Development of the plant variety protection system in the Republic of Moldova

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Development of the plant variety protection system

- 1993 – establishment of the State Agency on Industrial Property Protection of the Republic of Moldova (AGEPI)
- Provisional Regulations on the Protection of Industrial Property, adopted by the Government Decision of the Republic of Moldova No. 456 of 26.06.1993
- Protection of plant varieties in the Republic of Moldova by patents for invention
- 1994-1998 – 48 plant varieties protected by patents for invention
Development of the *sui generis* plant variety protection system

- 1996 – Law No. 915 on the Protection of Plant Varieties
  - Protection for plant varieties is afforded by means of a plant variety patent issued by AGEPI, provided that the variety complies with the criteria of patentability, which are in compliance with the principles of the UPOV Convention

- 1997 – the Parliament of the Republic of Moldova adopted the decision of accession of the Republic of Moldova to the UPOV Convention

Elaboration of the normative base

1998 — List of 15 plant genera and species for which protection is afforded according to the Law No. 915 (Government Decision of the Republic of Moldova No. 1176)

2000 – Extension of the list to 24 plant genera and species for which protection is afforded according to Law No. 915 (Government Decision of the Republic of Moldova No. 1174)

2007 — affording the protection under Law No. 915 to all plant genera and species (Government Decision of the Republic of Moldova No. 773)
Improvement of the examination procedure

- 1998-2000 – elaboration of the normative base and procedural documents – forms, technical questionnaire, information materials on the basis of UPOV norms and recommendations

- Development of the plant variety database and of the program on the procedure for examination and publication of variety patent applications

- Training and upgrading of the specialists in the field of examination of patent applications, including attendance of the UPOV Distance Learning Course DL-205, as well as exchange of experience with the specialists from Romania, Byelorussia, Great Britain, Community Plant Variety Office
Improvement of the legislative base (1)

- 2005-2008 – elaboration of the new draft law on the protection of plant varieties in the framework of the Cooperation Agreement between the Republic of Moldova and the European Union, with a view to:
  - harmonizing the national plant variety protection system with the European legislation
  - providing for an effective system on the enforcement of breeder’s rights
Improvement of the legislative base (2)

- 06.06.2008 – Law No. 39-XVI entered into force
Law No. 39-XVI on the Protection of Plant Varieties – main principles (1)

In the elaboration of the law there were taken into consideration:

- The 1991 Act of UPOV Convention

- The Council Regulations (EC) No. 2100/94 of 27.07.1994 on Community Plant Variety Rights with further amendments

- The European Parliament Directive No. 98/44.EC of 06.07.1998 on the Legal Protection of Biotechnological Inventions


- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 15.04.1994
Law No. 39-XVI on the Protection of Plant Varieties – main principles (2)

- Protection is afforded to plant varieties of all genera and species by issuance of the variety patent by AGEPI, provided that the variety complies with the criteria of patentability.

- The variety complies with the criteria of patentability where it is distinct, uniform, stable, new and it is designated by a denomination in compliance with the requirements of the law.
Right to a plant variety patent

- The right to a patent shall belong to the breeder or to his successor in title.
- The right to a patent for a variety bred or discovered and developed by the breeder in the exercise of his duties or labour contract shall belong to the employer, at the same time:
  - the breeder shall have the right to a remuneration set out by the contract between them;
  - the breeder shall enjoy the preferential right to a nonexclusive license to use the variety.
Rights granted by a patent

- The provisions concerning the:
  - rights granted by a variety patent,
  - exceptions to,
  - exhaustions,
  - nullity and cancellation of rights

are identical to the corresponding provisions of the UPOV Convention
Rights of the Patent Owner

- The patent owner shall have the exclusive right in the patent and in the protected variety, which comprises the right to prohibit third parties from performing without the authorization of the breeder the following acts in relation to the material of the variety or the harvested material of the variety:
  - a) production or reproduction (for the purposes of multiplication);
  - b) conditioning for the purpose of propagation;
  - c) offering for sale;
  - d) selling or other kinds of marketing;
  - e) exporting;
  - f) importing;
  - g) storing for any of the purposes mentioned in items (a) to (f).
Limitation of Rights of the Patent Owner

- The patent owner right shall not extend to acts done for:
  - a) private, non-commercial purposes;
  - b) scientific research and experiments;
  - c) the breeding or discovery and development of other varieties
Recent developments

- On 30 July 2015 the Parliament adopted the Law nr. 162 for the modification of the Law nr. 39 on the protection of plant varieties, which entered into force on 28.08.2015
- One of the modifications refers to the optional exception to the breeder's right under the UPOV Convention
Article 16. Limitation of patent owner’s rights

- “(2) Farmers may use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the propagating material of a protected variety, except hybrids, synthetic varieties, varieties of trees, shrubs and vines.

