

# SELECTION ACHIEVEMENTS PROTECTION LAW

## CHAPTER I. GENERAL PROVISIONS

### Article 1. Basic Concepts

#### *Definitions of Concepts:*

“Selection Achievement” shall mean a plant variety or animal breed which is bred by deliberate farming activities.

“Plant Variety” shall mean a group of plants which in spite of self-protective faculties is characterized by a genotype or a combination of genotypes by which this group should be distinguished from other groups of the same botanical taxon.

A variety may be represented by one or more plant, or one or more part of plant, provided this part or parts is possible to be used in order to get a variety as a complete plant.

The categories of selection achievements include: varieties, clones, lineage, first-generation hybrids, classes.

“Plant Seed” shall mean a part of plant from which the plant will be grown and which is used for the purposes other than reproduction.

“Animal Breed” shall mean a group of animals which in spite of self-protective faculties is characterized by certain genetically stipulated biological and morphological properties.

Some of them might be very special and distinguished from other groups of animals. A breed may be represented by a male or female animal or a breeding material.

The categories of animal breeds include: types and lineage.

“Breeding Animal” shall mean an animal to be used for reproduction and multiplication.

“Breeding Material” shall mean a breeding animal, or gametes or zygotes (embryos) thereof.

“Production Breed” shall mean an animal used for the purposes other than reproduction.

“Certified Selection Achievement” shall mean a Plant Variety or Animal Breed which is registered with the State Register of Certified Selection Achievements.

“Applicant” shall mean an individual or entity (employer) who has submitted an application for the Selection Achievement.

“Induced Mutant” shall mean a creature which has obtained a special signs or properties due to a mutation conditioned by certain chemical or physical factors.

“Back-cross” shall mean an ascendant crossing when a hybrid is re-crossed with one of its parents.

“Clone” shall mean a generation of vegetatively multiplied plants.

## **Article 2. Georgian Legislation on Selection Achievements Protection**

Georgian Legislation on Selection Achievements Protection shall consist of the present law and other legislative acts.

## **Article 3. Legal Protection of Selection Achievements**

1. The Certified Selection Achievements are under the protection of law.
2. A Selection Achievement Certificate certifies an exclusive right of its holder to use his/her Selection Achievement.
3. A State Commission of the Examination and Protection of Selection Achievements (hereinafter the "Commission") under the Georgian Ministry of Agriculture and Food shall be responsible for the development and implementation of the State policy in terms of Selection Achievements protection on the basis of the present law. The Commission shall consider, examine and test submitted applications, determine and check risk factors related to the use of Selection Achievements made with the aid of biological technologies, maintain the State Register of Certified Selection Achievements, issue the Certificates of Exclusive Rights, advertise official notes about the issuance of the Selection Achievement Certificates.
4. The Certificates issued by the Commission shall be registered with the State Register of Certified Selection Achievements.
5. The limits of legal protection of the rights provided for by the Selection Achievement Certificates shall be determined by the set of characteristics given in a Selection Achievement Description.
6. The Certificate shall be valid for the period of 30 years after the date of registration of a Selection Achievement with the State Register. In cases of vines, board-, fruit- or decorative plants, tea, subtropical crops and wood trees, including their seedlings, the same shall be valid for the term of 35 years.

## **CHAPTER II. SELECTION ACHIEVEMENT PROTECTION TERMS. APPLICATION CONSIDERING PROCEDURES**

### **Article 4. Selection Achievement Protection Terms**

1. An Exclusive Rights Certificate for the Selection Achievement shall be issued if the latter meets the protection requirements and the variety or breed in question is available in botanical and zoological genera and species lists.
2. The Selection Achievement protection requirements are as follows:
  - a) *Innovation*  
A plant variety or animal breed shall be considered innovative if the given seed of plant or the breeding material has not been sold or transferred to a third party by an author or successor (employer) thereof, in the territory of Georgia for one year, in the territory of a

foreign state for four years, and in cases of vines, board-, fruit- or decorative plants, tea, subtropical crops and wood trees for not less than six years before the date of submitting the application.

b) *Diversity*

A Selection Achievement by its basic characteristics shall be diverse from the Selection Achievements commonly known at the date of application submitting.

A variety or breed shall be considered commonly known if its characteristics are contained by official catalogues, other reference sources or are described in detail in a published literature.

