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PLANT BREEDERS' RIGHTS IN GERMANY AND IN THE EUROPEAN UNION

Protecting plant varieties in Germany: Choice between national or European PBR

Germany is a member of UPOV since 1968. It has been a party to the 1991 Act of the UPOV Convention since July 25, 1998. Germany thus has implemented the UPOV based sui generis plant variety protection system.

Plant breeders' rights (PBR) matters in Germany are regulated in the Plant Variety Protection Act (Sortenschutzgesetz). Applications for German PBR have to be filed with the Federal Plant Variety Office (Bundessortenamt - BSA). BSA performs the technical examination (testing of distinctness, uniformity and stability - DUS), checks the other requirements and grants the PBR title.

Another possibility to get PBR on the German territory is via European PBR. The European PBR system was implemented with Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (CPVR). The European Union is a member of UPOV since 29 July 2005. European PBR is effective in all members of the European Union with a unique title.

Applications for CPVR have to be filed with the Community Plant Variety Office (CPVO) located in Angers, France. The CPVO is an administrative office without own testing facilities. Technical examinations (DUS tests) are performed by entrusted examination offices in the EU member states on behalf of the CPVO. CPVR titles are granted by the CPVO.

According to national and European legislation cumulative protection on national and European level is prohibited. Article 92 of Council Regulation 2100/94 states that a "variety which is the subject matter of a Community plant variety right shall not be the subject of a national plant variety right or any patent for that variety. Any rights granted contrary to the first sentence shall be ineffective". In correspondence to that the German PVP Act excludes PBR if a variety is already a matter of CPVR. If German PBR was granted before granting CPVR the German title becomes ineffective at the time of granting the European title.

Based on Council Regulation 2100/94 enforcement of CPVR follows the same regulations as national PBR. In particular, Article 107 'Penalties for infringement of Community plant variety rights' reads as follows: "Member States shall take all appropriate measures to ensure that the same provisions are made applicable to penalize infringements of Community plant variety rights as apply in the matter of infringements of corresponding national rights."

European PBR is a very effective system which is widely used by plant breeders. With the implementation of CPVR national PBR lost importance in all European member states. The excellence of CPVR presents itself with some figures. The CPVO receives application for about 2700 varieties every year. About 23700 CPVR titles are in force. In Germany, the number of titles in force went down from about 5000 in 1995 to 1000 in 2015. The number of applications decreased to less than 30 per year.

List of References

1. [e-source] –
link: <http://www.upov.int/export/sites/upov/members/en/pdf/pub423.pdf>.
2. Germany. The Plant Variety Protection Law [e-source] –
link: <http://www.upov.org/export/sites/upov/en/publications/npvlaws/germany/germany1997.pdf>.
3. Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L 227 of 01.09.94).
4. CPVO website [e-source] – link: <http://www.cpvo.europa.eu/>.
5. Bundessortenamt website [e-source]. – <http://www.bundessortenamt.de/>.