

Dietrich Buschmann\*\*  
Klaus-Dieter Kater\*\*, Notar  
Hela Rischmüller-Pörtner  
Dr. Matthias Miersch\*/\*\*

Rechtsanwälte

\* zugleich Fachanwalt für Strafrecht

\*\* auch zugelassen am OLG Celle

Anwaltsbüro · Postfach 11 42 · 30001 Hannover

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Wedekindplatz 3 - 30161 Hannover  
U-Bahn Linie 3+7 (Sedanstraße/Lister Platz)  
Postfach 11 42 · 30001 Hannover  
Telefon (0511) 9 62 89-0  
Fax (0511) 9 62 89-30  
Gerichtsfach Nr. 61  
E-Mail: [RAe.Buschmann@htp-tel.de](mailto:RAe.Buschmann@htp-tel.de)

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### **Thesis paper: legal cases on reproduction (seed multiplication)**

1. In Germany legal protection for plant breeders was first established in 1953, but this protection did not apply to the products of the harvest. Plant variety rights protection had and has a strained relationship to the interests of the general public. This has to do with the free access to available resources. It was a traditional right of farmers to withhold some of their crop as seed to use in the following year (agricultural reproduction privilege).
2. At the suggestion of various international associations (among others the International Association of Plant Breeders), an international agreement for the protection of plant breeding was decided upon by ten states, leading to the founding of the International Association of Plant Breeders (UPOV) with headquarters in Geneva. For the first time, through the revision of the UPOV Agreement in 1991, the protection of plant variety rights was extended to include products of the harvest. The question of continuing the agricultural exemption was highly contested among the states, even though under the agreement the possibility of reproduction under the protection of the plant breeding interests was allowed. (see the opinion of Advocate General Ruiz-Jarabo Colomer in the legal case C-305/00)

Stadtsparkasse Hannover  
BLZ 25050180 Konto-Nr. 535060  
Postbank Hannover  
BLZ 25010030 Konto-Nr. 1993-304  
FA Hannover Mitte  
Ust-IdNr.: DE115587763

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3. On the European level, Community plant variety rights were first achieved in 1994 through Regulation 2100/94<sup>1</sup>. The Community Plant Variety Office in Angers grants protection of a variety, upon request, for the entire area of the European Union. In addition, individual member states can protect a variety through national legislation, however in this case double protection is not allowed, and the Community's protection has priority.
  
4. Because of the UPOV Agreement of 1991, existing plant variety rights laws had to be changed. Regulation of seed reproduction (multiplication) under European law (1994/95 Regulation EG 2100/94 und 1768/95) and national law (variety protection law 1997) resulted in considerable restriction of the agricultural exemption. Although reproduction is still allowed for particular plant varieties, it is only permitted if the farmer pays the holder of the plant variety right an "equitable remuneration."
  
5. Since 1998, all registered farmers in Germany have been written to by a Seed Trusteeship organization (Saatgut-Treuhandverwaltungs GmbH - StV) that represents some 60 breeders of over 500 varieties. Farmers were asked about their use of agricultural reproduction. An interest group that currently has more than 1000 members opposed the investigation and initiated a test case. Farmers who refused to provide

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<sup>1</sup> see:

[http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31994R2100&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31994R2100&model=guichett)

information were sued. More than a thousand lawsuits followed, leading to decisions by the European Court of Justice and the (German) Federal High Court.

6. The decision of the highest courts in Germany and Europe document the imperfection of the legislative process. They are nevertheless above all a clear vote for the upholding of basic principles of commercial legal protection and against attempts at investigation and denunciation. The importance of the lawsuit could be seen by the attempts made by the breeding industry to directly influence the Advocate General of the European Court of Justice, who made these attempts public (see the “Opinion of Advocate General Ruiz-Jarabo Colomer, 21 March 2002, Case C-305/00 Christian Schulin v Saatgut-Treuhandverwaltungs GmbH <http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&docrequire=alldocs&numaff=C-305%2F00&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100> )

7. With the decision of 13 November 2001 the Federal High Court ruled against an inclusive requirement for farmers to provide information under national plant variety protection law. With its decision of 10 April 2003 the European Court of Justice likewise ruled against a general information requirement for farmers under European law. The accomplishment of the information requirement is dependent on the availability of sort specific grounds. (see: the Judgment of the European Court C-305/00:

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&docrequire=alldocs&numaff=C-305%2F00&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100> )

8. On 6 July 2004 the Federal High Court decided to request a further interpretation from the European Court to clarify the controversial question of how high an “equitable” compensation for reproduction could be.
9. According to the principle establishing judgment referred to in Clause 7, the Seed Trusteeship (StV) tried to get information from companies that processed the seed for farmers from the products of their harvest (through cleaning of separators and disinfecting the material) . In its decision of 14 October 2004, the European Court ruled that the principles set concerning the requirement for information from farmers were also valid for processors. (vgl. C-336/02, Judgment of the European Court, [www.curia.eu.int](http://www.curia.eu.int)  
<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&docrequire=alldocs&numaff=C-336%2F02&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100>)

With this decision the European Court guaranteed that there would not be exploratory investigations and denunciations, as had been clearly emphasized by the European Commission, the source of the directives in the procedure.

10. It appears that the breeding industry will try to achieve changes in the laws, and through further court cases achieve a modification of the administration of justice. It should be taken into consideration that curtailment of the agricultural reproduction privilege is obviously only a first step.

- a. In 1994, in the framework of the development of the UPOV with the so-called TRIPS Agreement in the context of the WTO, it came about that all member

States were required to protect plant varieties either through patents or through another effective system.

- b. According to current information, in 2004 the USA put into effect in Iraq, through Order 81, a new patenting law forbidding reproduction.
- c. With the help of genetic engineering, it will in addition be tried through patent laws to expand the original laws of plant variety protection. Through this, in the future the definition of the terms variety, plant and plant parts will be decisive. Therefore plant parts or cross-species plants could be patentable.

11. The question as to how far the protection of a variety can go will further occupy German and European policy. In the framework of this discussion, industry interests should not be taken into consideration alone. On the contrary, it should be considered that plant variety protection also take into account the interests of farmers and the general public. It must be precluded that a few large companies control the public's food supply.