The protection of plant varieties as an activating element of the European agricultural sector

INTRODUCTION

The European Union appears with the objective of ending the situation of war lived in the previous years. The principal aim of the founding fathers of the EU was to secure peace in all these countries. These original states were Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

The first step to achieve this long-sought peace was the European Coal and Steel Community which intended to unite European countries economically and politically at 1950's. After that in 1957, the Treaty of Rome creates the European Economic Community (EEC), or 'Common Market.

The establishment of the European Union was achieved thanks to the passage of the years, the integration of new member countries and the promulgation of treaties.

Well then, it is within this European Union that the need to protect varieties of plant varieties arises. Specifically in 1994, through the promulgation of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights.

It is important to point out that the enactment of this regulation occurs one year after the complete creation of the Single Market with the four freedoms of: movement of goods, services, people and money.

It is clear, therefore, that the opening up of national markets within the European Union makes necessary the emergence of rules that protect plant varieties, for their subsequent sale and marketing, granting rights and duties to breeders as well as to agents who operates in the market.

However, we cannot forget that in 1961, the International Convention for the Protection of New Varieties of Plants (UPOV) which took place in Paris, established the International Union for the Protection of New Varieties of Plants (UPOV).

In this regard, in the following lines we will try to analyze which are the systems of protection of plant varieties in the EU framework, as well as answer the following questions: when, how and why each protection appears. And what is the relationship between European legislation, and its Romanian counterpart.

PLANT VARIETY PROTECTION SYSTEMS

Currently, there are two legal systems to protect the plant varieties in the European Union: national protection and protection on community level.

In this sense, within the EU we have two spheres of protection. The first one is the protection at Community level, which covers each one of the national legislations of the member states; and the second sphere of protection is the national rules of each member state.

In this line, the already mentioned Council Regulation 2100/1994, is the basic legislation in which the domestic laws had been properly implemented.

We must also mention the fact that before this Council Regulation 2100/94, plant varieties were already protected at national level. These domestic laws were diverse in each State. They had different definitions. Also the breeders' rights and obligations were different in each country and they were creating considering the historical, economic and technological context of the country where they have been approved.

Thus, through the Council Regulation 2100/94 it is possible to harmonize the different national plant variety protection systems.

The main characteristic of the entire plant variety protection system is uniformity, that is to say, all protection systems contain the same definitions, concepts and a minimum of protection, all resulting from the European standard. Subsequently, when national legislators transpose the Community rule to the national level, they have incorporated and developed some points in relation to the Community Regulation, but always in accordance with the basic lines of Council Regulation.

This homogeneity in both protection systems derives from the basis of the Community Regulation, which is the harmonization of the different domestic legislations existing before its appearance. And also the protection to plant varieties in a common area of creation, development, production and marketing of plant varieties such as the EU. Furthermore, this homogeneity is expressly detailed in the Basic Regulation (council Regulation 2100/94) for the protection of plant varieties, in its Article 2.

In this respect, the Community protection system exists in parallel with national protection systems. Of the 27 current EU states, 23 of them have a variety plant protection system in their national legislation, including Romania. Breeders have the possibility to choose between the European protection system which covers the territory of the 27 EU member countries and the national protection system which is limited to the territory of a particular State.

A) The Community Plant Variety Protection System

The Plant Variety Protection System in the Community framework first appeared in 1994 through the promulgation of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights.

This European protection system is administered by the Community Plant Variety Office, located in Angers (France).

The adoption of this law comes with the consensus of the members of the European Council as a result of several factors, among which we can mention the prevailing need to harmonize the different national legislations. Almost all EU Member States had in 1994 and even before a domestic legislation on plant variety protection. These domestic legislation was different in each country and sometimes its application could be contradictory in one country or another. For this reason, the European Union decided to harmonize and standardize all the legislation through a Regulation establishing the basic points of protection.

Moreover, the adoption of this Regulation was in response to technological developments in the agricultural sector. The agro-food industry was experiencing a huge economic and developing boom and with it the protection of new plant varieties. For this reason, on Community level the legislator needs to provide legal cover to the agricultural sector by legislating those aspects related to plant varieties and their protection.

