

SWEDEN

**Plant Breeders' Rights Law\***

Consolidated Text of the Law of 27 May 1971,  
as Amended by the Law of June 30, 1971, the Law of 24 August 1977,  
the Law of 10 November 1982, and the Law of 9 May 1985

**General Provisions**

**Article 1**

This Law shall apply to plant varieties which belong to the plant genera or plant species indicated in the annex to this Law.

**Article 2**

A breeder who has created a plant variety in the country, or his successor in title, may obtain through registration the exclusive right to commercially exploit the variety in accordance with this Law (plant breeder's right).

A breeder who is a Swedish national or is domiciled in Sweden, or such a breeder's successor in title, may acquire a plant breeder's right also in respect of a variety which has been created abroad.

A plant breeder's right may also be acquired

1. by a breeder who has created a plant variety in a foreign State which is bound by the Convention of December 2, 1961, for the Protection of New Varieties of Plants, or by such a breeder's successor in title.

2. by a breeder who is a national of or is domiciled in such a State and who has created a plant variety abroad in a case other than the one mentioned under 1, or by such a breeder's successor in title.

A plant breeder's right may be acquired in still another case, if the Government considers that it is of significant interest for Swedish food supply or for Swedish plant growing.

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### **Article 3**

A plant variety shall be registered only if

1. by at least one important characteristic it clearly differs from any other variety that has become known before the date of the application for registration,
2. it is sufficiently uniform (homogeneous), having regard to the particular features of its sexual or vegetative propagation,
3. after propagation made in accordance with the method of propagation indicated by the breeder, it is consistent (stable) in its essential characteristics.

A plant variety shall be deemed known if material thereof has been commercially offered for sale or otherwise made available, or if it has been the subject of an entry in an official list of varieties or of an application therefor, if it appears in a reference collection accessible to the public, if it has been the subject of a precise description in written matter accessible to the public, or if it has otherwise come to the knowledge of the public.

Registration may not take place if plant material of the variety has been commercially put into the trade with the consent of the breeder or of his successor in title,

1. in the country before the date of the application for registration,
2. abroad more than six years before the date of the application, this applying to vine, fruit trees, forest trees, ornamental trees and their rootstocks,
3. abroad more than four years before the date of the application, this applying to any plant other than those referred to in 2 above.

### **Article 4**

A plant breeder's right shall imply that, subject to the exceptions provided for below, any person other than the owner of the plant breeder's right (variety owner) may not commercially exploit the plant variety without the latter's permission

1. by producing or importing into the country plant material of the variety with the aim of offering the material for sale for propagation purposes or of otherwise making it available for such purposes,
2. by offering for sale or otherwise making plant material of the variety available for propagation purposes,
3. in the case where the repeated use of plant material of the variety is necessary for the production of plant material of another variety, by using plant material of the variety for such production and with the aim of offering the material so produced for sale for propagation purposes or of otherwise making it available for such purposes.

With respect to ornamental plants, the plant breeder's right shall also imply that any person other than the variety owner may not use without the latter's permission plants or parts of plants as propagating material for the commercial production of cut flowers or other material intended for ornamentation.

### **Article 5**

Where a plant variety has been the subject of an application for protection in a State which is bound by the Convention of December 2, 1961, for the Protection of New Varieties of Plants and where registration of the plant variety is applied for in the country within twelve months from the date on which the application was made in the foreign State (priority period), the application filed in the country shall be deemed, for the purposes of Article 3, first paragraph, subparagraph 1, and third paragraph, to have been made on the same date as the application in the foreign State, if the applicant so requests. Such priority may also be enjoyed on the basis of an application for protection relating to another foreign State, if an equivalent priority is granted on the basis of a Swedish application for the protection of a plant variety in the State in which the earlier application has been made and if the legislation applicable there is in the main in agreement with the Convention. Where an application for protection has been made in several foreign States, the twelve months period shall be computed from the date on which the first application for protection was made.

