</u>	<u>Number of representatives (principal members)</u>
General Directorate	1
Organization and/or regional trial organization	2
Legal Consultancy	1
Related public organizations on agricultural research	1
Faculties of Agriculture	1

d) The committee convenes with the participation of at least 5 of the principal members.

e) The principal members only have the right to vote in the meeting. The ones who are invited as consultants cannot vote.

f) In each meeting, a president is elected amongst the principal members. The office of reporter for meetings is executed by the organization.

g) In the meetings, the organization presents the examination reports related to the variety on verbal basis. The decision is taken by the Plant Breeders' Right Registration Committee.

h) The decisions are taken by the majority of the principal members with the ratio of 2/3 on condition that the principals and the necessary conditions mentioned in this Directive are met. The varieties are put to the vote separately in the meetings. The protected variety is denominated within the framework of the principals in Article 20 of this Directive. And the committee registers the plant breeders' right of this variety with this name and enters it in the register. And it is published in bulletin in order to be announced.

i) This variety which is protected by the Ministry is given the Plant Breeders' Right Registration Certificate which is in Annex 1 of this Directive.

j) If the Plant Breeders' Right Registration Committee does not find the examination report adequate to reach a decision it notifies the applicant of this situation and the Ministry fulfills the complementary examinations or has them fulfilled. The complementary examinations which are made until the decision of rejection or admission is taken are considered as the continuation of the technical examinations.

Rules of Denomination

Article 20- The name of the variety which is protected by giving plant breeders' right becomes its common name. If the name of the variety meets the below-mentioned conditions, the committee denominates the variety with the name proposed by the owner of variety.

a) On condition that the name makes sure that the variety is recognized, the name can be composed of a meaningful or meaningless word or word groups, words and numbers, or letters and numbers.

b) The name proposed for the variety must be different than the names of other varieties or the recognition of the variety must linguistically be sufficient.

c) The name must not include expressions against public order and general moral values.

d) The name must not consist of the signs which are only in question in plant species and seed sector mentioning the species, quality, amount, goal, value, geographical origin or production date in the language of our country and the languages of UPOV signatory countries.

e) The name must not be of the quality that may cause any deception or confusion as to the link between the variety and the plant breeder or the applicant in consideration of the geographical origin, value and characteristics.

f) From the point of view of the mark legislation, the name proposed for the variety cannot include any obstructing elements as to the mark acquisition concerning the products related to the variety

g) If a name is being used for a variety which is registered in a UPOV signatory country, the application for plant breeders' right shall be made with this name and variety shall be registered with this

name. If other names for the same variety are being used in other countries, these names which are used in other countries shall be registered in application register and plant breeders' right register. The same provisions are applied for the varieties which were previously registered in Turkey.

h) The name proposed for the variety cannot be similar to the names of the varieties of same or similar species registered or utilized in Turkey or in the UPOV signatory countries. Or the name cannot be so same or similar to an extent that it might create any confusion.

i) The ones who sell, market or utilize the multiplication material of the protected variety in other forms must utilize the name of the variety. This provision essentially includes the derived varieties. Although the plant breeders' right expires it is compulsory to utilize the variety name.

j) The rights of third persons are reserved concerning the utilization of the protected variety. If the utilization of the variety name by the person who is obliged to use the variety is forbidden because of previous rights of the third persons, the General Directorate shall request the plant breeder and the holder of right to propose another brand new name.

k) It is possible to use the name proposed for the variety with the other signs like mark, trade name or similar signs on condition that the variety name is easily recognized.

Publication of Registration

Article 21- The registration of the plant breeders' right for the protected variety shall be published in the bulletin within thirty days as of the registration date.

The bulletin involves the below-mentioned information concerning the registration of the plant breeders' right:

- a) Name of the protected variety
- b) Application date and number
- c) If the right of priority is used, country, date and number of first application and the variety name of the first application
- d) Name, surname, citizenship and address of the holder of right
- e) If the holder of right is not plant breeder, name, surname, citizenship and address of the plant breeder or plant breeders
- f) Registration date and registration number of the plant breeder.

Objection to Registration

Article 22- Within thirty days as of the publication date of the plant breeders' right registration in the bulletin, the third persons can object to the registration on the grounds that there are some lacks in the process mentioned in Article 32, 33, 34, 36, 39, 40, 41 and 44 of the Law.

The objectors to the registration must submit the below mentioned information and documents to the General Directorate:

- a) The petition and the documents supporting the objection,
- b) Document showing the petition fee which is determined by the Ministry and which is mentioned in Article 34 of this Directive is paid

The General Directorate may request objector to submit information, documents and materials supporting his objection the within thirty days. If the objector does not submit the requested information, documents and materials to the Ministry within the period given he is considered as if he has never objected.