In addition, the plant variety protection could not be included within the rules of Industrial Property regime due to their specific characteristics. Thus a specific regulation for this matter was necessary.

Furthermore, the EU's political and economic context in 1994, when the Single Market had just been adopted a year earlier, encouraged the emergence of a standard to protect those who discover and develop a new plant variety, and therefore they are inevitably within the market.

This need for harmonized protection at Community level is reflected in Council Regulation (EC) No 2100/94 itself, which sets out in its preamble 43 reasons for the promulgation of this law.

On the basis of all the reasons set out in the preamble of the Council Regulation and also in this text, Community legislators reach the correct conclusion that States Members need to have basic legislation to protect plant varieties. So they enact the Council Regulation 2100/1994.

It is necessary to emphasize that an important part of this rule, in particular the substantive aspects of it, they are based on the UPOV Convention (specifically in its last amendment of 1991).

The UPOV Convention came into force on August 10, 1968. Three countries ratified this Convention: United Kingdom, the Netherlands and Germany. This Convention was

really important for the scientific and agricultural sector because it reflects technological developments in plant breeding.

Furthermore, the Convention recognizes the intellectual property rights of plant breeders in their varieties.

Focusing on the community protection system, it is formed by different laws.

On the one hand, the basic law is Council Regulation 2100/1994, which has undergone some modifications in recent years, namely:

- Council Regulation (EC) No 2506/95 of 25 October 1995
- Council Regulation (EC) No 807/2003 of 14 April 2003
- Council Regulation (EC) No 1650/2003 of 18 June 2003
- Council Regulation (EC) No 873/2004 of 29 April 2004
- Council Regulation (EC) No 15/2008 of 20 December 2007.

The said law, which is composed by 118 articles, establishes in it general provisions that the Community System of plant variety protection is the sole and exclusive form of Community industrial property rights for plant varieties. (art. 1, 2 Council Regulation). And also that the application of this rule shall have uniform effect within the territory of the Community.

Furthermore, and as we have point out, this law regulate the basics aspects in relation with the plant variety protection giving the possibility to the Members States to grant national property rights for plant varieties in accordance with the Council Regulation.

The Council Regulation 2100/94 also establishes, within the substantives aspects of protection, the condition governing the grant of Community plant variety rights.

In this connection, the object of this regulation is the community protection of varieties of all botanical genera and species, including, *inter alia*, hybrids between genera or species (art. 5).

Regarding the characteristics that a plant variety must have to be granted, they are established in article 6: Distinctness, Uniformity, Stability, and Novelty.

In addition, the Council Regulation establishes that the right of protection is attributed to the person who bred, or discovered and developed the variety, or his successor in title, both referred to hereinafter as 'the breeder' (art. 11)

Also, this regulation is focused on the effects of this Community protection, which are, among others, the holder's rights (production or reproduction (multiplication); offering for sale; exporting/ importing from the Community...). However, these effects aren't unlimited, but since this Regulation intends to protect plant varieties linked to trade, the effects will not apply when acts relating to varieties are carried out for private purposes, experimental or research.

This is because, among others, one of the objectives of this regulation is to protect the discoverer and developer of new varieties. Thus, of this protection results the fact that the person who creates, discover and develop a new variety without commercial purposes has to be protected.

Moreover, the protection period of a plant variety granted to the holder is limited in time. In general, it shall run until the end of the 25th calendar year or, in the case of varieties of vine and tree species, until the end of the 30th calendar year, following the year of grant (art. 19).

This protection can also be expired when a situation makes the variety right null (art. 20). The Office shall declare the Community plant variety right null and void if it is established that the conditions of distinctness and novelty were not complied with at the time of the Community plant variety right; also if the variety doesn't have the conditions of uniformity and stability when the plant variety right has been essentially based upon information and documents furnished by the applicant. And also, when the right has been granted to a person who is not entitled to it.

In case of failure to comply the formalities the protection will be cancelled.

The Council Regulation also establishes some other points as the transfer of a plant variety right, kinds of exploitation rights and application procedures (arts 22-29).