The Government or an authority designated by the Government shall prescribe the manner in which a request for priority shall be made and the documents which shall be produced in support of the request. Where these provisions are not complied with, priority may not be enjoyed.

## **The Application for Registration and the Processing Thereof**

### **Article 6**

Registration under this Law shall be made in the Plant Variety Register which shall be kept by the National Plant Variety Board.

Upon registration of a plant variety, the denomination of the variety shall also be registered.

### **Article 7**

The applications for the registration of a plant variety shall be made in writing to the Plant Variety Board.

The application shall contain a precise description of the variety, with a special statement of the characteristic or characteristics distinguishing the variety from other varieties and with a proposal for a denomination of the variety. The name of the breeder shall be stated in the application. If registration is applied for by a person other than the breeder, the applicant shall furnish proof of his right to the variety.

There shall be attached to the application document a declaration signed by the applicant on his honor and conscience that, to his knowledge, the variety has not become known before the date on which the application is made, or is deemed pursuant to the provisions of Article 3 to have been made, in such a manner as to preclude registration pursuant to the provisions of Article 3, third paragraph.

In connection with the application, the applicant shall make plant material of the variety available in a sufficient quantity for testing the variety.

The applicant shall pay a prescribed application fee.

### **Article 8**

The variety denomination shall enable the plant variety to be distinguished from other varieties.

The variety denomination may not be approved if

1. it consists of figures only, unless it is established practice to designate the variety in question in that manner,
2. it is manifestly liable to mislead the public,
3. it conflicts with a law or other statutory instrument or with public order or if it is liable to give offense,
4. it may be confused with a variety denomination which has been entered or proposed for entry in the Plant Variety Register or another official list of varieties for a variety of the same or of a closely related plant species, or which is used for propagating material of such a variety,
5. it may be confused with a trademark, name, trade name or other designation for which a person other than the applicant enjoys protection and which would have constituted an obstacle to the registration of the variety denomination as a trademark for material of a plant variety or for goods of a similar kind,
6. it may be confused with such a trademark for material of a plant variety or for goods of a similar kind, for which the applicant enjoys protection.

The Government may provide, subject to reciprocity, that a variety denomination which is the subject of a registration or of an application for registration in a foreign State shall be registered in Sweden, notwithstanding the provisions of the first and second paragraphs, if there is no particularly important reason against it.

### **Article 9**

A request may not be made in one and the same application for the registration of two or more plant varieties.

#### **Article 10**

An applicant who is not domiciled in Sweden shall have an authorized representative resident in this country who shall be empowered to represent him in all matters concerning the application.

#### **Article 11**

If the applicant has not complied with the provisions made for the application, or if there is any other obstacle to the approval of the application, the applicant shall be requested to express his views or to make a rectification within a certain period.

If the applicant fails within the prescribed period to submit a statement or to take action to remedy a defect to which his attention has been drawn, the application shall be considered null and void. A notice thereof shall be included in the notification to the applicant.

#### **Article 12**

If there is still an obstacle to the approval of the application after a statement has been submitted and if the applicant has had an opportunity to express his views regarding the obstacle, the application shall be rejected if there are no grounds for sending a further notification to the applicant.

#### **Article 13**

Where anyone claims before the Plant Variety Board to have a better right to the plant variety than the applicant and where the matter is unclear, the Board may request him to introduce an action within a certain period, failing which his claim will be disregarded when further consideration is given to the application.

Where a dispute concerning a better right to the variety is pending before a court of law, the application for registration may be declared suspended until a final judgment is pronounced in the case.

#### **Article 14**

Where anyone proves to the Plant Variety Board that he has a better right to the plant variety than the applicant, the Board shall transfer the application to him if he so requests. The transferee shall pay a new application fee.

Where a transfer is requested, the application may not be declared null and void, rejected or approved until the request has been finally examined.