After the submission of application a Selection Achievement shall be considered commonly known if an appropriate Certificate is issued or the publishing of a Selection Achievement has been permitted.

c) *Uniformity*

The same plants or animals shall have the uniform morphological and biological characteristics with the account of changes characteristic to the multiplication.

d) *Stability*

A Selection Achievement shall be considered stable if in the course of repeated or special cycle multiplication, at the end of each cycle the basic characteristics are the same.

3. If a Selection Achievement is contained by the Register of Selection Achievements and is authorized for the utilization and the genus and species which the Selection Achievement belongs to has been made entered into the botanical and zoological genera and species lists after the registration date, the requirements of article 2 and the rights determined by article 18 of this law shall not apply.

## **Article 5. Submitting of Applications**

1. A right to submit application to the Commission shall be vested in an author of the Selection Achievement or his/her successor (employer).
2. If a Selection Achievement is bred, created or discovered during the performance of public duties or at office, the right to submit an application shall be vested in an employer, unless anything different is agreed by the author and the employer.
3. If a variety or breed is bred in the process of cooperative activities the application may be submitted by more than one applicant or by the one who acts on the basis of the power of attorney of others.

The persons working within the Commission framework shall have no right to submit an application, except for those who have worked over the Selection Achievement before their starting work for the Commission and there is an evidence of this fact.

4. An application for the Selection Achievement Certificate shall contain:
  - a) Request for Certificate;

- b) Selection Achievement specifications;
  - c) Certificate fee payment bill or the notification of exemption therefrom.
5. The form and contents of the above documents shall be determined by the Commission.
  6. For one Selection Achievement one application shall be submitted.
  7. If the applicant is an employer with the application referred to in point 2 of this article there shall be enclosed a copy of agreement made by the employer and the author.
  8. The applications shall be submitted in Georgian or any other language. In the latter case the with application there shall be enclosed a certified translation. The Request for Certificate shall be made in Georgian in the form determined by the Commission.

#### **Article 6. Title of Selection Achievement**

1. A title to the Selection Achievement shall be given by an applicant with the consent of the Commission. If the Commission disapproves the title the applicant, within the determined period of time, shall propose a new title. The title shall make possible to identify the Selection Achievement; shall be brief and different from other selection achievements related to adjacent botanical or zoological species; shall not contradict the principles of humanity and morals; shall not consist of the figures only; and shall not prompt errors during the determination of properties, origination, meaning and author of the Selection Achievement.
2. A person utilizing the protected Selection Achievement is obliged to use the title fixed in the State Register.
3. The title of a Selection Achievement may be changed only in exceptional cases and with the consent of the Commission.

#### **Article 7. Date of Submitting Application**

1. The date of submitting an application for the Selection Achievement shall be deemed the date of submitting to the Commission a request for the Certificate.
2. In case of coincidence of submitting two or more applications for the same Selection Achievement, the date of dispatching a request shall be deemed as the date of submitting of application. In case of coincidence of these dates as well the preference shall be given to the application which was registered earlier.
3. If prior to the submission of application the Commission this application has been submitted to the authorities of a foreign State with whom Georgia is bound with a covenant on the protection of Selection Achievements the applicant has a right to take advantage of the date of submitting thereof to the foreign state within 12 months after the submission of application to the Commission.
4. The application submitted to the Commission shall contain the date of submitting thereof to the foreign State. The applicant is obliged to provide to the Commission, within six months after the submission of application to the Commission, a copy of application certified by the authorities of the State to which the same has been submitted as well as of the certified

translation thereof. In such a case the applicant has a right to submit to the Commission some additional documentation and the materials required for the examination within three years after the submission of application to the foreign State.

#### **Article 8. Appealing of the Commission Decisions**

A decision of the Commission on the issuance, denial, nullification or revocation of a Certificate may be appealed to the court.

### **CHAPTER III. ASSESSMENT OF THE SELECTION ACHIEVEMENT PROTECTION REQUIREMENTS**

#### **Article 9. Preliminary Examination of Application**

1. Within a month after the submission of an application a preliminary examination thereof shall be held. During the examination there shall be determined whether the requirements to the application and attached documents in terms of submission deadline and so forth are met.
2. In the course of a preliminary examination the applicant has a right to make corrections to the application or add some more materials.
3. If within the determined period of time the application is not corrected or complemented with additional materials as required by the Commission the application will not be considered and a written notice will be sent to the applicant.
4. The applicant has a right to appeal the negative response of the examination to an Expert Panel of the Commission within three months after the receipt of notice.
5. In case of the affirmative decision the applicant shall be noticed in written that his/her application has been approved and an appropriate note shall be advertised to the Commission's official bulletin.