In addition, the third part of the Regulation focuses on the Community Plant Variety Office explaining its status, formation, functioning staff, decisions.

Furthermore, the Council Regulation regulates, particularly, the different proceedings before the office, as application, examination, decisions and appeals.

An important aspect that also regulates this rule and it is necessary to make reference is the matter referring to the "repercussions on other legislations". As we have said before, this rule arose to harmonize the dispersed national laws in the EU that offered disparate situations regarding the plant variety protection.

With this in mind, the Community legislature focuses on how the application of this regulation may affect the other legislations. For that reason, the Council Regulation determines the prohibition of dual ownership, that is, "*Any 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.*"

Therefore, it is clear that this law avoids the existence of conflicting systems (Community and national). Thus, the plant variety protection in the EU must pass through Community protection. Although, after that this rule qualifies this point, determining that "Claims under Community plant variety rights shall be subject to limitations imposed by the law of the Member States only as expressly referred to" (art. 93).

It is obviously that the Council Regulation opens the possibility for national legislators to develop the rule, in relation with the exercise of certain rights, but in any case, it is the community rule that establishes what these rights are.

Finally, this regulation also regulates the infringements that may be committed against the plant variety protection, the exercise of civil actions and the competent jurisdiction for its resolution.

As we can see, this rule is the basic legislation governing the substantive and formal aspects of Community plant variety protection and it also constitutes the framework for harmonizing all national legislation of the EU Member States in this area.

In addition, while Council Regulation 2100/94 is the basic rule, the Community legislature has enacted other rules concerning the protection of plant varieties which develop this basic rule focusing on some specific aspects. Thus, therefore we find:

- COMMISSION REGULATION (EC) No 874/2009 of 17 September 2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (OJ L 251 of 24.09.09 p.3).
- Commission Regulation (EC) No 1238/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards the fees payable to the Community Plant Variety Office (OJ L 121 of 01.06.95 p.37).
- Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14 (3) of Council Regulation (EC) No 2100/94 on Community plant variety rights (OJ L 173 25.07.95 p.14).

This protection system at Community level is therefore an alternative to the protection at national level that has proved adequate for the purposes intended.

B) National Plant Variety Protection System: Romania.

Romanian law transposed the European community legislation in 1998 through Law no. 255 of 30 December 1998 on the protection of new plant variety, but also through Law no. 266 of 23 May 2002 on the production, processing, control and certification of quality, the sale of seeds and planting material, and the testing and registration of plant variety.

It should not be ignored that, so far, the number of European Union members has increased and Council Regulation (EC) No 2100/94 applies, therefore, to several states, so, country wide, it is necessary for the regulation to be in accordance with the European legislator as much as possible.

Currently, Council Regulation (EC) No 2100/94 was modified and improved through some laws. The last one modification was made by Council Regulation (EC) No 15/2008 of 20 December 2007.

The need for Council Regulation (EC) No 2100/94 is mentioned in the preamble of the Regulation, which states 43 reasons.

Below are the reasons behind the Regulation:

1. plant variety raises specific problems regarding applicable industrial property regime;
2. industrial property regime concerning plant variety has not been harmonized within the Community and is still governed by the national law of the Member States, meaning provisions that differ greatly;
3. therefore, it is advisable to establish, alongside national regimes, a Community regime allowing valid industrial property rights throughout the Community;
4. it is appropriate that the implementation and application of the abovementioned Community regime to be ensured not by the authorities of the Member States, but by a Community body with legal personality, called the 'Community Plant Variety Office'; the system must also take into account the evolution of variety selection techniques, including biotechnology;
5. in order to encourage the selection and development of new plant variety, all plant variety should benefit from better protection than the current one without, however, compromising general access to protection or in particular cases of certain selection techniques;
6. varieties of all botanical types and species should be protected;
7. varieties that should be protected must meet internationally recognized requirements, namely to be distinct, homogeneous, stable and new, and must be differentiated by a name meant for each variety;
8. it is important to provide a precise definition for "plant variety" in order to ensure the system is functioning properly;
9. this definition should neither modify any previous definitions in the field of intellectual property rights or other industrial property rights, more precisely patents, nor impede the application of laws governing product protection, including plant and plant material, or procedures concering other industrial property rights;
10. it is, nevertheless, desirable to have a mutual definition in both fields;
11. therefore, the efforts of parties involved internationally must be supported in order to obtain a mutual definition;
12. granting Community plant variety rights requires an evaluation of all the varities' important features;
13. these features must not necessarily refer to their economic importance;
14. the system should also clearly state who is entitled to the Community plant variety rights;
15. in certain situations it may belong to more people, not just one;
16. formal empowerment for filing an application should be regulated;
17. the regime should clearly define the term "holder" used in the Regulation;
18. whenever this term is used without further specifications in the Regulation, including article 29 (5), it must be understood within the meaning of article 13 (1);

