

COLOMBIA

Decree No. 533 of 8 March 1994

Introducing Regulations to the Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties*

as Amended by Decree No. 2468 of 4 November 1994

CHAPTER I

SCOPE

Article 1

The scope of this Decree shall extend to all cultivated varieties of botanical genera and species, provided that the cultivation, possession or use thereof is not prohibited on grounds of human, animal or plant health.

This Decree shall not apply to wild species, that is, those individual plant species that have not been planted or improved by man. Such species shall be subject to the provisions of paragraph 21 of Article 5 of Law No. 99 of 1993.

CHAPTER II

COMPETENT NATIONAL AUTHORITY

Article 2

The Colombian Institute for Agriculture and Livestock (ICA) shall be the competent national authority for the application of the provisions on plant variety protection.

Article 3

For the purposes of this Decree, the functions of the ICA shall be the following:

- (a) Conduct of tests to determine novelty, distinctness, uniformity and stability.

* Spanish Titles: Decreto No. 533 de 1994 (marzo 8) por el cual se reglamenta el régimen común de protección de derechos de los obtentores de variedades vegetales - Decreto No. 2468 de 1994 (noviembre 4) por el cual se modifica parcialmente el artículo Décimo Tercero del Decreto 533 del 8 de marzo de 1994

Such tests may be carried out by public or private entities or both, according to guidelines issued by the Subregional Committee for the Protection of Plant Varieties, established pursuant to Article 37 of Decision 345. The said entities shall have been previously authorized by the Ministry of Agriculture.

- (b) Grant of breeders' certificates.
- (c) Creation and upkeep of the National Register of Protected Plant Varieties.
- (d) Setting and collection, in accordance with the Law, of fees for services rendered by it, subject to the administrative procedure for the grant of breeders' certificates, the deposit of live samples, field and laboratory trials and other fees arising from the protection of varieties.
- (e) Organization and maintenance of deposits of live material or, failing that, recognition of the maintenance and deposit of such material in another member country or in a country that grants reciprocal treatment and has internationally recognized legislation on the protection of the rights of breeders of new plant varieties.
- (f) Participation in national and international gatherings and events, without prejudice to powers conferred on other public bodies, but without contracting international obligations except with express authorization.
- (g) Publication of the Protected Plant Varieties Gazette, which shall give information on the filing of applications, including the identification of applicants, the varieties filed for protection, the denominations given them, the acceptance or rejection of applications, the grant of breeders' certificates, declarations of lapse or invalidation of breeders' certificates and all legal acts subject to registration.
- (h) Notification of the grant of breeders' certificates to the Board of the Cartagena Agreement within a period not exceeding forty-eight (48) hours following the date of publication, in the Protected Plant Varieties Gazette, of the decision granting the breeders' certificate.
- (i) Revocation of the breeder's certificate where any of the events provided for in Article 35 of Decision 345 of 1993 occurs.
- (j) Introduction of such tests and field and laboratory trials as it considers appropriate for the verification of compliance with the conditions laid down in Article 7 of Decision 345 of 1993.
- (k) Introduction of procedures for the approval of technical examinations conducted abroad to test the requirements of distinctness, uniformity and stability.
- (l) Such other powers as are conferred on it by Decision 345 of 1993.

CHAPTER III

RECOGNITION AND REGISTRATION OF BREEDER'S RIGHT

Article 4

A breeder's certificate shall be granted to the person, whether natural person or legal entity, who has created a plant variety, provided that the variety meets the conditions laid down in Article 4 of Decision 345 of 1993.

Article 5

The ICA shall issue a technical report on novelty, distinctness, uniformity and stability. If the report is favorable and the application complies with the other requirements, the breeder's certificate shall be granted and registration with the corresponding denomination shall be ordered.

Article 6

The National Register of Protected Plant Varieties is hereby established.

The Register shall contain a phenotypical description of the protected variety, the number of the breeder's certificate, the denomination of the variety, the particulars of the breeder and of his representative if any, the identity of the owner of the protection right where not the same person as the breeder, and any other legal act affecting the breeder's rights.