#### **Article 15**

Where the application documents are complete and there is no obstacle to registration, the Plant Variety Board shall publish the application in order to give the public an opportunity to submit objections to the application.

Objections shall be made in writing to the Plant Variety Board within a period determined by the Board.

#### **Article 16**

The Plant Variety Board shall make arrangements for trials with material of the plant variety, unless this is considered unnecessary for special reasons. A prescribed fee shall be paid for the trials.

#### **Article 17**

After the period for lodging objections to the application has expired and the trials with material of the plant variety have been concluded, the application shall be taken up for further consideration. The provisions of Articles 11 to 14 shall be applicable to such consideration.

The applicant shall be given an opportunity to express his views on any objection made and any trial carried out.

#### **Article 18**

An action against a final decision of the Plant Variety Board on a matter concerning an application for the registration of a plant variety may be brought by the applicant if the decision has gone against him. A decision whereby the application is approved, despite the fact that an objection has been duly lodged, may be the subject of an action by the person who has made the objection. Where the opponent withdraws his action, it may nevertheless be heard if special reasons exist.

A decision whereby a request for transfer under Article 14 is approved may be the subject of an action by the applicant. Any person who has lodged a request for transfer may bring an action against a decision whereby the request is rejected.

#### **Article 19**

An action under Article 18 shall be brought before the Board of Agriculture by lodging an appeal within two months from the date of the decision. The person who wishes to appeal shall pay a prescribed appeal fee within the same period, failing which the appeal will not be heard.

A decision of the Board of Agriculture may be the subject of an action by the applicant if the decision has gone against him. The action shall be brought before the Supreme Administrative Court by lodging an appeal within two months from the date of the decision.

### **Article 20**

Where an application for registration of a plant variety is approved and the decision to that effect gains force of law, the variety shall be entered in the Plant Variety Register and the registration shall be published.

A decision to declare null and void or to reject an application that has been published in accordance with Article 13 shall be published after the decision has gained force of law.

## **Period of Validity of Plant Breeder's Right**

### **Article 21**

A plant breeder's right shall be valid as from the date when the application for registration is approved and may be maintained in force for 20 years computed from the beginning of the year following that in which the decision as to registration gained force of law

## **Use of Variety Denomination**

### **Article 22**

Any person who commercially offers for sale or otherwise makes available propagating material of a plant variety for which registration has been made shall in so doing use the denomination registered for the variety, even after the protection period for the variety has expired or the plant breeder's right has otherwise lapsed.

A registered denomination of a variety or a denomination that may be confused therewith may not be used for another variety of the same or of a closely related plant species or for material of such a variety so long as the registration of the denomination exists.

## **Annual Fees**

### **Article 23**

Unless otherwise provided by virtue of Article 49, a prescribed annual fee shall be paid for a plant breeder's right for every calendar year, computed from the year following that in which the application for registration is approved.

The annual fee shall become due on the first day of the calendar year to which it relates. The annual fee for a year that has begun before the plant variety was registered, or within two months thereafter, shall only become due, however, two months after the date of the registration. The annual fee may not be paid before registration has been made, or earlier than six months before the calendar year to which the fee relates.

The annual fee may, together with any prescribed increase, be paid within six months after the due date.

### **Postchecking**

### **Article 24**

In order to check the stability of a registered plant variety, the Plant Variety Board may request the variety owner to make propagating material of the variety and the necessary documents and information available to the Board.

### **Licenses, Transfer, etc.**

### **Article 25**

Where a variety owner has granted to another person the right to commercially exploit the registered plant variety (license), the licensee may transfer his right only if an agreement has been reached to that effect.

Where a license forms an integral part of a business, it may be transferred, however, in connection with the transfer of the business or of a part thereof, unless otherwise agreed. In such a case, the transferor shall continue to be responsible for the execution of the license agreement.

