

POR ABRAHAM DÍAZ

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Since Mexico is part of the UPOV international treaty, the requirement to obtain protection for vegetal varieties are the same as in any other member country; that is, that the vegetal variety is new, distinctive, homogeneous and stable. Likewise the rights granted in Mexico in favour of plant breeders are basically the same; that is, the right to be recognized as the creator of the vegetal variety and the right to exploit said vegetal variety in an exclusive manner for the production, reproduction of sale thereof, as well as for the production of other vegetal varieties and hybrids for commercial purposes.

We have to point out that since Mexico is part of the UPOV treaty of 1978 – not yet having signed the UPOV act of 1991 – the term of protection for vegetal varieties is shorter than in other countries (15 and 18 years depending on the specific type of variety), but the rights are basically the same.

Nevertheless the way of enforcing those rights substantially differs from other UPOV member countries.

UNAUTHORIZED EXPLOITATION

In countries like Ecuador and Colombia vegetal variety rights are enforced by judicial authorities, and it is possible to take civil and even criminal actions against infringers, which strongly discourages many infringing activities in those countries. But in Mexico the authority in charge of enforcing vegetal variety rights is an administrative one. No civil criminal actions can be taken to enforce this type of right.

In Mexico the authority in charge of protecting plant variety rights is the National Service of Certification and Identification of Seeds (SNICS), which directly depends on the Ministry of Livestock and Agriculture (SAGARPA). SNICS was created in 2003, the year in which the Federal Law of Vegetal Varieties (FLVV) came into force in Mexico. Since then SNICS has been in charge of studying the applications for protecting vegetal varieties, granting the

corresponding plant breeders' certificates and enforcing vegetal variety rights in Mexico, among other functions.

Another difference that has to be highlighted is that in Colombia it is possible to request the authorities to take action against third parties that are exploiting vegetal variety rights in an unauthorized manner. The corresponding certificate of plant breeder does not have to be granted at the moment of taking action, because it is only necessary that the authority issues a preliminary office action stating that an application for obtaining vegetal variety rights has been filed and studied by the authority.

FINES BUT NOT PRISON

In contrast, in Mexico the FLVV provides that once that applicant complies with the requirements of novelty, denomination and correct filling in of the application, SNICS will issue an office action indicating that an application for vegetal variety rights is under prosecution. Therefore the applicant is presumed to be the holder of the corresponding rights.

In Mexico it is possible taking action against third parties who exploit vegetal varieties in an unauthorized manner, only after the corresponding plant breeder certificate is issued by SNICS. The only effect of the above-mentioned office action is to grant applicant the right to claim damages since the date of the issuance of the office action. Nonetheless, in Mexico actions for collecting damages can be brought only after an infringement is declared by SNICS; this authority is not entitled to declare damages since that right is reserved in Mexico for civil Courts.

Consequently, it becomes necessary to wait until the plant breeder certificate is granted by SNICS in order to take infringement action, and it is necessary to wait until an infringement is confirmed in order to collect damages.

In this context, Article 48 of the FLVV considers the following activities as infringements:

- To modify the denomination of a protected vegetal variety without the authorization of the Ministry.

- To falsely present oneself as the creator of a vegetal variety.

- To divulge or commercialize a vegetal variety as if it were of foreign origin when it is not the case, or to divulge or commercialize a vegetal variety as if it were of national origin when it is not the case.

- Opposing the visits of inspection that are conducted in accordance with the FLVV.

- To commercially exploit the features or content of a protected vegetal variety, attributing said features or content to another vegetal variety.

- To violate the preliminary injunctions provided in the FLVV.

As set forth above, all these infringements are punished only with fines and not with prison as in countries like Colombia and Ecuador.

GETTING BETTER

As part of the enforcement of this type of rights in Mexico, it is also possible to request SNICS to implement preliminary injunctions, which may consist of an order to retrieve from the market all the products and materials used to infringe vegetal variety rights; an order to suspend any activity that may constitute a violation to the FLVV; and the seizure of infringing goods.

It has to be said that the preliminary injunctions provided by the FLVV almost replicate those contained in the Mexican Law of Industrial Property and, therefore, many practices of the Mexican Institute of Industrial Property in

connection with preliminary injunctions were copied by SNICS.

For instance, in order to obtain the implementation of preliminary injunctions it is necessary to post a bond to warrant any damages that may be caused to the person or company against whom injunctions are implemented; the alleged infringer has the right to post a counter bond in order to obtain the lifting of the injunctions.

When issuing the final ruling in connection with the infringement proceeding, SNICS will also decide regarding the permanence of the lifting of the injunctions. At the time of writing, SNICS has not yet implemented injunctions against any third party. Nevertheless, despite the fact that SNICS was only recently set up, it is doing a great job protecting vegetal variety rights, considering that the legal remedies currently available under Mexican law are much more limited than those available in other countries of Latin America.

Obviously things can be improved in Mexico, starting with the signing of the UPOV Act of 1991, which would extend the term of protection and would allow a better protection of the essentially derived vegetal varieties, among other benefits.

Nevertheless, while these changes are taking place we have to recognize that, thanks to the good work that is being conducted by SNICS, efficient and proper enforcement of vegetal variety rights is being achieved in Mexico.