- (3) The patent owner shall be entitled to receive equitable remuneration for use under paragraph (2) of the harvested product of a protected variety, which can be established by contract, but which must be less than the price charged for the licensed production of the propagating material for the same variety.

- (4) Farmers shall, at the request of the patent owner, furnish information about the quantity of the harvested material used in accordance with paragraph 2”.
Term of protection

- The term of the plant variety patent shall be:
  - up to 25 years or,
  for grapevines, potatoes and trees
  – up to 30 years from the date of grant of the patent

- At the request of the patent owner the term of the patent may be extended for a period of 5 years
Procedure for examination of the application

- AGEPI receives patent applications, undertakes the formal and the preliminary examination, publishes the applications, undertakes the substantive examination.
- The State Commission for Variety Testing carries out the technical examination of the varieties as to their compliance with the conditions of distinctness, uniformity and stability (DUS).
- According to the testing results it is drawn up the technical examination report on the basis of which AGEPI takes the decision to reject the application or to grant and issue a patent.
Grant of the patent and maintenance in force thereof

- If no appeal is lodged against the decision to grant a patent, AGEPI shall grant a plant variety patent.
- For maintenance in force of the patent, the patent owner shall, throughout the life of the patent, pay the annual fees and maintain the characteristics of the variety defined in the official description of the variety.
- Otherwise the patent owner shall forfeit the patent.
Enforcement of patent owner’s rights

The Law stipulates provisions concerning:

- actions for infringement of rights
- measures for bringing an action for infringement of rights
- measures for securing proofs
- measures for securing an action for infringement of rights
- remedial measures
- alternative measures
- compensation for damages
**Actions for infringement of rights**

- Infringement of rights - any act of production, selling, exporting, importing, storing of the material of the patented variety without the permission of the patent owner, as well the following acts:
  - incorrect use of the variety denomination or failure to indicate the denomination;
  - The use of the denomination of a protected variety or of a denomination so similar as to be easily confused with the denomination of a protected variety.
- A person who has committed the mentioned infringements shall be obliged to compensate for damages sustained by the patent owner. The amount of compensation may not be less than the benefit obtained by the infringer.
Right to bring an action for infringement of rights

- Patent owner.
- A licensee, if no excluded by the patent owner
- Any licensee shall have the right to participate in infringement proceedings brought by the patent owner in a court in order to obtain compensation for damages sustained.
Measures to secure evidence prior to the filing of an action for infringement of rights

- Any person who has provided evidence to confirm the infringement of his rights may request a court or other competent authority, prior to the filing of an action against illegal acts, to take temporary measures to secure relevant evidence.

- A court may pronounce judgment on the adoption of measures to secure evidence on condition a guarantee of equivalent value is provided, necessary to compensate any damages caused to the defendant where no infringement is confirmed.
Measures to secure evidence

- The court shall have the right to:
  - request a detailed description of the variety or its materials, the rights to which are assumed to have been infringed, either with or without specimens;
  - seize the disputed products;
  - seize materials and equipment used in the production process and/or distribution of the disputed products, and also documents relating thereto.
Securing evidence in urgent cases

- Measures to secure evidence may be prescribed without the knowledge of the defendant where a delay could cause irreparable harm to the patent owner or where there is a risk of the evidence being destroyed.
- The affected parties shall be promptly informed of the court’s decision.
Invalidity of measures to secure evidence

- Measures to secure evidence shall be deemed worthless or invalid:
  - where within 20 working days the plaintiff fails to bring an action for infringement of rights in court;
  - as a result of any actions or inaction of the plaintiff which involved the causing of damage;
  - upon the establishment of the absence of infringement or the risk of infringement of rights in a plant variety.

- Where damage caused by measures to secure evidence is recognized as worthless or invalid, the plaintiff shall pay the defendant appropriate compensation.
Measures to secure an action for infringement of rights

- A court may, upon the application of the right owner, take measures, such as:
  - taking a decision on the temporary prohibition of any act which is an infringement of the patent owner’s rights, or permitting the continuation of such acts on certain conditions;
  - the sequestration of materials suspected in the infringement of a patent in order to prevent their use in commercial trade;
  - the sequestration of any of the infringer’s property, including freezing of bank accounts, requiring bank, financial or commercial documentation to be provided, etc.
Remedial measures

- Having established that an infringement of rights has taken place, a court may, upon application, order measures such as:
  - temporary withdrawal from trade;
  - final and complete withdrawal from trade;
  - destruction.

