

Breeding Achievement of The Legal Status Defining Problems

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Summary: In the article analyzed the legal concept of selection achievements, we study the problem of determining the legal status of new plant varieties and animal breeds and put forward solutions to these problems

Keywords: civil law, intellectual property, selection achievements, patent, legal status, legal protection

Modern society flourishing level can not be imagined without the development of science, and without introducing into the economy and the production of innovative efficient research results. In particular, in terms of population growth in the world a special place in solving the problems of food and energy given to the use of intellectual property. At the same time, considerable importance in the economic development of each country is the use of results of intellectual activity that improves the viability of establishing and implementing them in the economy and production.

Place the results of intellectual activity in the economic development is connected not only with the creation and introduction of inventions manufacturing, utility models, industrial designs, new technologies and production techniques, but also the achievement of high productivity in agriculture, the productivity of meat and dairy products, thereby increasing the economic income as well as the creation and implementation of agricultural production of new varieties and breeds for the complete satisfaction of the population's needs for food and biofuel sources.

Moreover, that carried out in the system of our country's agricultural economic, social and legal reforms differ relevance, consistency and special importance in the national economy. The development of various forms of ownership in agriculture, increasing production volumes agricultural products and improving rural living standards are the objectives of a strategic nature. Accordingly, the development of economic relations in agriculture and improving the mechanism of legal regulation are considered as one of the factors of economic prosperity of our country.

It is well known that the creation of a new variety or breed is one of the areas of research and production of human activity. It is reflected areas such as crop production, forestry, livestock breeding, seed production and biotechnology. From a legal point of view, each of which is a separate sphere of legal regulation. Legal problems of the creation of new varieties and breeds have their own characteristics: both from a general point of view, and their evaluation as a single biological object they differ in certain features. At the same time

become important breeding achievements.

Currently, analysis of the works in the field of breeding shows that in conditions of market relations the legal regulation of selection do not meet modern scientific and practical capabilities, various events and Innovations, do not cover the new relations in the field of scientific and practical activities. It must be emphasized that the current legislation in this area does not contain a cost-effective legal structures that meet the requirements of the time. And this in turn gives rise to a number of economic, organizational and legal issues in the creation, introduction of new varieties and breeds that are resistant to diseases, different climatic conditions, as well as in determining the legal status of biotechnology research results.

It must be recognized that the foundations of the current breeding area control systems were developed several decades ago, at the time when selection achievements were considered little explored area of human knowledge, which is why the new plant varieties and animal breeds recognized the gifts of nature itself. This in turn led to the ownerless relation to established varieties and breeds, which had spent many years of hard work of scientists, breeders, and the huge resources of the state. And now, in the course of doing business, there are cases of new varieties in violation of statutory requirements. At the same time, there are cases of violation of the rights of research institutions and other entities that are the owners of the patent, the

introduction into circulation under its own trademark agricultural products.

In addition, the economic efficiency of agricultural production, which is the closing link agriculture, directly linked to the breeding work and their achievements, which are what new varieties of plants and new breeds of animals. Their deficiencies or an inability to meet modern economic and technical parameters limit the production capacity of agriculture, adversely affect productivity and hinders the development of the industry.

In the transition to a market economy and providing the conditions under which the state is the main reformer, improving the profitability of the agricultural sector depends not only on suitable climatic conditions and security sector with qualified human resources and technology, but also the introduction into economic circulation of land and water, providing agricultural production is high-yielding varieties of plants and breeds of animals fertile. In other words, agricultural production is not capable of productive activities without ensuring its agro-industrial commercial farms needs varieties of plants and animal species, most of them are the result of selection achievements. It should be noted that the selection achievements in agriculture are not created in the process of production. New varieties and animal breeds are developed in specialized research institutions, scientific and industrial associations and by the use of these varieties and breeds in the goods-producing activities of farming enterprises



achieved economic efficiency and profitability in agriculture.

The new variety or breed - the result of scientific and artistic research. In many cases they are the result of years of research of whole groups of scientists who are in the process of creating them have resorted to the use of the achievements of fundamental sciences, in particular in the process of cognition of nature resorting to molecular biology, genetics, biochemistry, advanced control systems, as well as the organization and payment labor.

