



Law No. 99-42 of May 10, 1999, on Seeds, Seedlings and New Plant Varieties¹

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On behalf of the people,

The Chamber of Deputies having adopted it,

The President of the Republic enacts the law whose content is as follows:

Title I **General Provisions and Definitions**

1. This Law shall apply to all the seeds, seedlings and new plant varieties used in plant production.

It shall establish the procedures for their production, propagation, import, marketing and protection of the rights relating thereto.

2. For the purposes of this Law, the following definitions shall apply:

(1) seeds and seedlings: all seeds, plants, parts of plants such as cuttings, tubers, bulbs and rootstocks.

(2) nurseries: the plantations and fields devoted to the production of seeds and seedlings of fruit trees, ornamental trees, forest trees, vegetables and the like.

- (3) propagation plots: fields devoted to the production of selected seeds.
- (4) new plant varieties: new plant varieties, created or discovered and resulting from a particular genetic process or a particular composition of the hereditary processes, different from any other plant group and constituting an independent entity in terms of its capacity for propagation.
- (5) variety: the plant group belonging to a plant variety unit of the lowest known rank.
- (6) breeder: any natural or legal person who breeds, discovers or creates such a plant variety, or his beneficiary.
- (7) breeder's right: the right of the breeder alone to exercise the rights provided for by this Law in relation to new plant varieties.
- (8) new plant variety certificate: the certificate issued by the competent authority to the owner of the new variety.
- (9) competent authority: the authorities attached to the Ministry of Agriculture responsible for the protection of plants and new plant varieties.

Title II **Seeds and Seedlings**

Chapter One *Classification of Seeds and Seedlings and Registration of Their Varieties*

3. The seeds and seedlings of all the species and varieties of agricultural plants shall be classified in the following categories:

- basic seeds and seedlings;
- certified seeds and seedlings;
- standard seeds and seedlings.

The requirements for the classification of seeds and seedlings in the above categories shall be fixed by decree.

4. An official register shall be set up in which plant varieties are entered when they are distinct, stable and uniform, and of important agricultural value.

The competent authority shall keep the official register.

An entry in the register shall be made following an application submitted by the person concerned to the competent authority, accompanied by a detailed description of the variety and a sample of its seeds or seedlings.

The form of the register and registration procedures shall be fixed by decree.



5. The official register shall include details of the main morphological and physiological features, as well as the other characteristics distinguishing between the different plant varieties registered.

However, the basic elements of hybrid plants and compound varieties shall remain secret if their breeders so wish.

6. A technical commission for seeds, seedlings and plant varieties shall be set up.

This commission shall be responsible for the following duties:

— proposing the measures capable of developing and guiding the seeds, seedlings and plant varieties sector;

— issuing an opinion on applications for the registration of plant varieties and breeds in the official register.

— issuing an opinion on the applications for the grant of ownership of new plant varieties.

The membership and operating procedures of the above commission shall be fixed by decree.

Chapter II

Production of Seeds and Seedlings

7. Any person may produce seeds and seedlings and propagate them, either directly or through third parties, in accordance with specifications approved by decree.

8. In order to guarantee the quality of seeds and seedlings and protect them against the diseases and insects which could spread in their environment, each producer or propagator shall have an enclosed wood park and set up a protection zone around the nursery or field devoted to the production and propagation of seeds and seedlings, the breadth of which shall be fixed by decree of the minister in charge of agriculture.

The nurseries and production and propagation fields shall also be subject to supervision by the competent authority to ensure that they are unharmed by quarantine organisms and all other plant diseases, and to guarantee the purity and originality of the variety.

In addition, the minister in charge of agriculture may, by decree and whenever needs dictate, prescribe special methods for the production of certain seeds and seedlings, according to their nature and the degree to which they are affected by their production environment.

Chapter III

Marketing of Seeds and Seedlings

9. Only seeds and seedlings of the plant varieties entered in the official register in one of the categories referred to in Article 3 of this Law may be marketed.



The use of any indication or sign or any other signal likely to lead to confusion in the mind of the purchaser as regards the name of the seeds and seedlings or their purity, origin, age or phytosanitary condition, is prohibited.