#### **Article 10. Examination for Innovation**

1. Any concerned person has a right, within six months after the publication of information about a selection innovation, to bring claims to the Commission against this fact. The Commission shall promptly notify the applicant about the claims and the applicant, within three months, shall provide to the Commission an evidence against such claims.
2. The Commission, on the basis of available materials, shall make a decision and provide it to the applicant.
3. If the Selection Achievement does not meet the requirement of innovation the decision of the Commission shall be negative.

## **Article 11. Examination for Diversity, Uniformity and Stability**

1. The examination of a Selection Achievement for diversity, uniformity and stability shall be conducted in the form and within the term determined by the Commission.
2. The applicant shall provide to the Commission, at a domiciliary and within a term specified thereby, required quantity of seeds, seedlings or breeding material.
3. The Commission, on the basis of an appropriate contract, may use the results of the examinations held by other organizations or those conducted in cooperation with the Commission as well as the materials provided by the applicant or the results of tests conducted by competent authorities of a foreign State.
4. If the Selection Achievement meets the protection requirements and its title those specified by article 6 of the present law the Commission will make a decision on the issuance of a Certificate and the applicant shall develop a description of the Selection Achievement.

## **Article 12. Fee**

A fee for services related to the issuance of the Selection Achievement Certificate shall be paid to the Commission. The compiling of a list of activities for which the fee is to be paid, the determination of an amount and a term of payment, or of the conditions of reduction or repayment thereof, or the exemption therefrom shall be the responsibility of the Ministry of Agriculture and Food.

## **Article 13. Publishing**

The Commission shall publish an official bulletin in which an information about the submission of applications for Certificates, the issuance thereof or the Selection Achievement Utilization Licenses shall be advertised.

## **CHAPTER IV. SELECTION ACHIEVEMENT PROTECTION**

### **Article 14. Registration of Selection Achievements**

In the State Register of Selection Achievements the following records shall be made:

- a) Genus and species of plants or animals;
- b) Title of a Selection Achievement;
- c) Date and number of registration;
- d) Name and address of a Certificate holder;
- e) Name and address of an author of the Selection Achievement;
- f) Copy of a Selection Achievement Certificate transfer act, name and address of the transferee;
- g) Information about the licenses;
- h) Information about the expiration or termination of the Certificate (with the indication of reasons thereof).

## **Article 15. Certificate**

1. An Exclusive Right Certificate for the use of a Selection Achievement shall be given to the persons whose rights are recognized on the basis of rules determined by the present law. The Certificate shall include the names of all authors.
2. In case of loss or ruin of the Certificate a duplicate may be issued.

## **Article 16. Right of Certificate Holders**

1. The exclusive right of a Certificate holder consists in the obligation of any person willing to use the holder's Selection Achievement to take a license (permission) therefrom for the following purposes:
  - a) Production and reproduction;
  - b) Preparation for sowing and further reproduction;
  - c) Keeping;
  - d) Sale and other forms of disposing of;
  - e) Export;
  - f) Import.
2. The right of a Certificate holder shall be extended to those plants and production breeds as well which are bred from the seeds or breeding materials, available on market, without the permission of the Certificate holder.
3. The permission of the Certificate holder is required in order to perform activities specified in paragraph 1 of this article in relation to the seeds or breeding materials which contain the characteristics under the protection of Certificate, or if for the purpose of seeds production a repeated use of varieties or breeds under protection is needed.
4. The right of a Certificate holder to the forms of the Selection Achievement use specified in paragraph 1 shall be deemed proved if:
  - a) the existing varieties or breeds have inherited the basic characteristics of the Selection Achievement protected by the Certificate or have preserved the basic signs of genotype or combination of genotypes;
  - b) the existing varieties or breeds basically correspond to the genotype or combinations of genotypes protected by the Certificate, irrespective of changes conditioned by individual selection, induced mutant's selection or the use of back-cross or other methods of generic engineering.