- The measures specified above shall be implemented at the expense of the defendant, except when there are important reasons preventing this.
Alternative measures

- The court may, upon the request of the infringer, prescribe financial compensation to the plaintiff, where the infringer acted unintentionally or carelessly, where adoption of such measures would cause him disproportionate detriment, and where financial compensation for the plaintiff is reasonable.
Compensation for damages

- Upon the request, the infringer shall compensate the patent owner for damage caused by the infringement of his rights.
- In determining the amount of compensation:
  - all existing circumstances must be taken into account, such as negative economic consequences, for the patent owner, income obtained illegally by the defendant, and also other aspects, such as moral damage sustained by the patent owner;
  - as an alternative, a single lump sum may be determined, calculated based upon, at the very least, regular payments or remuneration which would be due to the patent owner.
Statistics

- 1994-1998 – 48 varieties protected by patents for invention
- 1996-2015/07 – filed 383 variety patent applications, of which 349 from national applicants
- 2000-2015/07 – granted 192 variety patents (175 – for national owners)

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<thead>
<tr>
<th>Applicants</th>
<th>Filed applications</th>
<th>Granted patents</th>
<th>Valid patents</th>
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<td>Foreign applicants</td>
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The leaders according to the number of filed applications and the number of issued patents are the Research Institute of Field Crops “Selectia”, Balti, the Institute of Plant Genetics and Physiology of the Academy of Sciences of Moldova (IPGF ASM), Fhytotechnical Institute “Porumbeni”, the Institute of Horticulture and Food Technology (IHFT)

<table>
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<th>Applicants</th>
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## Statistics

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<th>Group</th>
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<td>V.</td>
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<td>VII.</td>
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<td>VIII.</td>
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Dissemination of information (1)

- Publication of information materials, booklets, pamphlets “How to obtain a variety patent in the Republic of Moldova?”

- Holding of seminars and lectures for breeders, scientists, interested persons

- With the UPOV support there were organized 2 national seminars dedicated to the plant variety protection system under the UPOV Convention (1999, 2004), with the participation of Mr. R. Jordens, Vice Secretary General of UPOV
Dissemination of information (2)

- 2007 – round table dedicated to the best European plant variety protection practices, as well as a practical course for experts, breeders, interested persons, dedicated to the European practice on carrying out the examination of applications, DUS tests, organized with the support of the TACIS Project, with the participation of the European expert

- 2008 – national seminar dedicated to the plant variety protection system and the 10th anniversary of accession of the Republic of Moldova to the UPOV Convention
Dissemination of information (3)

- June 2009 - Regional Training on Plant Variety Protection under the UPOV Convention for Certain Countries in the Eurasian Region, organized by the UPOV in cooperation with the AGEPI and the State Commission for Plant Variety Testing and with the financial assistance of the USPTO and the Ministry of Agriculture, Forestry and Fisheries of Japan.

- November 2011 - practical course for experts, breeders, interested persons, dedicated to the European practice on carrying out the examination of applications for plant variety patents, and DUS tests, with the support of TWINNING Project and the participation of the EU Short-Term Local Experts.

- June 2012 - Technical Group on Automation and Software of UPOV (Technical Working Party on Automation and Computer Programs (TWC/30), Thirtieth Session) and its preparatory meeting, organized by AGEPI and State Commission for Variety Testing, in collaboration with the Office of UPOV.
Pre-diagnosis of intellectual property

- The pre-diagnosis service includes:
  - inventory of the IPO portfolio of the enterprise;
  - evaluation of the innovative potential of the enterprise;
  - general assessment of the technological level;
  - verification of management methods of the IPO portfolio;
  - assessment of the efficiency of the enterprise by using means of distinguishing its goods and services.

- AGEPI has carried out pre-diagnosis at the Fhytotechnical Institute “Porumbeni” and the Institute of Horticulture and Food Technology
Problems detected

- Financial problems
- Lack of efficient management of intellectual property
- Lack of an institutional strategy on the development, protection and use, including the marketing of plant varieties
- Lack of experience in using legal instruments of enforcement of plant variety rights
Main recommendations

- Establishment of a service for the management and accounting of activities on development, legal protection and use of plant varieties;
- Review of budgetary policy to identify and include means with special destination – acquisition and maintenance in force of the legal protection of plant varieties in the country and abroad;
- Cooperation with the National Agency for Food Safety to monitor and prevent unauthorized use of varieties;
- Development of marketing strategies to promote plant varieties and launch them on the market;
- Supervision and implementation of legal instruments for the enforcement of rights in case of their infringement.
Questions?

Informations:
http://agepi.gov.md/md/
http://agepi.gov.md/md/plants/

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