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PLANT VARIETY PROTECTION AND ITS IMPLEMENTATION IN POLAND

INTRODUCTION

Poland, as a member of the International Union for the Protection of New Varieties of Plants (UPOV) since 1989 follows the UPOV Conventions (1978, 1991) in the area of plant variety protection.

The plant varieties are protected in Poland on the basis of the Polish Seed Industry Law (September 2000 r.). The varieties of all species and taxa are eligible for PBR (Plant Breeder's Rights) protection and inclusion into the Register of Cultivars (Catalogue of Varieties).

There is no automatic link of the variety protection with its registration in Catalogue of Varieties:

- a variety can be protected and not listed in the Catalogue,
- and conversely, it can be listed and not be protected,
- for most ornamental species the importance of their protection has continuously becoming more important.

Administration of the variety protection system in Poland has been entrusted to COBORU (The Research Centre for Cultivar Testing) which is at the same time responsible for administering the Catalogue of Varieties approved for trade in the country. COBORU located at Słupia Wielka near Poznań acts as the national Plant Breeder's Rights Office and is responsible for:

- administering the variety protection system,
- technical work (examination of varieties).

The Office is represented by the Director who is appointed by the Minister. Decisions of the Office are taken by the Director.

Protection is granted to:

- the breeder of a new variety,
- the successor in title of the breeder.

CONDITIONS FOR THE GRANTING OF A BREEDER RIGHT

The Breeder's right shall be granted when the variety is:

- new,
- distinct,
- uniform,
- stable.

The condition of novelty is essentially a legal one (legal assessment). The condition of distinctness, uniformity and stability are basically technical (technical assessment), (Articles 7–9, UPOV Convention).

Other conditions:

- variety denomination in accordance with the provisions of Article 20 of UPOV Convention, 1991,
- the applicant complies with the formalities provided for by the Law, e.g.,
- application has been filed,
- the required fees paid.

THE SCOPE OF THE RIGHTS

General remarks:

- an authorization of the right holder is required in order to carry out certain acts of the variety exploitation,
- the holder may exercise his right in two principal ways:
 - either by retaining the exclusive right to exploit the variety
 - or by granting licences.

Acts of the variety exploitation requiring the prior authorization of the holder:

- production or reproduction (multiplication),
- conditioning for the purpose of propagation,
- offering for sale,
- selling or other marketing,
- exporting and importing,
- stocking for any of the purposes mentioned above.

Harvested material intended to be used as seed which has been obtained through unauthorized use of propagating material of the protected variety require the authorization of the holder, unless the holder has had reasonable opportunity to exercise his right in relation to the said propagating material.

Any person having paid fees to the breeder for exploitation of its protected variety can multiply and commercialize it according to the conditions planned in a contract: it is said that the right (mentioned in the agreement) has been exhausted.

EXAMINATION PROCEDURES

COBORU acting as a National Plant Breeder's Rights Office is responsible for:

- administration of the variety protection system in Poland,
- maintenance of Register of Applications and Register of Breeders Rights. The Registers are open to public inspection,
- publishing Polish Gazette on plant breeder's rights and Register of Cultivars, quarterly,
- administration of fees (application fee, examination fee, annual renewal fees, etc.) in amounts and under conditions specified in the Regulation,
- examination as to formal requirements, filing date,
- examination of the application as to substance,
- technical examination of a variety.

Technical examination of the variety is performed in the Office in order to:

- to verify that the variety belongs to the stated botanical taxon,
- to establish that the variety is distinct, uniform and stable (Articles 7 to 9 of the UPOV Convention),
- to prepare the official description of a variety,