### **Article 26**

Where a plant breeder's right has passed to another person or where a license has been granted or transferred, a notice of such fact shall be entered in the Plant Variety Register on request and on payment of a prescribed fee. Where it is shown that a license that has been noted in the Register has ceased to be valid, the notice shall be cancelled.

The provisions of the first paragraph shall be applicable *mutatis mutandis* to compulsory licenses matters.

In a court case or a matter concerning a plant breeder's right, the variety owner shall be deemed to be the person who has last been entered in the Plant Variety Register in that capacity.

### **Article 27**

If the market is not supplied with propagating material of a registered plant variety on reasonable terms and to the extent required with regard to the national economy or otherwise from the point of view of public interest, any person who wishes to commercially exploit the variety in the country may obtain a compulsory license for that purpose, if there is no acceptable reason for the failure to supply. A compulsory license shall also include the right to receive from the variety owner propagating material of the variety to the extent that is adequate.

### **Article 28**

The compulsory license may be issued only to a person who may be assumed to fulfill the conditions for exploiting the plant variety in an acceptable manner and in conformity with the license.

The compulsory license shall not constitute an obstacle to the exploitation of the variety by the variety owner himself or to the granting of a license by him. The compulsory license may only pass to another person together with the business in which it is exploited or in which exploitation was intended to take place.

### **Article 29**

The compulsory license shall be issued by the court, which shall also determine the extent to which the plant variety may be exploited, and specify the royalties and other terms for the license. When a substantial change in circumstances so requires, the court may upon request terminate the license or specify new terms.

## **Termination of a Plant Breeder's Right, etc.**

### **Article 30**

If an annual fee is not paid in accordance with Article 23, the plant breeder's right shall become forfeit from the beginning of the year for which the fee has not been paid.

### **Article 31**

If a plant variety has been registered contrary to Article 1, 2 or 3, first paragraph, subparagraph 1, or third paragraph, and if the obstacle still exists, the court shall, on the basis of an action on that account, annul the registration. Registration may not be annulled, however, on the ground that the person in respect of whom registration was made was entitled to a certain share only in the plant breeder's right.

An action based on the fact that a plant variety has been registered in the name of a person who is not the one entitled thereto pursuant to Article 2 may be brought only by the person who claims to be entitled to the variety. The action shall be introduced within one year after the plaintiff has come to the knowledge of the registration and the other circumstances on which the action is based. If the variety owner acted in good faith when the variety was registered or when the plant breeder's right passed to him, the action may not be introduced later than three years after the registration.

In other cases, the action may be brought by anyone who sustains damage as a result of the registration and, if public interest so requires, by an authority designated by the Government.

### **Article 32**

Where a plant variety has been registered in the name of a person who is not the one entitled thereto pursuant to Article 2, the court shall, on the basis of an action brought by the person entitled, transfer the registration to him. The action shall be introduced within the period stated in Article 31, second paragraph.

### **Article 33**

Where a variety owner has failed to comply with a request by the Plant Variety Board pursuant to Article 24 and where such failure constitutes an obstacle to a reliable postchecking of the plant variety, the Board shall cancel the variety from the Register.

Where it is found that a registered plant variety has not retained the characteristic or characteristics which, at the time of registration, distinguished the variety from other varieties, the Plant Variety Board shall cancel the variety from the Register.

### **Article 34**

Where the variety owner declares in writing to the Plant Variety Board that he renounces the plant breeder's right, the Board shall cancel the plant variety from the Register.

Where a plant breeder's right is the subject of distraint or where a dispute concerning transfer of registration is pending before the court, the variety may not be cancelled from the

Register at the request of the variety owner so long as the distraint exists or the dispute has not been finally settled.

### **Article 35**

Where a variety denomination has been registered contrary to this Law and if there is still a ground precluding registration, the Plant Variety Board shall register a new denomination for the plant variety. The same shall apply where the registered variety denomination has manifestly become liable to mislead the public or has become contrary to public order or liable to give offense.