19. bearing in mind that the Community's plant variety rights must have a homogenous effect throughout the Community, commercial transactions subject to the holder's approval must be clearly defined;
20. the protection must be broadened, as opposed to the one existing in most of the national systems, for certain materials of a plant variety in order to take into account trades with countries outside the Community where there is no protection;
21. introducing the principle of rights exhaustion must, nevertheless, ensure that the protection is not excessive;
22. in order to encourage variety selection, the system confirms the internationally recognized rule of free access to protected varieties in order to obtain new varieties based on protected varieties and the exploitation of these new varieties;
23. in certain situations, when the new variety, although distinct, derives from the original variety, a certain form of dependence must be established towards the holder of the original variety;
24. exercising the rights conferred by the Community on plant variety protection must be subject to the restrictions stipulated and adopted for the public interest;
25. this entails the protection of agricultural production;
26. to this end, farmers should be authorized to use the product of their harvests in accordance with certain methods for propagation purposes;
27. it is necessary to ensure that these methods are defined within the Community;
28. in certain situations, compulsory licenses must also be provided for the public interest, which may include the need to supply the market with materials presenting established features or to continue the encouragement of the improved varieties' ongoing selection;
29. the use of stipulated varieties' names must become compulsory;
30. Community plant variety rights must last for at least twenty-five years; vineyards and trees for at least 30 years;
31. other causes of rights cessation must be specified;
32. Community plant variety rights are the responsibility of the holder, and his/her role in accordance with the non-homogenous legal regimes of the Member States, particularly in the civil law field, must, therefore, be clarified;
33. this also applies to the regulation of offenses and the option to benefit from Community plant variety rights;
34. it is necessary to verify that the full application of the Community plant variety rights principles is not compromised by the effects of other systems;
35. in order to make this happen, certain rules are required in line with the existing international commitments of the Member States concerning relations with other industrial property rights;
36. it is necessary to examine whether and to what extent the conditions of protection granted by other industrial property systems, such as patents, must be adapted or amended for reasons of consistency with the Community plant variety rights;
37. if necessary, new Community provisions should be adopted for this purpose, including balanced norms;
38. the obligations and powers of the Community Plant Variety Office, including its boards of appeal, on granting, revoking or verifying Community plant variety rights titles, as well as making these public, should be inspired, as much as possible, by the norms established for other systems; the same applies for the structure of the Office and its proceedings regulations, the cooperation with the

Commission and other Member States, especially through a board of directors, the participation of the Examination Offices in the technical examination and, in addition, the necessary budgetary measures;

39. the Office should be assisted and controlled by the aforementioned governing Board, consisting of the Member States and Commission representatives;
40. the Treaty does not mention, for the purpose of adopting the hereby Regulation, other powers than those stipulated in article 235;
41. the Regulation takes into account existing international conventions, such as the International Union for the Protection of New Varieties of Plants (UPOV Convention), the Convention on the Grant of European Patents (European Patent Convention) or the Agreement on Trade-Related Aspects of Intellectual Property Rights, trade of counterfeit goods;
42. therefore, the patent ban on plant varieties only applies within the limits set forth in the European Patent Convention;
43. the Regulation should be re-examined with a possible change in mind after analyzing the evolution of the abovementioned conventions.