The new plant variety or animal breed, being both scientific and industrial link agricultural production, has a positive impact on the production of biological agents, and also on the efficiency of the entire system of agriculture. In turn, breeding management, genetic engineering, and other research areas in the field of development of new varieties and breeds, it is not only the practical science of management, but also in terms of content and management of this area. Breeding, as a science to pre-reproduction new biological advances and the sphere of production, determines such regulatory factors in which to be covered not only the natural sciences associated with the development of breeding and seed production and breeding business, is adjacent to the agricultural sector. And with that, a mistake should be the opinion that selection occurs only on the basis of the natural sciences. They are using the laws of nature, create and improve new biological forms suitable to the specific socio-economic conditions.

In turn, it considered that the socio-economic opportunities for society largely depend on the science of genetic breeding, seed production and practical breeding. Currently, variety, hybrid plants, rocks, line, types of animals as the main objects of selection works are characterized by high performance. The new "design" of the inner nature of agricultural plants and animals, in accordance with the terms of the periodic reproduction expresses the socio-economic essence selection.

When talking about the economic feasibility of new biological solutions, we must not forget also that the results of breeding, genetic engineering in livestock breeding and crop differ in their material, economic and other features (uniqueness), as well as the creation of nature (scientific research, reproduction, introduction etc.), although they have a common name with the commercial products. In addition, the biological stages of the selection process are not yet achieving the principal means of production in agriculture, and are considered to be the result of material science, the practical significance of which is set in a specific order.

It should be stressed that to date the selection achievements included in the system of state property, as created in public research institutions and public funds. At the same time, taking into account the fact that the selection achievements are the subject of wildlife, their existence depends on the climatic conditions, there is a possibility of their death and the inability restoration, raises the need to

establish a special system of regulation¹.

Although in our country, as was noted above, taken many legislative acts related to breeding achievements and attitudes associated with them, the issue of documents of legal protection of objects of the Agency restoration property, as well as the technical requirements in this area to date, reducing the possibility of an effective and consistent legal protection. In addition, a rare use of new biotechnological methods and tools to create new varieties and plants, as well as the lack of protection available only in Uzbekistan plant varieties and animal breeds, shows the need to improve the legislation and the adoption of several regulations in this field.

In addition, before the modern science of civil law are questions about the legal status of new varieties of plants and how intellectual property rights, the establishment of the distinguishing features of the research ways to create new varieties and breeds, such as breeding, genetic engineering, cloning and identification of features designed to their basis of new varieties of plants and improving the efficiency of the legal regulation of these activities and their results are new varieties of plants and breeds. These points establish the relevance of the legal status of new varieties and breeds that are non-traditional intellectual property. Research on living organisms, which

are a special kind of intellectual activity, and combining them results in certain common rules, alignment of legislative acts defining their legal status, as is the task of modern jurisprudence. In this regard, there is a need to review the intellectual property rights institute in terms of research on living organisms, development of scientific findings, to address this problem and improve the legislation defining the legal status of these objects.

From a theoretical point of view, you need to conduct a comprehensive analysis and filling in the gaps of the modern doctrine of civil law, by removing a perfect definition of these objects as objects of civil law and intellectual property, determination of their properties, and their legal protection, as well as identifying features relating to their commercial Turnover. In addition, the unsatisfactory provision of legal regulation of the processes of creation, use, legal protection of new varieties and breeds. In this area needed single or interrelated legal mechanism. This should ensure consistency of science and industry. It requires the creation of evidence-based methodology to eliminate such differences, gaps and constraints. In addition, at the initial stage stop enforcement, and in particular the judicial practice. Mainly dominated by methods of organizational, economic and administrative spirit. There is a formal relation to the conclusion of agreements and their implementation. Cases resolution of civil disputes in the administrative order, or in some cases a lack of

¹ Levchenko V.I. Problems of legal maintenance of plant breeding and protection of its achievements in the USSR. Author. doc jurid. Sciences. -M.: 1990 -P.4-7.

understanding of the essence of the laws by the courts in this area. There is a need for evidence-based recommendations and suggestions on generalization and unification of legal practice. In addition, of particular relevance to civil, business and private international law acquire their defining research directions and methods in the field of selection achievements, as well as the need to meet the scientific and legal solutions in the fields of genetics, breeding, bio and nanotechnology, as well as economics.