In a case referred to in the first paragraph, the variety owner shall be given an opportunity to propose a new denomination.

The registered denomination of a variety for which the protection period has expired or the plant breeder's right has otherwise lapsed may, at the request of the variety owner or if there are other reasons, be cancelled from the Plant Variety Register, after the Plant Variety Board has given consideration to the matter, where the denomination is no longer used.

## **Liability and Obligation to Provide Compensation, etc.**

### **Article 36**

If anyone intentionally infringes a plant breeder's right, he shall be liable to a fine or to imprisonment for a term not exceeding six months.

Public prosecution for the offense referred to in the first paragraph may be instituted only if the aggrieved party reports the offense for prosecution and if prosecution is required for special reasons of public interest.

### **Article 37**

Any person who intentionally or through negligence infringes a plant breeder's right shall pay reasonable compensation for the exploitation of the plant variety, and compensation for the further damage caused by the infringement. If the negligence is slight, the compensation may be adjusted.

If anyone infringes a plant breeder's right without intention or negligence, he shall pay compensation for the exploitation of the variety, if and so far as this is reasonable.

An action for compensation for infringement of a plant breeder's right shall be introduced within five years from the date upon which the damage occurred, failing which the right to compensation shall be statute-barred.

### **Article 38**

At the request of the person whose plant breeder's right has been infringed, the court may order, in accordance with what is reasonable for preventing the continuation of the infringement, that plant material with regard to which infringement exists be delivered against payment to the person whose right has been infringed, or be destroyed. This shall not apply to a person who has acquired the material or a special right thereto in good faith and who has not himself infringed the plant breeder's right.

The material referred to in the first paragraph may be confiscated if it may reasonably be assumed that an offense referred to in Article 36 has been committed. The general provisions of the law with respect to confiscation in criminal cases shall apply in these circumstances.

Notwithstanding the provisions of the first paragraph, the court may upon request order that the owner of material referred to in the said paragraph shall have the right of disposal over the material in return for reasonable compensation and on other reasonable terms.

### **Article 39**

Where anyone commercially exploits a plant variety which is the subject of an application for registration, the provisions of this Law regarding infringement of a plant breeder's right shall apply *mutatis mutandis* if the application leads to registration. A penalty may not be imposed, however, and compensation for damage caused by exploitation made before the application was published in accordance with Article 15 may be determined only in accordance with Article 37, second paragraph.

The provisions of Article 37, third paragraph, shall not apply if the action for compensation is introduced not later than one year after the date of registration of the plant breeder's right.

### **Article 40**

Where the registration of a plant variety has been annulled by a judgment that has gained force of law, no penalty, compensation or safety measure may be imposed in accordance with Articles 36 to 39.

Where an action is brought for infringement of a plant breeder's right and where the defendant claims that the registration should be annulled, the court shall upon his request adjourn the case until the question of annulment of the registration has been finally examined. Where no action has been introduced for this purpose, the court shall, at the same time as it declares the case adjourned, prescribe a certain period for the defendant to introduce the action.

### **Article 41**

Any person who intentionally or through negligence infringes Article 22 shall be liable to a fine. He shall also provide compensation for the damage caused. If the negligence is slight, no penalty shall be imposed. The compensation may in such a case be adjusted.

## **Rules Concerning Legal Procedure**

### **Article 42**

A variety owner or any person who may exploit a plant variety by virtue of a license, may bring an action for a declaratory judgment on whether he enjoys protection by virtue of the registration, against another person, in the case where there is any uncertainty as to the situation and where this is detrimental to him.

Under the same conditions, any person who carries on or who intends to carry on activities may bring an action against a variety owner for a declaratory judgment on whether there is any obstacle to the activity by virtue of the registration.

Where it is claimed in a case referred to in the first paragraph that the registration should be annulled, the provisions of Article 40, second paragraph, shall apply *mutatis mutandis*.