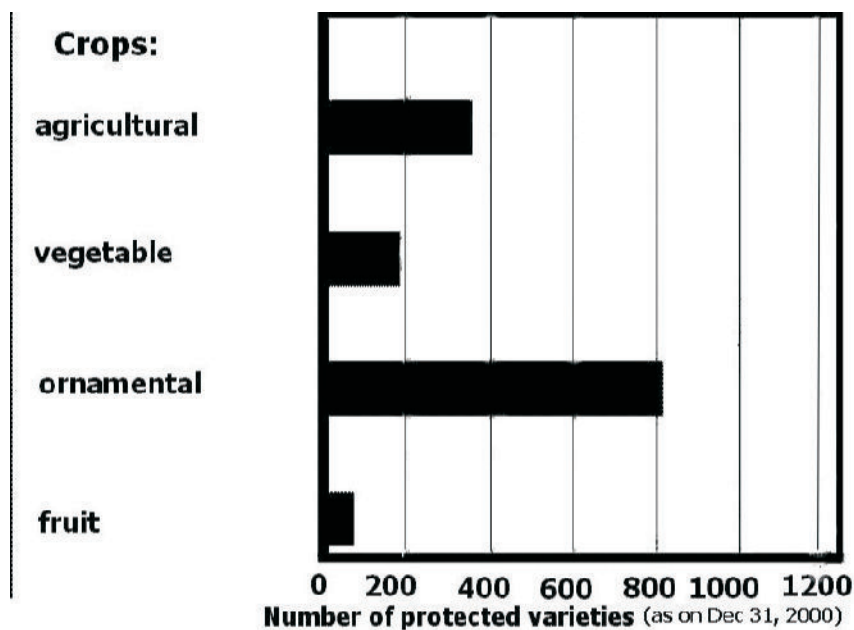


Fig. 1 Plant Breeders' Rights Register

Table 1

List of major agricultural crops to which „farmers privilege” is refers in Poland (Seed Law 2000)

No	Cultivated Plant (taxon)	Latin name
Cereals		
1	Barley	<i>Hordeum vulgare</i> L.
2	Oats	<i>Avena sativa</i> L.
3	Wheat	<i>Triticum aestivum</i> L. emend. Fiori et Paol.
4	Triticale	<i>x Triticosecale</i> Wittm.
5	Rye (with exception for green crop)	<i>Secale cereale</i> L.
Root, tuber and turnip crops		
6	Potato	<i>Solanum tuberosum</i> L. sensu lato
Oil crops		
7	Oilseed Rape	<i>Brassica napus</i> L. emend. Metzg. ssp. <i>napus</i>
8	Linseed with the exclusion of flax	<i>Linum usitatissimum</i> L. convar. <i>Mediterraneum</i> (Vavilov ex Ell.) Kulpa et Danert
Pulses		
9	Yellow Lupin	<i>Lupinus luteus</i> L.
10	Field Bean	<i>Vicia faba</i> L. var. <i>minor</i> Harz
11	Pea	<i>Pisum sativum</i> L. ssp. <i>sativum</i>
12	Common Vetch	<i>Vicia sativa</i> L. ssp. <i>sativa</i>
Herbage legumes		
13	Lucerne	<i>Medicago sativa</i> L. ssp. <i>sativa</i>
14	Hybrid Lucerne	<i>Medicago sativa</i> L. ssp. <i>falcata</i> x ssp. <i>sativa</i>

The testing system for assessing Distinctness, Uniformity and Stability (referred to as DUS – testing) is performed as follows:

- the DUS – testing is mostly conducted within the COBORU testing network and it comprises:
 - comparative growing tests, involving:
 - i) sampling,
 - ii) observations and measurements or both,
 - iii) and processing and evaluation of the results obtained.
- UPOV Test Guidelines are used for each taxon providing a common base for DUS assessment in member States and for establishing cultivar descriptions in standardized form
 - as a result, the UPOV Reports on Technical Examination are prepared,
 - live collections of the Reference collections for each genus ar species in which varieties are tested and maintained.

The cultivars of some taxa are tested in co-operation with the Research Institute of Pomology and Floriculture (ISiK – Skierniewice),

and in co-operation with Czech, Hungarian, Latvian and Slovak testing Authorities (agricultural and vegetable cultivars) in order to:

- reduce the overall time,
- reduce of expense and expertise involved in carrying out the DUS tests,
- or to reduce the costs of maintenance of reference collections.

Poland has bilateral agreements for DUS testing of: Buckwheat, Rye, Scorpion Weed, Triticale, White Mustard, Brussels Sprouts, Sprouting Broccoli and incidentally other taxa. The Polish DUS Testing specialists participate in work of two groups of RING TEST.