Both the Community norms we have spoken about and the internal laws refer to new plant variety rights. In order to understand what is actually being protected *in concreto*, the question "what is a plant variety" needs to be answered first.

Within the Community, the **variety** is defined as *a group of plants belonging to a single botanical taxon of the known basic level and which, whether or not it fully complies with the conditions for granting Community plant variety rights, may:*

- be defined by the features resulting from a particular genotype or from a particular combination of genotypes;
- be different from any other plant assembly by showing at least one of the abovementioned features, and
- be considered an entity in view of its ability to be reproduced without any modifications.

The Romanian legislator uses the definition given by the Regulation and, thus, defines the variety both in Law no. 255/1998, republished, as well as in Law no. 266/2002, republished, as *the group of plants belonging to a botanical taxon of the lowest known rank, which may be:*

1. *defined by the features resulting from a particular genotype or a combination of genotypes;*
2. *different than any other plant group by at least one of the features referred to in point 1;*
3. *considered an entity with regard to its ability to be reproduced as such;*

Moreover, Law no. 266/2002, republished, defines the variety as: a group of plants belonging to a botanical taxon of the lowest known rank, which:

a) is clearly distinguished from those already known by at least one distinct, precise and fluctuating feature, which can be defined and described, or by several features whose combination qualifies it as a new type (distinctiveness);
b) is homogenous compared to all the features stipulated by in force regulations, with the exception of a very small number of atypical forms, taking into account the reproductive features (uniformity);
c) c) is stable in its essential features, more precisely following successive reproduction or at the end of each reproduction cycle; the essential features remain as originally described (stability);
d) d) the hybrid with its parental forms is considered a hybrid.

From the three above-mentioned definitions, it can be noticed that the Romanian legislature transposed in its own legislation the plant variety definition used within the Community almost identically.

It is noticeable that Romania also wants to harmonize the issue of plant variety rights and legislation, and not only is it concerned about this issue, but it also acts in order to unify the national legislation with the Community's legislation.

The numerous amendments to Law no. 255/1998 reveal the intense concern of the Romanian legislator regarding the synchronization of the internal legislation with that of the European Community.

We have talked earlier about how the term variety is defined above, but it should not be neglected that this article attempts to clarify the issue of **protected varieties**.

Article 6 of the Council Regulation (EC) No 2100/94 clearly states that ***Community plant variety rights are granted to plant varieties that are: DIFFERENT, HOMOGENOUS, STABLE, and NEW.***

Internal legislation takes over these four conditions and introduces them into art. 6 of Law no. 255/1998, but with a slight difference of notion, respectively, ***ISTIS grants protection for a new plant variety and issues the variety patent if it is NEW, DIFFERENT, UNIFORM and STABLE.***

It is noted that both internal and European legislations mention the **distinctiveness** feature in terms of plant variety rights.

Art. 7 of the Regulation states that a *variety is considered to be different if it is clearly distinguished by features resulting from a genotype or a combination of given genotypes from any other variety whose existence is well known on the date of submitting the application in accordance with article 51 of the same Regulation.*

The homologous of art. 7 of the Regulation or, in other words, the transposition into Romanian legislation of art. 7 of the Regulation, is given by art. 7 of the Law no. 255/1998, which states that *a variety is different if it is clearly distinguished by one or more relevant features resulting from a particular genotype or a combination of genotypes from any other variety whose existence is well known on the date of*

submitting the variety patent application to ISTIS or, as the case may be, the invoked date.

It is very easy to notice that not only the article numbers are the same, respectively art. 7, but also the content of the two articles is identical on the **distinctiveness** requirement.

The follow-up question is how do we qualify a variety as well known? The answer is given by the Community's legislator and transposed by the Romanian one.

Thus, the existence of another variety is considered to be well known if, at the date of the application submission, in accordance with article 51 of the Regulation:

> (a) it has been the subject of plant variety rights or is registered in an official register of varieties within the Community or in a state, or any intergovernmental organization competent in this field;
>
> (b) an application for receiving protection for this plant variety or its registration in an official register is lodged, provided that, in the meantime, the application has resulted in granting the protection or the registration.