## **Article 17. Activities Not To Be Considered the Violation of a Certificate Holder's Right**

The following activities shall not be considered the violation of a Certificate holder's exclusive right:

- a) Activities aimed at the personal or selective use of the Selection Achievement;
- b) Use of a Selection Achievement as a raw material for getting new varieties or breeds; conduct in relation to such varieties or breeds those activities which are specified in article 16 (1), except for cases envisaged by article 16 (2);
- c) Use in the territory of a given farm and within the period of two years of a locally bred vegetative material as a seed (the determination of the list of genera and species of plants is the responsibility of the Ministry of Agriculture and Food);
- d) Multiplication of production breeds in the farms of their origin;
- e) Any operations on seeds, vegetative or breeding materials or production breeds made available on market with the consent of the Certificate holder.

### **Article 18. Protection of Selection Achievement before the Receipt of Certificate**

1. From the date of submission of application to the Commission to that of the issuance of Certificate an applicant shall be endowed with a right to protection of his/her Selection Achievement.
2. After the receipt of a Certificate the holder shall have a right to receive compensations from those persons who, within the period of temporary protection, without the consent of the holder, have conducted the activities provided for by article 16 (1).
3. Before the receipt of a Certificate the applicant shall have a right to sell or dispose of seeds or breeding materials for research purposes or transfer thereof to farms for the purpose of creating the stocks of seeds or breeding materials.
4. In case of the violation of above requirements the holder or any representative thereof shall be deprived of the right provided for by paragraph 2 above.

## **CHAPTER V. USE OF SELECTION ACHIEVEMENTS**

### **Article 19. License Agreement**

A Certificate holder (licenser) may transfer to another party (licensee) a right to use a Selection Achievement according to conditions provided for by a License Agreement.

### **Article 20. Rights of the Licensee**

A licensee shall have a right to use a Selection Achievement and conduct activities provided for by article 16 (1) of the present law.

A licensee shall have a right to transfer the license to a third party or issue a sublicense if this is not provided for by the License Agreement.

## **Article 21. Restriction of Rights of the Licensee**

Any License Agreement whose conditions do not comply with the rights provided for by the Certificate shall be invalid.

## **Article 22. License**

1. A Certificate holder shall have a right to publish in the official bulletin of the Commission an announcement that any person willing to use the Selection Achievement may do this after the holder's consent.
2. The Commission shall make a record concerning the license issuance and its cost in the State Register of the Selection Achievements.
3. As of January 1 of the year next to the announcement of the license issuance the cost of Certificate validity shall be reduced by 50%.
4. At the request of a Certificate holder and with the consent of all licensees the Commission shall enter into the State Register Selection Achievements a record of the termination of license.

## **Article 23. Issuing of License without the Consent of a Certificate Holder**

1. At the completion of three years after the issuance of Certificate the Commission may issue a license without the consent of the Certificate holder, provided:
  - a) the holder does not produce Selection Achievements, or produce in less quantities than required, or produce outside Georgia;
  - b) the holder does not provide a reasonable grounds for his denial to issue a license;
  - c) the person who has applied for a license has proved that he is financially and otherwise able and competent to use the license effectively.
2. In case of issuing license without the consent of a Certificate holder the Commission shall be responsible for the determination of fee to be paid by a licensee the Certificate holder.
3. A licensee shall have the right to carry out the activities provided for by article 16 (1) of the present law, provided that the Certificate holder retain all rights to the Selection Achievement contemplated by the Certificate.
4. A Certificate holder is obliged to transfer to the licensee seeds or breeding materials.
5. The Commission may issue a license without the consent of a Certificate holder for the term of up to four years. This term may be extended if an inspection proves that the conditions on the basis of which the license has been issued are still met. In case of the licensee's failure to meet the license conditions the Commission may terminate the license.

## **CHAPTER VI. COPYRIGHT TO SELECTION ACHIEVEMENTS**

### **Article 24. Author's Rights to a Selection Achievement**

1. An author of a Selection Achievement is an individual who has bred, discovered or developed this Selection Achievement.
2. The author of the Selection Achievement shall have a right to claim that the Certificate holder (employer) pay him/her a fee for the use of Selection Achievement.
3. Any disputes related to the author's rights shall be settled by court.