The General Directorate sends a copy of the petition and its annex concerning the plant breeders' right registration to the holder of right and to the Plant Breeders' Right Registration Committee and requests the holder of right to notify of his opinion with its motives in black and white within thirty days.

The General Directorate may also request the opinion of the objector and of the holder of right when it finds it necessary during the examination of the objection by the Plant Breeders' Right Registration Committee.

If the Plant Breeders' Right Registration Committee is of the opinion, as a result of the examination of the objector's petition and the information and documents in its annex, that the processes in the items of first paragraph in consideration of giving plant breeders' right are not fulfilled, or that one of these

processes includes a very important flaw the committee sends the report on the subject to the General Directorate. In line with the opinion of the Plant Breeders' Right Registration Committee, the General Directorate comes to a decision which is that the process on plant breeders' right registration is null and void, and that the process shall be re-materialized by going back to the stage that includes flaw.

If the General Directorate does not find the objection appropriate as a result of the examination it overrules the objection made against the plant breeders' right registration and notifies the objector and the holder of right of the situation.

Changes after the Plant Breeders' Right Registration

Article 23- Within thirty days, the holder of right shall notify in black and white, the General Directorate of the changes in the address and title after the registration date of the plant breeders' right.

Additionally within thirty days, the holder of right shall notify the General Directorate, in black and white, of the changes like transfer and transfer by inheritance by submitting the original statement of account showing the related fee is paid.

The General Directorate evaluates the change demands and if it finds them appropriate it sends these changes to the organization in order to make these changes. The organization makes the related changes in the register and these changes are published in the bulletin.

Liability of the Holder of Right after the Registration

Article 24- The holder of right is responsible of the continuation of protected variety or depending on the occasion, of the multiplication materials bearing the hereditary characteristics of the protected variety as long as the right is valid.

The organization investigates whether or not the variety or, depending on the occasion, genetic structure of the hereditary parts sustain during the protection. The holder of right is responsible of providing information, documents and materials in order to make the organization or another organization determined by the General Directorate study whether the protected variety sustain its genetic structure.

If there is any doubt as to the continuation of the genetic structure of the variety and if this doubt cannot be eliminated with the information, documents and materials mentioned in the second paragraph of this article, the General Directorate shall request a study to check whether the variety sustains its genetic structure. This study includes the fulfillment of the growing tests of the samples and the other tests, and their comparison with the material provided by the holder of right, the information in the variety description.

If the studies made reveal that the holder of right is unsuccessful as to the continuation of the genetic structure of the variety the opinion of the holder of right is asked for before the annulment of the plant breeders' right by the Ministry according to the Article 48 of the Law.

Within three months, the holder of right shall submit the adequate amount sample of the protected variety or depending on the occasion, of the hereditary parts to the organization or to the other organization to be identified by the General Directorate in order to have the sample of the variety or renew the present sample, or to make a comparative examination of the other varieties with the view to protect the variety. If the examination reveals negative outcomes the plant breeders' right is annulled.

In case the General Directorate finds it necessary the holder of right shall keep the variety's submitted sample for storage on behalf of the Ministry.

SECTION FIVE

Compulsory License and the Demand for Mediatorship Concerning Compulsory License

Compulsory License

Article 25- At the end of third year beginning from the registration of the plant breeders' right, the plant breeders' right can be subjected to license in case the public interest necessitates.

If the utilization of protected variety, or increase or extension of protected variety utilization has great importance as to national defense and public health, it is considered that there is public interest.

In case the non-utilization or inadequate utilization of the protected variety as to quality and quantity can cause severe damage to economic and technological development, it is considered that this situation concerns public interest.

The Council of Ministers decides compulsory license upon the proposal of the Ministry. In case the utilization of the protected variety is important for national defense and the public health the proposal for compulsory license is made by the Ministry or by the Ministry of National Defense and Ministry of Health in a joint manner.

The compulsory license decision which is reached because of national defense can be limited with the utilization of the variety by one or a few enterprises.

The export of protected variety cannot be considered as the motive of compulsory license.

Obligation to Use

Article 26- The holder of right or the person he authorized has to utilize the multiplication material of the protected variety.

The obligation to use must be realized within three years as of the publication date of the announcement on the provision of plant breeders' right in the bulletin.

The variety must be utilized sufficiently in quantity and in quality. The market conditions and conditions which are mentioned in the third paragraph of the Article 25 of the Directive shall be taken into account for the evaluation of the utilization.