Article 7

The term of protection shall be 20 years in the case of vines, forest trees and fruit trees, including the rootstocks thereof, and 15 years for all other species, both terms being counted from the date of grant.

CHAPTER IV

RIGHTS AND OBLIGATIONS OF THE BREEDER

Article 8

The breeder of a variety entered in the National Register of Protected Plant Varieties shall have the right to prohibit third parties from engaging without his consent in the acts specified in Article 24 of Decision 345 of 1993 in relation to protected varieties and varieties essentially derived from the protected variety, except where the said variety is itself an essentially derived variety.

Article 9

The owner of a variety entered in the National Register of Protected Plant Varieties shall have the obligation, in addition to those contained in Decision 345 of 1993, to maintain and replace, at the request of the ICA, the live sample of the variety throughout the term of the breeder's certificate.

CHAPTER V

FILING OF THE APPLICATION AND ACCEPTANCE OR REJECTION THEREOF

Article 10

The application for the grant of a breeder's certificate shall be filed with the ICA and shall contain the following:

- (a) Name, address and nationality of the applicant and of the breeder when the latter is acting through an agent.
- (b) Common and scientific names of the species.
- (c) Proposed generic denomination.
- (d) Identification of the breeder and place in which the variety was bred, specifying the country of origin.
- (e) Most noteworthy morphological, physiological, health, phenological and physico-chemical aspects and industrial or technological properties such as will permit description of the variety.
- (f) Genetic origin of the variety.
- (g) The mention, where appropriate, of the exercise of the right of priority provided for in Article 18 of Decision 345.
- (h) Geographical origin of the plant material constituting the raw material of the new variety to be protected.
- (i) The application for a breeder's certificate for a variety protected abroad shall specify all the countries in which the said certificate is registered, including the date of such registration.

In order to comply with the requirement specified in subparagraph (c) of this Article, the denomination shall possess all the following characteristics:

1. It shall allow the variety to be identified.
2. It may not be composed solely of figures.

3. It may not mislead or confuse as to the characteristics, value or identity of the variety or as to the identity of the breeder.

Article 11

The ICA shall accept or reject an application within the period specified in Article 6 of the Code of Legal Administration. The acceptance or rejection of the application shall be determined by its compliance with the requirements of form specified in the foregoing Article.

Article 12

The ICA shall pronounce on the conditions specified in Article 7 of Decision 345 within a period of three (3) years for short-cycle varieties and ten (10) years for medium and long-cycle varieties, both periods being calculated from the filing date of the application for protection.

Article 13

The period of protection of breeders' rights shall begin to run on the date on which the decision granting the breeder's certificate comes into effect. That date shall be understood to be the date of grant of the certificate.

In the case of breeders' certificates or titles granted abroad, the ICA shall have a period of 30 calendar days, following the filing date of the application for protection, within which to pronounce thereon.

RESEARCH INCENTIVES

Article 14

The National Government shall specify the manner in which entities under public law may distribute among their breeder employees and assign to research plans, programs and projects such funds as are derived from the exploitation of plant varieties in respect of which they hold breeders' certificates.

The participation of breeder employees in the funds referred to in this Article shall not be wage components and shall in no way be taken into account for the settlement of social benefits or entitlements of any kind deriving from their employment relations.

CHAPTER VI

INFRINGEMENTS

Article 15

In the event of infringement of the rights conferred by a breeder's certificate, those provisions and procedures shall be applied, subject to compatibility with this Decree, that are laid down by the Code of Commerce for infringements of industrial property rights, without prejudice to such criminal actions as may be available.

TRANSITIONAL PROVISION

A variety that is not new on the opening date of the National Register of Protected Plant Varieties, but has been registered prior to the said date in the register of the ICA or a register of cultivars in any of the Member Countries, or again in a register of protected varieties in any country having special legislation on plant variety protection and granting reciprocal treatment to Colombia, shall enjoy protection as provided in this Decree if the application for protection is filed within the year following the opening date of the said Register.

The term of protection may not exceed that which has yet to run before the lapse of the periods specified in Article 7 of this Decree, counted from the date of registration of the variety at the ICA or in the register of another country.

Article 16

This Decree shall enter into force on the publication date thereof.