In determining the legal status of the new variety or species, taking into account the similarities of their legislative regulation, should not be left unattended and features peculiar to them. This, in turn, can also be evaluated as a problem of modern civil law for self-development provisions of the laws defining the status of the new variety, the conditions of its legal protection and recognition of intellectual property.

He is currently the fourth period of the development of Uzbekistan's legislation on the creation of new varieties and breeds, the definition of their legal status, the establishment and protection of the rights and obligations of entities with regard to these objects. First period - the period preceding the acquisition of independence of the republic, in which the definition of the legal status of new varieties and breeds regulated on the basis of the law on inventions and carried out by government regulations and departmental regulations. The few documents establishing the legal status of new

varieties and breeds in the period came from the spirit of the time and there is provision for the only state-owned and mismanagement with respect to the created object.

The second period of the development of legislation in this area - the first years of independence of the Republic of Uzbekistan: a special law (the laws of Uzbekistan "On selection achievements" of August 30, 1996), defines the legal status of new varieties and breeds at this time was adopted, as well as a special system created creating new varieties and breeds and the establishment of its legal status (State Patent Office, the State commission for variety Testing, Inspection purebred breeding in animal husbandry).

The third period in the development of legislation on the legal status of new varieties and breeds refers to the 2002-2009 years. At this stage, it was adopted in the new edition of the Law "On selection achievements" (29 August 2002) of the Republic of Uzbekistan ratified the Paris Convention "On Legal Protection of New Varieties of Plants"², The President and the Government of the Republic of Uzbekistan issued a number of laws on the legal bases of creation and introduction of new varieties and breeds.

The fourth stage of development of the legal status of new varieties and breeds legislation can be considered the period starting from 2010. Since

² Постановление Олий Мажлиси Респулики Узбекистан «О присоединении к международной конвенции об охране новых видов растений» от 27.08.2004 г. №680-II

that time, there is a practice of adopting new legislation in this area, as well as changes and additions to the existing legislative acts ("On Selection Achievements", "The Seed", "On pedigree business").

It must be admitted that at present there is no single approach to the understanding of selection achievements in legal literature and in international law, as well as in the national legislation of various countries. Analysis of legal literature, international law and the laws of foreign countries show that there are two approaches to the understanding of selection achievements. Representatives of the first approach (A.P.Sergeev, O.Okuylov, I.V.Biryukova, Yu.G.Smirnov³) analyze the concept of the selection achievement in terms of its content and its constituent base objects, and evaluate achievement of breeding a new variety and breed. This is the case in the legislation of Uzbekistan, Kazakhstan, Georgia, Bulgaria, the Russian Federation.

Representatives of the second approach (K.Vsevolozhsky, V.Pirogova⁴) considering the

selection achievement is not based on its object, and based on the characteristics and alternative in the process of creating new varieties and species. This approach is seen in the Paris Convention, in US law, Germany, Belgium, France, China, Lithuania.

In our view, the determination of selection achievements and evaluating the results of this activity as a special sphere of biological research, the main attention should be paid not to the object itself, and the process of its creation and at the same time based on the requirements of the legislative acts it is advisable to pay attention to novelty created varieties and breeds. Based on this and on the basis of scientific research methods to create new varieties and breeds it is now possible to consider the arguments of the representatives of the second well-founded approach to the definition of the selection achievement.

From this we can shape following legal definition to the concept of selective achievements:

Selection achievement - new varieties of plants and new breeds of animals, created as a result of research using the natural properties of biological objects.

³ Sergeev AP Intellectual property rights in the Russian Federation. Uchebnik.-M.: Prospekt, 2001.-751 p.; Ochiul O. intellectual property legal status. Author. dis ... Doctor. jurid. nauk.-Tashkent, 2000. -55 p.; Biryukova IV Problems of legal regulation biopatenta and its perfection. Diss ... kand.yurid.nauk.-Tashkent, 2006.-170 p.; YG Smirnov, VA Oreshkin The legal protection of plant varieties and animal breeds // Patents and license. Moscow. 1999. -№4. -P.9-10.

⁴ Vsevolozhsk V. Protection and Use of Selection Achievements (commentary fundamental provisions of Chapter 73 of the Civil Code) // the Economy and the right. -Moscow. 2008. -№1. -S.4-5.; Pirogov V. Intellectual Property Law and Biotechnology: Realities and Prospects // the Economy and the right. -Moscow, 2006. -№5. -P.113-114.