Proof of Variety Utilization

Article 27- The holder of right or the person he authorized has to submit the documents to the Ministry which prove that the protected variety is used. These documents must comprise the declarations which show that the protected variety is adequately used as to quality and quantity. And these declarations must be approved by the professional societies, chambers of commerce and industry related to the subject or by the other related organizations or institutions.

The document proving the utilization of variety must include the number and the date when the plant breeders' right of the protected variety is given, and the date when the utilization starts, name, address of the declaring person and the date when the document is issued.

Variety utilization certificate is entered in the plant breeders' right record. The fee which is mentioned in the Article 34 of this Directive shall be paid for this treatment.

Demand for Mediatorship Concerning Compulsory License

Article 28- The person who wants to demand the compulsory license can first demand the mediatorship of the Ministry in order to be given contract based license for the same variety.

In order to demand the mediatorship of the Ministry the fee mentioned in Article 34 of the Directive shall be paid.

The demand for mediatorship shall include the below-mentioned matters:

- a) The information on the demandant
- b) Information on the holder of right and the variety which is subjected to mediatorship demand
- c) Conditions justifying the issue of compulsory license
- d) Content of license demanded and the reasons of demand
- e) Information that suffices to decide whether the demandant shall efficiently be able to utilize the variety for which the right is in question and whether the reasonable guarantee demanded by the holder of right for the issue of license shall be provided.

If the issue of contract based license has not been possible despite the period of two months that follow the notification of the acceptance of mediatorship demand, the Ministry shall declares the end of its mediatorship and its activities and it notifies the persons concerned of this situation.

If the Ministry is of the idea that the license contract shall really be made it can accept the demand of the parties on extra time of one month although period of two months has expired.

Mediatorship of the Ministry

Article 29- Within one month as of the date of demand, the Ministry shall reach a decision on the demand for mediatorship.

If the Ministry is of the opinion, after examining the demand on mediatorship and the annexed documents of the demand and after making researches, that a situation necessitating the compulsory license exists, and that the demandant has solvency and necessary means to utilize the variety for which the right is in question, the Ministry accepts the demand on mediatorship.

The Ministry notifies the demandant of its decision on the mediatorship. And it also notifies the holder of right of its decision in question together with the copy of the demand on mediatorship.

Fee of the Demand on Mediatorship

Article 30- According to the findings of the examination of the quality of the demand, examination of requests and allegations, the Ministry determines, in line with the Article 34 of this Directive, fee of the demand on mediatorship which is mentioned in second paragraph of Article 28 of this Directive on an annual basis and per each request in the demand separately. The Ministry determines the office and the form of payment of mediatorship fee.

Determination of Guarantee Fund

Article 31- According to the findings of the examination on the quality of application the subject, examination of requests and allegations, the Ministry determines, in line with the Article 34 of this Directive, the amount of guarantee fund mentioned in Article 22, paragraph two, clause (c) of the Law on an annual basis and per each demand separately. The Ministry determines the office and form of payment of guarantee fund.

Determination of Fee of the Demand on Compulsory License and of Guarantee Fund

Article 32- According to the findings of the examination of the quality of the application subject, examination of requests and allegations, the Ministry determines, in line with the Article 34 of this Directive, the guarantee fund mentioned in Article 23, paragraph four, clause (b) of the Law, and the amount of fee mentioned in clause (c) of the Law on an annual basis and per each demand separately. The Ministry determines the office and form of payment of guarantee fund and the fee.

SECTION SIX

Fees

Annual Fee

Article 33- The Ministry has the annual fee related to the protected variety accrued beginning from the registration of the plant breeders' right. The fee is deposited to the account of organization's revolving fund.

The holder of right shall pay the annual fee to the Ministry in cash in January of each year during the protection of variety.

It is the Ministry to determine the amount of annual fee for the following year in December of each year.

The amounts of annual fee determined by the Ministry shall be published in the bulletin every year in December.

In case the annual fee is not paid within the payment periods established, the plant breeders' right shall automatically be annulled according to the Article 55 of the Law. In case of automatic annulment of the right because of the non-payment of the annual fee it is considered that the annual fee is paid as of the final date. This situation is published in the bulletin within thirty days.