Therefore, it can be concluded that as long as the variety is not well known and registered in the database or in connection with which the proceedings for entering the plant variety rights database have started, the variety is considered to be different.

Romania is in line with the European Union provisions and stipulates in the national legislation that well-known varieties are:

> a) protected in Romania and registered in the National Register of Variety Patents or in other states parties to the Convention;
>
> b) registered in the official registry of varieties of crop plants in Romania intended for trade or in similar registers and books from other states, that are parties to the Convention;
>
> c) those for which there is a registered application for the plant variety protection or its registration in a Romanian variety register, provided that the application leads to the granting of the protection or to the registration of the variety;
>
> (d) those for which there is an application registered abroad for the plant variety protection or for the plant variety registration, provided that the application gives rise to protection or registration;
>
> e) offered for sale or sold on the territory of Romania or other states.

Therefore, it can be concluded that as long as the variety is not well-known and registered in the database or in connection with which the proceedings for entering the protected varieties database have started, the variety is different.

It can also be concluded that there are no differences between European and Romanian legislation on the abovementioned issue, our country transposing the European legislation precisely.

The Romanian and European legislation resemble very much also when it comes to the notion of **stability**.

The Regulation speaks of stability in art. 9, where it is mentioned that *a variety is considered stable if the features examined for distinctiveness and other features used to describe the variety remain unchanged following successive multiplications or, in the case of a particular propagation cycle, at the end of each cycle.*

The stability of a variety is of particular importance for the European legislator, importance which is also understood by the Romanian legislation, which transposed art. 9 of the Regulation in art. 9 of Law 255/1998, republished.

Thus, according to art. 9 of the Regulation, the variety is stable if, after repeated propagation or, in special cases, at the end of each propagation cycle, the relevant features for determining distinctiveness or any other features used to describe the variety remain unchanged.

It is again easily noticeable that the national legislation is identical to the European one. Moreover, Law 255/1998, republished, shows the importance given to the stability of the varieties in terms of legal regulation, by offering a distinctive article for explaining this requirement.

A third requirement for plant variety rights is **novelty**.

The Council Regulation stipulates that a *variety is to be considered as new if, at the date of submission of the application provided for in article 51 of the Regulation, it not sold or otherwise surrendered to third parties within the meaning of article 11 of the Regulation to the breeder or with his consent, variety constituents, or a harvested material belonging to the variety for the exploitation of the variety:*

> *(a) within the Community for more than 1 year from the abovementioned date;*
>
> *(b) outside the Community for more than 4 years or, in the case of vines and trees, for more than 6 years from that date.*

The Romanian legislation, through Law no. 255/1998, republished, takes over the explanations regarding the novelty requirement and transposes them into the national legislation as follows: the variety is new if at the date of the patent application registration for the variety or at the time of invoking the priority of the propagating or harvesting material, it was not sold or otherwise made available to third parties, by the breeder or with his/her consent, for the purpose of commercial exploitation of the new variety:

a) on the Romanian territory, one year before the patent application registration for the variety;

b) on the territory of other states, more than 4 years after the registration of the variety patent application, and for trees, trees and ornamental shrubs and vineyards, more than 6 years.

In such cases, the Romanian legislation adapted in an extremely practical way the Community's exigences to the Romanian territory, introducing the notion of a variety patent, showing that in order to be protected, the variety first needs a variety patent granted according to law.

The harmonization thus created between national and Community legislation determines the transactions that take place on the Community market to be very easy, while also ensuring accountability for those who violate the imperative requirements of the Community.

