

FEATURES OF LEGAL REGULATION IN THE FIELD OF PLANT VARIETY PROTECTION

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Annotation. *The article summarizes the problems of approximation process Ukrainian legislation in the field of intellectual property to the EU legal system. The analysis makes it possible to identify problems in further ensuring the legal protection of plant varieties requiring urgent solutions, and to propose approaches to increasing the efficiency of this process.*

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Among the objects of intellectual property, the rights to which are protected by relevant international agreements and legislative acts of the state, biological objects, in particular plant varieties, belong to a special form of intellectual property. The peculiarity is that in contrast to industrial intellectual property, which after their development acquire a finished form and do not change during use, biological objects are variable. This is especially true of plants, the use of which requires repeated reproduction with the help of reproductive material. In the case of legal protection of plant varieties, the object of legal protection itself is separated from its material carrier, reproductive material, the circulation of which also requires special legislation. On the other hand, the larger the area of geographical distribution of the variety, the more difficult it is to confirm the validity of its legal protection.

In Ukraine today, the main problem is the lack of discipline and responsibility in the implementation of existing norms, control and clear division of powers between the bodies involved in the registration of plant varieties. Amendments to existing legislation, adapted to international law, should solve this problem.

Introduction. The reform of legal regulation in the field of seed production was carried out back in the 1980s in many countries, such as Turkey, Peru, Bangladesh, India, Mexico, Malaysia. Many of the processes that are taking place in this area have already been passed by developing countries, and we are given the opportunity not to repeat other people's mistakes and to master those practices that have actually proven their effectiveness.

The international seed industry primarily consists of private seed companies and farmers' associations, breeders of new varieties, importers, exporters. Associations often unite in regional and international organizations that serve as platforms for information

exchange, training, research, and negotiation processes.

National seed associations work closely with international organizations such as the Organization for Economic Co-operation and Development (OECD), which develops certification schemes in international trade, the International Seed Testing Association (ISTA) and others.

Developing countries, which were dominated by state control over seed production until the reforms of the 1980s, have recognized the need to develop the private sector in this area. For this, institutional changes were carried out: the private sector, local and foreign seed companies began to be involved in the processes that were controlled by government departments, such as variety testing, registration of varieties, certification of seeds.

The role of the state in the formation of the private sector in seed production was significant in providing information and financial assistance, technical support in the process of joining national associations to international seed organizations, as well as in reforming legal regulation in order to move away from total state control at all stages of seed production [1].

There is no compulsory registration of commercial seed varieties in the United States. The Ministry of Agriculture does not maintain a unified register of commercial varieties. Registration is voluntary for seed companies that can submit their variety data to the register.

The European Union practices compulsory registration, but at the same time it is enough to provide information in one of the member countries, and companies gain access to the entire EU market. The tests do not last more than two years.

Many developing countries had a policy of compulsory registration and tight control of new seed varieties, not permitting the sale of seeds before an authorized government agency conducted a mandatory trial of the new variety, which could last from 2 to 6 years (depending on the type of test and variety). Testing of varieties and hybrids of agricultural crops is carried out for economic utility (Value in Cultivation and Use, VCU). In case of positive test results, the variety was entered in the register (national catalog) of commercial varieties.

On the one hand, this approach had to ensure the sale of exceptionally high quality varieties, but on the other hand, such tight controls are often used as a barrier to the entry of new varieties from the private sector or imports into the market. Government trials are lengthy, costly and not indicative of coverage, as they are often limited in quantity and quality [1].

As a result, prior to the reforms of the 1980s, in developing countries at the time with compulsory registration, commercial variety crop registries consisted mostly of old varieties, since the cost of testing new varieties could exceed the potential profit from the sale of new varieties of seeds.

It became apparent that mandatory government testing consumes significant resources that could be used for useful research and technology diffusion. This is especially negative in small and poor countries, where companies are willing to spend

money on trials to develop new hybrids of major commercial varieties (for example, corn), but leave opportunities for other openly pollinated varieties beyond the threshold.

The situation in many developing countries has changed dramatically over the past 30 years, following the introduction of significant reforms in this area in a number of countries.

For example, in India, variety registration and certification has always been voluntary. The Government of India has facilitated the import of seeds and the commercial presence of foreign seed companies, and has also provided access for private companies to germplasm from public research institutes.

Bangladesh abandoned compulsory variety registration for all seeds in 1990 and applies such a requirement for only five staple crops (rice, wheat, jute, sugar beets and potatoes). As a result of deregulation, private seed companies and NGOs were able to test and introduce new crops, including corn hybrids (fodder and sweet corn), sunflowers and a variety of vegetables.

Reforms canceled the obligation registration and certification in Turkey and allowed private companies to introduce new hybrids and varieties for different crops. As a result, farmers and consumers have experienced significant benefits and increased income. Changes in legal regulation have become a significant factor in the growth of exports of fresh and frozen vegetables. If before the reform only one variety of cucumbers was registered, then after the abolition of mandatory registration, by 1992, more than 100 new varieties of cucumbers were introduced for export. The same applies to the number of potato varieties that have grown dramatically [2].

In Peru, reforms in the late 1980s allowed several new private companies to grow seed. Decentralization and delegation of regulatory and certification functions to regional seed committees / councils and farmers' associations has allowed small seed producers to step out of the shadows and participate in the seed industry legally.

The most important link in seed production is the seed certification system for agricultural plants. In most foreign countries, a seed certification system means a combination of different types of control (ground, field and seed / laboratory) for confirmation of quality indicators by seed categories, which is carried out by authorized seed certification bodies. As a result of inspections, the authorized body submits documentary confirmation of the conformity of a batch of seeds of any variety included in the Register of commercial varieties, established standards and other regulatory legal acts in the seed industry.

The subject of compulsory certification in most countries is consignments of commercial varieties, seeds for large crops and supplies to state seed funds. In other cases, voluntary certification of seeds is carried out on the basis of applications from their owners for the same indicators.

There are various approaches to checking seed quality. In the USA, for example, there is no mandatory certification, and the problem of seed quality is solved through a policy of "truthiness labeling", allowing companies to define their quality standards and carry out testing, requiring only accurate labeling with comprehensive information