Treatment Fee

Article 34- The Ministry shall have the treatment fee accrued for the treatments foreseen in the Law and in this Directive. The fees are collected in return for the treatments below.

a) Application fee is the ad hoc payment made by the applicant to the Ministry at the first application. If the application fee is not paid, the application is considered to be withdrawn. The Ministry shall not give

the application fee back in case the applicant withdraws the application or in case the application is null and void or rejected in any manner whatsoever.

b) Technical examination fee is the fee which is paid during the application in the first year and in January in the following years in order to examine the variety technically and establish the DUS tests. In case the Ministry has the technical examination made by any organization outside the Ministry the fee is transferred to the organization making the examination. If needed, the Ministry shall collect extra money from the applicant together with this fee. If the Ministry has the technical examination made by an organization abroad the fee as the currency of that country is collected from the applicant together with extra fee. In case the applicant withdraws the application or in case the application is null and void or rejected in any manner whatsoever the Ministry shall give the technical examination fee and if paid, the extra fee back to the applicant within thirty days.

- c) Fee for name examination,
- d) Fee for petition against application and registration
- e) Registration fee of plant breeders' right
- f) Fee for demand on compulsory license
- g) Mediatorship fee on the compulsory license
- h) Fees charged on the copies
- i) Publication fees
- j) Fee for transfer and transfer by inheritance
- k) Guarantee fund

The amount of treatment fees for the following year shall be determined by the Ministry every year in December. The treatment fees are published in the bulletin.

Treatment fees are collected in cash during all treatments. The treatments of which the fee is not paid shall not be evaluated.

The amount of fee accrued shall be deposited to the account of the organization's revolving fund.

SECTION SEVEN

Transfer of the Right, Transfer of the Right by Inheritance, and Contract Based License

Transfer of the Right emanating from application and registration related to the protected variety

Article 35- With regard to the variety of which the application is made for the plant breeders' right, the right emanating from the application which is made according to the Law and the provisions of this Directive, or the right emanating from the registration as a result of plant breeders' right registration can be transferred or inherited to another person.

The transfer of the right or the transfer of the right by inheritance emanating from the application or from the registration shall be entered in the register and published in the bulletin on condition that the fee mentioned in Article 34 of this Directive is paid.

For the purpose of transfer or inheritance of the application right or the right emanating the registration to other persons, the holders of right shall apply to the General Directorate with the originals or the copies attested of the below-mentioned documents by the notary:

- a) Petition for demand
- b) Declaration of heirship
- c) Plant Breeders' Right Registration Certificate
- d) Transfer warrant attested by notary that includes the signatures and declarations of transferor and transferee, and the name of protected variety
- e) Signature circular, if transferee is legal person
- f) Proxy statement attested by the notary, if the demand on transfer or inheritance is made by the proxy

Contract Based License

Article 36- The right emanating from the application or from the registration can be subjected to the license contract in such a way that it shall be valid within the borders of the country.

The contract based license can be given in two ways to be valid within the borders of Turkey: Exclusive license (only to one person or organization) and non-exclusive license (license to multiple users).

License contract is made in black and white. In order that the license contract might be valid the licensee or licensor must apply to the Ministry with the below-mentioned documents:

a) License contract attested by the notary, which includes the signatures and declarations of licensee and licensor; application date and number of the variety subjected to license; registration date and number, license fee, duration and basis.

b) Plant Breeders' Right Registration Certificate

c) Document stating the fee is paid

d) Signature circular, if the licensee is a legal person

e) Proxy statement, if the demand is made by the proxy

SECTION EIGHT

Registration of Nullity, Publication and Automatic Annulment of Right

Registration of Nullity and Publication in the Bulletin

Article 37- In case it is decided to annul the plant breeders' right according to the provisions of the Article 52 of the Law, the court verdict on the nullity of the plant breeders' right is entered in the plant breeders' right register. The verdict on nullity shall be announced in the first bulletin to be published after being entered in the plant breeders' right record.

Automatic Annulment of the Right

Article 38- In case the plant breeders' right is automatically annulled according to the provisions of the Article 55 of the Law, the variety for which the right is in question is considered as common property beginning from the annulment date. If the organization has the submitted sample for storage of the variety of which the protection right has expired, it shall send it to one of the centers that keeps the gene sources in the country.

In case of automatic annulment of the right, this situation is entered in the record and shall be announced in the first bulletin to be published.

If the right has annulled because of the fact that the holder of right applies to the General Directorate in black and white to abandon the plant breeders' right, the annulment shall become valid beginning from the registration date of abandonment. The abandonment shall be announced in the bulletin to be published after the date of registration.

None of the holders of right can abandon his right without the permission of the other licensees and holders of right who are entered in the plant breeders' right register as holders of right. If the third persons claim any right on this right, the holders of right cannot abandon their right without their approval.

If the plant breeders' right is annulled because of the non-payment of the annual fee within the period established, the annulment shall become valid beginning from the final date of annual fee. However if the holder of right notifies the Ministry in black and white of the fact within six months as of the publication date of annulment in the bulletin that the annual fee is not paid within period given because of force majeure, the plant breeders' right shall become effective again on condition that the annual fee payment is made according to the amount and form of payment determined by the Ministry.