10. The minister in charge of agriculture may, in exceptional circumstances, authorize the marketing of seeds and seedlings that satisfy particular requirements laid down on the advice of the Technical Commission for Seeds, Seedlings and New Plant Varieties.

The minister in charge of agriculture may also authorize the marketing of recently-bred seeds and seedlings, provided that they are on a waiting list held by the competent authority.

Inclusion in this list shall be subject to requirements fixed by decree.

11. Subject to the legal provisions in force, seeds and seedlings shall be imported and marketed in accordance with specifications approved by decree.

12. The seeds and seedlings marketed shall meet the general standards of storage, packaging and labelling, which shall be fixed by decree.

Chapter IV Inspection of Seeds and Seedlings

13. Seeds and seedlings produced shall be subject to inspection by the competent authority in order to guarantee their quality and phytosanitary condition.

For this purpose and in addition to the measures provided for by the laws relating to the protection of plants, the competent authority shall conduct inspections of nurseries and fields and shall carry out laboratory tests to ensure compliance with the standards for each category of seeds and seedlings.

The standards and the inspection procedures shall be fixed by decree.

14. The officials of the competent authority appointed by the minister in charge of agriculture and sworn in shall have the right to visit all nurseries, propagation plots and premises used for packaging, storage and marketing in order to carry out the necessary checks.

However, access to the dwellings used exclusively for residence purposes shall be regulated in accordance with the procedures provided for by the Code of Penal Procedure in relation to searches.



Title III New Plant Varieties

Chapter One Protection of New Plant Varieties

15. The competent authority shall provide protection for plant varieties where the breeders or their beneficiaries so request.

The protection of a new variety may be requested by any person of Tunisian nationality or by any foreigner subject to application of the principle of reciprocity.

An application for protection shall be made by the breeder, his agent or his successor in title, directly to the competent authority or by means of a registered letter with acknowledgement of receipt.

16. The application for protection shall be accompanied by a detailed description of the new plant variety, the denomination proposed for it, a sample of it for conservation purposes and whatever data may enlighten the competent authority with a view to the taking of protection measures.

17. In the event of agreement to the application, the applicant shall receive a new plant variety certificate.

18. The competent authority shall keep a national register of new plant varieties consisting of two parts:

- a first part in which applications for new plant variety certificates are entered;
- a second part in which new plant variety certificates are entered.

The lists of plants eligible for protection, the data and the method of entering applications and certificates in the above register shall be fixed by decree of the minister in charge of agriculture.

19. New plant varieties, applications relating thereto and the resulting new plant variety certificates issued shall be published in the Official Gazette of the Republic of Tunisia.

Chapter II Rights Arising From the New Plant Variety Application and Certificate

20. The application for a new plant variety certificate, filed with the competent authority in accordance with the provisions of this Law, shall confer the following rights:

- priority to obtain the breeder's certificate for the variety where two or more applications are filed therefor;
- transfer of the application to third parties;
- temporary protection of the variety against counterfeiting;



— use of the variety which is the subject of the application.

21. The new plant variety certificate shall confer on its owner the right to produce the variety obtained and to dispose of it.

22. The breeder's rights shall cover:

- the protected plant variety;
- any variety which does not clearly differ from the protected variety;
- any variety essentially derived from the protected variety, if the latter is not itself essentially derived mainly from another variety;
- any variety whose production requires the repeated use of the protected variety.

23. The breeder's rights shall not extend to:

- acts performed in a particular context for experimental purposes which are not commercial in nature;
- operations performed in connection with education or scientific research which relate to the creation of new varieties.

24. Contrary to the provisions of Articles 21 and 22 of this Law, certain new plant varieties which are extremely important to human or animal life may be the subject of compulsory authorization of use.

A declaration of compulsory authorization of use shall be made by order of the minister in charge of agriculture.

From the date of the publication of the order in question, the competent authority may assign the use of the new plant variety referred to in the certificate to specialized public institutions or to bodies or private individuals who submit sufficient technical and professional guarantees in the relevant area.

The owner of the breeder's rights shall be awarded equitable remuneration in return for the use of the variety concerned or transfer of the proceeds received from private persons for the same purpose.

In both cases the amounts shall be fixed on an amicable basis. In the event of disagreement, the competent judicial authority shall determine the amounts in question.