It must not be forgotten that Law 255/1998 also stipulates the other situations of the Regulation in which the variety is considered to be new, namely to not lose its novelty feature:

a) it is subject to a rights transfer agreement, if the commercial exploitation of the new variety has not taken place prior to the registration of the application;

b) it is the subject of an agreement between the breeder and another person, and the breeder authorizes the production of the propagating material under his terms;

c) it is subject to an agreement between a breeder and a third party to conduct a trial in a field or in a laboratory or a small experiment in order to assess the new variety;

d) it has been made available to a third party, either as a propagating material or as a harvested material, as a result of the purposes specified in art. 33 of the aforementioned Law, and is not used for subsequent propagation, these acts are not considered commercial exploitation of the new variety, according to art. 33 of the abovementioned Law;

e) it has been made available, as the breeder has exhibited the variety in an officially recognized exhibition;

f) it has been made available to an official body, under a legal or contractual obligation, for the purpose of producing, reproducing, multiplying, conditioning or storing, without the person requesting protection losing its exclusive exploitation right of the variety, provided that no other commercial provision has been previously made; if such a variation has been used for the production of a hybrid and has been marketed, the provisions of paragraph (1) and art. 6 of the aforementioned Law will apply;

g) it has been made available by a company to another that is subordinated, or if both companies are owned by a third entity or company, provided that the variety has not been made available in other ways.

Thus, the Romanian legislator has dealt with all the cases outlined in the above Regulation and has transposed it with maximum diligence into its own legislation so that there is no problem regarding Romania's relations with both the European Union, as an institution, and its Member States.

One last element that needs to be considered for plant variety rights is the **homogeneity** within the Community and within a state.

In European legislation, the homogeneity of a variety is explained as follows: *a variety is considered homogeneous if, subject to variations that may result from the particularities of its multiplication, it is sufficiently homogeneous in determining the analyzed features that settle distinctiveness and any other features used for the variety's description.*

In Romania, the variety is **uniform** if, subject to foreseeable variations throughout the propagation cycle, the plants remain sufficiently uniform in their features, including those used in the examination of the variety's distinctiveness, as well as in other features used to describe the variety.

After presenting both definitions, we conclude that the homogeneous and uniform notions refer exactly to the same thing; the required feature is the same in both European and internal legislation.

On the other hand, most dictionaries of synonyms explain the two notions in a similar manner, so it was hard to believe that the two notions could convey different requirements regarding plant varieties.

We conclude that the Romanian legislation has transposed the Community legislation without any new elements, and only with certain adaptations of the Regulation, in order to make Law 255/1998, republished, applicable, as well as other laws that followed it.

At the same time, it is concluded that only plant varieties fulfilling the abovementioned conditions can benefit from the Community's protection, so a lot of plant varieties remain unprotected in many countries of the European Union.

Last but not least, it should be noted that according to art. 44 par. 1 of Law 255/1998, republished, counterfeit is a crime and is punishable by imprisonment from 3 months to 2 years or by fine if the holder of the variety patent authorization commits any act stipulated in art. 30 par. (1) of the same law.

The following acts are sanctioned with the punishment stipulated in par. 1:

a) the use of a name other than the registered one for propagating, producing or selling material;

b) the use of a registered name of a new variety for propagating, producing or selling material that does not belong to said variety;

c) attributing, for the propagated, produced or sold material a name very close to that of the protected variety in a way that causes confusion;

d) the sale of propagated material with the false mention that it belongs to the variety for which the variety patent was granted, thereby misleading the buyer.

CONCLUSION

For all these reasons, this Community Variety Plant Protection, joining the national protection laws, has been a relevant tool in the activation of the agricultural sector and this because this system guarantees the protection of discoverers, breeders and owners of plant varieties, giving them economic and legal rights with the possibility of exercising and claiming against those who violate them; the regulation also generates security for the breeder's protection and thus on the market; it encourages new discoveries; and it is adapted to the new technical advances.

The community plant variety protection system has been widely applied since its appearance in 1994. More than 3000 applications are examined each year at the CPVO (Community Plant Varity Office), making it the most extensive system of its kind in the world.

In particular, with 3,111 applications received in 2015, the CPVO remained the top filing office.

Furthermore, at the end of 2015 around 111,180 plant variety titles were in force in the world, 4,1% more than the previous year. The CPVO granted 23,771 titles, becoming the office with the highest numbers of plant variety titles in force.

Moreover, the appeals system of the Office is fully operational, 165 appeals were presented to this Office until 2016.

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