### **Article 43**

Any person who wishes to introduce an action for annulment of the registration of a plant variety, for transfer of the registration or for the issue of a compulsory license shall notify the Plant Variety Board accordingly and inform everyone who according to the Plant Variety Register holds a license to exploit the variety. Where a licensee wishes to introduce an action for infringement of the plant breeder's right or for a declaratory judgment under Article 42, first paragraph, he shall inform the variety owner accordingly.

The obligation to give information in accordance with the first paragraph shall be deemed to have been fulfilled when information in a prepaid registered letter has been mailed to the address entered in the Plant Variety Register.

Where it is not shown, when the action is introduced, that a notification has been made or information given in accordance with the provisions of the first paragraph, the plaintiff shall be given time for this. If he fails to act within this time, his action may not be taken up for consideration.

### **Article 44**

If, under the provisions of the Judicial Procedure Code, there is no competent court of law for an action concerning a better right to a plant variety, for the annulment of the registration of a variety or for the transfer of such registration, for a compulsory license or for a declaratory judgment under Article 42, the action shall be brought before the Stockholm District Court.

### **Article 45**

A copy of the judgment or final decision in a case referred to in Articles 13, 29, 31, 32, 36 to 39 or 42 shall be sent to the Plant Variety Board.

## **Special Provisions**

### **Article 46**

A variety owner who is not domiciled in Sweden shall have an authorized representative resident in this country and empowered to accept service on his behalf of writs, summonses and other documents in cases and matters concerning the plant breeder's right, with the exception of summonses in criminal cases and of subpoenas. The representative shall be notified to the Plant Variety Register and shall be noted therein.

Where a variety owner has not notified a representative in accordance with the first paragraph, service may be made instead by mailing him the document that is to be served in a prepaid letter to his address entered in the Plant Variety Register. If the complete address is not entered in the Register, the document may be served by holding it available at the premises of the Plant Variety Board and by announcing this fact and publishing its main contents in a publication prescribed by the Government. The document shall be deemed to have been served when the above-mentioned has been fulfilled.

### **Article 47**

The Government may provide, subject to reciprocity, that Article 10 or 46 shall not apply in respect of an applicant or a variety owner domiciled in a specified foreign State or having an authorized representative resident in that State who has been notified to the Plant Variety Board and has the authority referred to in the said articles.

### **Article 48**

An action against a final decision of the Plant Variety Board brought in accordance with this Law, other than an action referred to in Article 18, shall be brought before the Board of Agriculture by lodging an appeal within two months from the date of the decision. The person who wishes to appeal shall within the same period pay a prescribed appeal fee, failing which the appeal will not be taken up for consideration.

An action against a decision of the Board of Agriculture shall be brought before the Supreme Administrative Court by lodging an appeal within two months from the date of the decision.

### **Article 49**

Fees in accordance with this Law shall be determined by the Government or, with respect to fees for trials under Article 16, by an authority designated by the Government. In determining the annual fees, the Government may provide that no fee shall be payable for one or more of the first years.

### **Article 50**

The Government may provide that the examination of a plant variety for which registration is applied for may be carried out by an authority in another State or by an international institution, and that an applicant for the registration of a variety for which he has previously sought registration in another State shall report information given to him by the authority in that State concerning the examination of the registration requirements.

\* Swedish title (of the Law of May 27, 1971): Växtförädlarrättslag

Consolidated text prepared by the Office of the Union from the texts published in the *Svensk författningssamling*:

Law of May 27, 1971: SFS 1971 : 392 of June 23, 1971

Law of June 30, 1971: SFS 1971 : 628 of July 27, 1971

Law of August 24, 1977: SFS 1977 : 703 of September 13, 1977

Law of November 10, 1982: SFS 1982 : 991 of December 7, 1982

Law of May 9, 1985: SFS 1985 : 262 of May 22, 1985