25. The breeder's rights shall remain valid for 20 years for ordinary new varieties and 25 years for new varieties whose production elements require longer periods to be developed.

These periods shall begin on the date of grant of the new plant variety certificate.

26. Ownership of a new plant variety created by a public researcher in the performance of his duties shall belong to the State represented by the public institution to which he is answerable. The name of the official who created the new plant variety shall be placed on the variety certificate.



The public institution shall have sole entitlement to enter an application for inclusion of the new plant variety in the national register provided for in Article 18 of this Law.

27. In the case of joint ownership of the new plant variety certificate, the provisions of the code of property rights on ownership in common shall apply.

Chapter III Transfer and Loss of Rights

28. The rights relating to an application for a new plant variety certificate or to such a certificate itself may be transferred in full or in part.

The transfer of rights in full or in part shall be established in writing on pain of absolute invalidity.

29. The rights shall be transferred with the exception of the right to the amounts arising from compulsory authorization of use under Article 24 of this Law.

30. Rights may be transferred to third parties upon expiry of a period of three years from the date of grant of the new plant variety certificate, or a period of four years from the filing date of the application for such a certificate, where the owner of the certificate or his applicant or successor in title does not do the following without good reason:

- begin to use the plant variety to which the certificate refers or undertake genuine and specific preparations to do so;
- market the plant variety;
- abandon the use of the plant variety for more than three years.

31. The transfer of the rights in the manner referred to in Article 30 of this Law shall be to any person who satisfies the requirements of Article 15 of this Law, on a request made to the competent authority in which the applicant proves that he has been unable to obtain the authorization of use from the owner of the certificate or from his applicant, and that he is able to use the plant variety concerned in a genuine and specific manner.

32. The State shall, at any time and in the general interest, have the authorization to use the plant variety which is the subject of the certificate or the application, either directly or on its behalf.

The resulting indemnities shall be calculated in accordance with the provisions of Article 24 of this Law.

33. The owner of a new plant variety certificate shall be deprived of his right in the following cases:

- (1) where the competent authority becomes aware that the protected variety no longer satisfies the requirements on the basis of which the new plant variety certificate was issued;



(2) where the owner of the certificate is unable at any time to prove the plant components used for the production or propagation of the plant variety which are such as to reproduce the protected variety with its morphological and physiological features that have been specified in the new plant variety certificate;

(3) where the owner of the certificate does not allow the inspections made by the competent authority to verify the precautions taken to safeguard the variety;

(4) where the annual fee provided for in Article 47 of this Law has not been paid within the prescribed time limits.

34. Deprivation of a right shall be declared by order of the minister in charge of agriculture, after the person concerned has been heard and on a reasoned opinion given by the Technical Commission for Seeds, Seedlings and New Plant Varieties. The order in question shall be published in the Official Gazette of the Republic of Tunisia.

The owner of the new plant variety certificate may lodge an appeal against the deprivation order within one month of the date of its publication.

For this purpose, he shall support his appeal, where appropriate, with the results of an expert examination carried out by a prescribed laboratory within one month of the appeal being lodged.

Where the expert examination finds in favor of the appellant, the latter shall recover his rights in the plant variety which is the subject of the deprivation order.

A list of the prescribed laboratories shall be drawn up by order of the minister in charge of agriculture.

35. The owner of the new plant variety certificate may at any time waive all or part of his rights resulting from the plant variety which is the subject of the new plant variety certificate.

The waiver shall take the form of a written declaration to be forwarded to the competent authority.

However, a waiver relating to a certificate in which there are third-party rights shall be accepted only if it is accepted by the owners of the rights in question.

Chapter IV *Protection of Breeders' Rights*

36. Any infringement of the rights of the owner of a new plant variety certificate shall be characterized as counterfeiting subject to penalties in accordance with the legislation in force and, in addition, shall incur the civil liability of the person committing the infringement.

However, an infringement of this kind may be considered such only if it has been knowingly committed.



Use of a protected variety for the basic variation for breeding a new variety shall likewise not be considered an infringement.

37. The owner of the new plant variety certificate shall take legal action relating to civil liability.

The beneficiary of the compulsory authorization of use and any potential appellant may also take such action where the owner of the certificate does not after having been called upon to do so through a notarial bailiff.