### **Article 25. Author's Fee**

1. The author of the Selection Achievement shall have a right to receive from the Certificate holder (employer) a fee for the breeding discovering or developing of the Selection Achievement. The amount an payment terms of such a fee shall be agreed by both parties on a contractual basis.
2. If a variety or breed is bred, discovered or developed by several authors, the fee shall be distributed by mutual agreement.
3. The fee shall be paid within six months after the end of each year of the use of Selection Achievement or within the term determined by the contractual agreement.
4. In case of the failure to pay the fee in timely manner the Certificate holder (employer) shall pay to the author a fine for each day of delay and at the rate determined by the contractual agreement.

## **CHAPTER VII. GOVERNMENT'S REGULATING THE CREATION AND USE OF SELECTION VARIETIES AND BREEDS**

### **Article 26. Encouragement of Selection Achievements by the Government**

1. In order to encourage the creation and use of Selection Achievements a program funding of the selection operations shall be provided.
2. The program shall provide for the encouragement of popular and scientific selection activities through special prizes; the creation of productive and high-quality varieties and breeds; the development of selection technologies; the introduction of national and international experience; the financial and organizational support of selection activities.

### **Article 27. Preserving Selection Achievements**

1. A Certificate holder shall have the obligation to preserve for the variety or breed (hybrid) the characteristics given in a variety/breed description and fixed in the State Register of Selection Achievements for the whole effective term of the Certificate.

2. A Certificate holder shall have the obligation to provide to the Commission at its request the specimen of seeds, seedlings or breeding materials as well as the space for the performance of examination.

#### **Article 28. Recognizing a Certificate Invalid**

1. Any person has a right to claim that the Commission recognize a Certificate invalid.
2. The Commission shall consider such claims and make appropriate decisions within six months. Such a term may be extended if additional examination is necessary.
3. The Commission may consider that a Certificate has been issued without sufficient grounds if:
  - a) at the time of issuing of the Certificate no sufficient evidence was provided to prove the uniformity and stability of Selection Achievement;
  - b) at the time of issuing of the Certificate no requirements for the innovation and diversity were met;
  - g) the person in question was not eligible to receive the Certificate.

#### **Article 29. Revocation of Certificate**

The Commission may revoke the Certificate if:

- a) the Selection Achievement no longer meets the requirements of uniformity and stability;
- b) the Certificate holder fails to provide to the Commission, within the period of 12 months, the specimen of seeds, seedlings, breeding materials, necessary documents and information required for the examination of Selection Achievement, or to provide favorable conditions for the examination;
- c) the Certificate holder fails to pay fee in timely manner.
- d) the title of Selection Achievement has been canceled and no new title has been provided.

#### **Article 30. Violations of Other Rights of Certificate Holders or Selectioners**

1. In case of violation of any other right of a Certificate holder the person or entity in question shall take responsibility if the latter:
  - a) gives to a produced and a for-sale seed, seedling or breeding material a title different from that of the already registered Selection Achievement;

- b) gives to a produced and a for-sale seed, seedling or breeding material a title of the already registered Selection Achievement, while the produced and sold seed, seedling or breeding material does not correspond to those of the Selection Achievement;
  - c) gives to a produced and a for-sale seed, seedling or breeding material a title slightly different from that of the already registered Selection Achievement that may cause a confusion;
  - d) has entered or has had someone else enter into the State Register or reporting documents a false record;
  - e) has made or has had someone else make a forged and a false documents;
  - f) submits documents containing proved data on the Selection Achievement;
  - g) has sold the seeds, seedlings or breeding materials without Certificate.
2. Any person who has committed any action specified in paragraph 1 of this article shall be liable to sanctions provided for by law.

### **Article 31. Settlement of Disputes**

All disputes related to the present law shall be settled by courts.

## **CHAPTER VIII. INTERNATIONAL COOPERATION**

### **Article 32. Right to Submit Application to Any Other State**

Any holder of a Certificate has the right to submit a Selection Achievement protection application to a competent authority of any other State.

### **Article 33. Rights of Foreign Individuals and Entities**

The individuals and entities of foreign States shall have the same rights as the individuals and entities of Georgia do.

### **Article 34. International Covenants**

In case of disagreement between the provisions of the present law and the international covenants to which Georgia is a party the provisions of the international covenants shall apply.

Eduard Shevardnadze  
President of Georgia

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