The General Directorate shall publish the application on the disability to pay the annual fee because of force majeure in the first bulletin to be published after the application date. All related persons shall notify the General Directorate in black and white, of their opinion on this matter within thirty days beginning from the publication of force majeure application in the bulletin. The General Directorate shall evaluate the force majeure application and the opinions of the related persons and shall come to a decision.

The revalidation of the plant breeders' right is possible with the decision of the Ministry. If the Ministry accepts the existence of force majeure, the right shall become valid again as of the payment date on condition that the annual fee is made. The revalidation of the right shall be entered in the register and published in the bulletin.

The acquired rights of the third persons who have the right shall not be influenced by the revalidation of the right which is as a result of the annulment of the right because of non-payment of annual fee. And the third persons shall make use of their acquired rights according to the contract they make. In case of dispute, the rights of third persons and their scope shall be determined by the courts.

SECTION NINE

Plant Breeders' Right Register and National List Bulletin

Plant Breeders' Right Register

Article 39- With regard to the varieties benefiting from the protection of plant breeders' right within the scope of the Law and this Directive, the Ministry shall form the plant breeders' right register which is composed of the application register and plant breeders' right record.

The plant breeders' right register is a file that includes all stages starting from the information given by the plant breeder or his proxy to the General Directorate at the first application, and examination and admission of application, technical examination, provision of right, publication in the bulletin, objections and transfers etc.

a) Application register in the file is composed of the below-mentioned information:

1) Name, surname, citizenship and address of the applicant

2) Name, surname, citizenship and address of the plant breeder or plant breeders, if the applicant is not plant breeder

3) Application date

4) Number for application register

5) Date, country and number of the right of priority, if the right of priority is utilized

6) Publication date and number of application

7) Transfer of the right emanating from the application and the treatments like pledge, transfer by inheritance and seizure

8) Abandonment of application

9) Rejection of application

10) Name, surname and address of the proxy, if the application is made by the proxy

b) Plant breeders' right record in the file includes the below-mentioned information:

1) Application date and registration number

2) Name, surname, citizenship and address of the holder of right

3) Name, surname, citizenship and address of the plant breeder or plant breeders, if the holder of right is not plant breeder

4) Name of the variety and the other names of variety used in other countries

5) Registration date and number

6) Variety description and the other technical characteristic

7) License, compulsory license, transfer, transfer by inheritance, pledge and seizure related to the protected variety

All the related persons can examine the information and documents with regard to the application and plant breeders' right record which is in the plant breeders' right register. The examination is not made on the originals of the information and documents. The examination can be made on the copies of the requested documents on condition that fee per page which is determined by the Ministry is paid. The examination on the originals of the documents is possible with the written approval of the Ministry.

The person who is demanding the examination of the register shall apply to the General Directorate with a letter mentioning the examination subjects. If the General Directorate finds the examination demand

appropriate it shall permit the examination of the Register. However the owners of the varieties of which the production and multiplication necessitate the continuous utilization of the other varieties have the right to request the exclusion of documents, information and tests belonging to the variety out of the scope of the examination. The owners of these varieties must submit their demand on the exclusion of the register that includes the records of their varieties, to the General Directorate on written basis.

National List Bulletin

Article 40- The bulletin is published by the General Directorate on periodic basis.

The General Directorate publishes information on the protected varieties including the applicant, holder of right, period of protection, application date, registration date and name of the variety, and the annual report which also includes the other matters need to be published.

SECTION TEN

Miscellaneous and Last Provisions

Protected Varieties

Article 41- Within the framework of the UPOV Act, for the varieties protected in UPOV member countries and in the other countries within the scope of the reciprocity principle: without any technical examination, the application is admitted with the examination on novelty and the other examination by making evaluation according to Article 5 of the Law and Article 16, second paragraph of this Directive. Except for the technical examination fee, the other fees related to the application are paid during the application and the variety is protected through Plant Breeders' Right Registration Committee.

Temporary Article 1- The annual fee and the treatment fee mentioned in Article 33 and Article 34 of this Directive shall be determined and announced by the Ministry on a non-recurring manner within thirty days as of the publication date of the Directive.

Temporary Article 2- If the variety description is prepared by making DUS tests in the varieties beforehand within the scope of Temporary Article 2 of the Law, the provision in the second paragraph of Article 16 of this Directive shall not be implemented.

Validity

Article 42- This Directive shall come into force on the publication date.

Execution

Article 43- The Minister of Agriculture and Rural Affairs shall execute the provisions of this Directive.