38. Any beneficiary of an authorization to use a plant variety which is the subject of a new plant variety certificate may participate in the liability case brought by the certificate owner in order to win compensation for the harm which he himself has suffered.

39. The applicant or owner of a new plant variety certificate may request the court with territorial jurisdiction to allow him to seize all the items used for reproduction and plant propagation, as well as any other product resulting from the use of those items obtained in defiance of his rights, following submission of a detailed description of the items in question.

The right also relates to the beneficiaries of the right of use and of the compulsory authorization.

The request shall be made following production of a copy of the new plant variety certificate or a copy of the application for the new plant variety certificate or for the transfer of the rights deriving therefrom.

40. Where counterfeiting is established, the court shall order the transfer to the owner of the new plant variety certificate of ownership of the plants or parts thereof, or of the reproduction or propagation material obtained without consideration for the latter's rights and, where appropriate, the confiscation of the instruments used for the purpose.

Title IV **Reporting of Crimes and Penalties**

Chapter One *Reporting*

41. Crimes relating to seeds, seedlings and new plant varieties shall be reported in the form of official reports drawn up by judicial police officers as provided in Article 10 of the Code of Penal Procedure, by sworn officials of the competent authority and by economic inspection officials.

42. All official reports drawn up and signed by the officials referred to in Article 41 of this Law, shall be sent to the minister in charge of agriculture who shall forward them to the Public Prosecutor's office.

Chapter II Penalties

43. Notwithstanding the penalties provided for in the Decree on Manufacturing and Commercial Trademarks of June 3, 1889, the Decree on the Suppression of Fraud in Merchandise Trading and Falsifications of Foodstuffs or Agricultural and Natural Products of October 10, 1919, and Law No. 91-44 of July 1, 1991, on the Organization of the Distribution Trade as amended and completed by Law No. 94-38 of February 24, 1994, and Law No. 92-117 of December 7, 1992, on Consumer Protection, the following shall be punished:

— any person contravening the provisions of Articles 8, 12 and 13 of this Law, with a fine ranging from 1,000 to 10,000 dinars;

— any person contravening the provisions of Articles 7, 9 and 14 of this Law, with a prison sentence ranging from one month to one year and a fine of between 1,000 and 20,000 dinars, or with one of the two punishments only.

44. Notwithstanding the penalties provided for by the Decree of June 3, 1889, any deliberate infringement of the rights of an applicant or of an owner of a new plant variety, as well as any claim of the status of applicant for or owner of a new plant variety certificate shall be punished with a fine of between 5,000 to 50,000 dinars.

45. In the case of a repeat offense, the penalties provided for in Articles 43 and 44 of this Law shall be doubled.

46. In addition to the penalties provided for in Articles 43, 44 and 45 of this Law, the minister in charge of agriculture may order the seizure of the seeds and seedlings of the plant varieties which are the subject of an infringement under the terms of this Law, destroy them, declassify them or temporarily or permanently withdraw their approval.

Title V Miscellaneous Provisions

47. The registration of varieties, seeds and seedlings, and the approval of their production or propagation together with the entry of applications and new plant variety certificates in the relevant registers shall be subject to payment of a fee, the amount and procedures for collection and use of which shall be fixed by decree.

New plant variety certificates shall in addition, following their registration, be subject to payment of an annual fee, the amount and procedures for collection and use of which shall be fixed by decree.

48. Contracts for the transfer and use of new plant variety certificates shall be registered for a fixed charge.

49. Contrary to the provisions of Article 2(4) of this Law and for a period of one year from the date of entry into force of the Law, protection may be requested for plant varieties proposed for marketing, or already marketed or distributed inside or outside the country.



Where protection is granted, the period which has elapsed between the time when the plant variety concerned is first proposed for marketing, marketed or distributed and the time when the application for protection is made shall be deducted from the period of protection.

50. Law No. 76-113 of November 25, 1976, on the Organization, Monitoring of Production and Marketing of Seeds and Seedlings is hereby repealed.

This Law shall be published in the Official Gazette of the Republic of Tunisia and enforced as State law.

Tunis, May 10, 1999.
Zine El Abidine Ben Ali

Note: Translation by the International Bureau of WIPO.

¹ Preparatory work: Discussion and adoption by the Chamber of Deputies at its session of April 27, 1999.