

LAW ON INDICATIONS OF GEOGRAPHICAL ORIGIN

I. SUBJECT-MATTER AND CONDITIONS FOR PROTECTION

**Subject Matter of the Law
Article 1**

- (1) This Law shall regulate the acquisition and legal protection of indications of geographical origin.
- (2) Indications of geographical origin shall be appellation of origin and geographical indication.

**Use of Indications of Geographical Origin
Article 2**

Indications of geographical origin shall be used to mark natural, agricultural and industrial products, products of traditional handicrafts and services.

**Appellation of Origin
Article 3**

An appellation of origin shall be the geographical name of a country, region or a locality, used to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors, and which is produced, processed or prepared within a specific limited geographical area.

**Geographical Indication
Article 4**

Geographical indication shall be the indication that identifies certain goods as goods originating from the territory of specific country, region or a locality within such territory, where specific quality, reputation or other characteristics of the goods can be essentially attributed to their geographical origin.

**Traditional and Historic Names
Article 5**

Where the requirements referred to in Articles 3 and 4 of this Law have been met, a name that is not the official geographical name of a country, a region or a locality that has become well-known through a long-term use in trade as the traditional name of the product that originates from such region or a historical name

Homonymic Names

Article 6

Where the names of two or more places of origin of the product are identical or nearly identical in written or pronounced form (homonymic names), protection of such geographical names shall be granted to all interested persons that meet requirements provided for in this Law, based on the principles of just and equal treatment of producers in the market and truthful information of consumers, except where this could give the wrong impression to the public about the exact geographical origin of the product.

Names That Cannot be Protected

Article 7

The following names shall not be protected by the indication of geographical origin:

- 1) Names contrary to public order or morals;
- 2) Names whose appearance or content may mislead consumers with respect to nature, origin, quality, manner of production or other characteristics of the product;
- 3) A name that is the exact name of the country, region or a locality of origin of the product, which causes wrong impression among consumers that the product originates from another country, region or a locality;
- 4) A name which, due to long-term use, became generic, i.e. usual name for a specific product;
- 5) A name that is not protected or ceased to be protected or ceased to be used in the county of origin;
- 6) Geographical indication origin for vine products that is identical to the name of the variety of grape that existed in the territory Montenegro before January 1, 1995.

II. GENERAL PROVISIONS ON THE PROTECTION PROCEDURE

Protection of Indications of Geographical Origin

Article 8

- (1) Legal protection of indications of geographical origin shall be exercised in the administrative procedure before the Intellectual Property Office of Montenegro (hereinafter referred to as: the responsible authority).
- (2) Decisions in the procedure referred to in paragraph 1 of this Article shall be final and against such decisions administrative dispute procedure may be initiated.¹

¹ Please note that the administrative dispute procedure is actually the court review of the administrative decision.

- (2) An application for international registration referred to in paragraph 1 of this Article shall be filed to the responsible authority accompanied with a payment of prescribed fees.
- (3) Content of the application for international registration of the indication of geographical origin shall and the manner of the administration of the procedure by the responsible authority shall be regulated by a specific regulation.

Representation

Essential Elements of the Application
Article 15

The following shall be the essential elements of the application:

- 1) A request for the registration of an appellation of origin or a geographical indication, as the case may be;
- 2) A description of the geographical area;
- 3) An information on specific characteristics of the product.

**Request for the Registration of an Appellation of Origin
or a Geographical Indication**
Article 16

- (1) A request for registration of an appellation of origin or a geographical indication shall include:
 - 1) Particulars of the applicant;
 - 2) Geographical name to be protected;
 - 3) Type of a product to which the geographical indication applies;
 - 4) The name of the region or a locality of origin of the product to be marked by a geographical name;
 - 5) A signature of the applicant;
 - 6) A proof that the prescribed fee has been paid.
- (2) Where the applicant is a foreign natural or legal person or a foreign association, the application referred in paragraph 1 of this Article shall be accompanied by a public document verifying that the appellation of origin or a geographical indication has been recognized in the country of origin.
- (3) An application for the registration of an appellation of origin, along with the elements referred to in paragraph 1 of this Article, shall also include an information on the organization authorized to control the quality of a product.
- (4) An application for the registration of a geographical indication, along with the elements referred to in paragraph 1 of this Article, may include the appearance of the geographical indication if comprising of words and possible figurative elements or figurative elements only, suitable to identify geographical origin of certain goods.

Description of the Geographical Area
Article 17

Description of the geographical area shall comprise information on the geographical area where the product originates from and shall include specifics on administrative borders of such area, its geographical map and the information on human factors suitable to cause specific characteristics, quality and reputation of the concerned product.

Information on Specific Characteristics of the Product
Article 18

(1) In case of an application for the registration of a geogra

- (3) Where the application for the registration of an appellation of origin or a geographical indication does not contain essential elements referred to in Article 15 of this Law, responsible authority shall invite the applicant to rectify the situation within 30 days from the date the notification is served, with the warning that the application will be rejected.
- (4) If the applicant for the registration of an appellation of origin or a geographical indication rectifies the situation within the time limit, a filing date of the motion rectifying the situation shall be recognized, by a specific decision, as a filing date for such an application, and the application shall be entered in the appropriate register of applications.
- (5) If the applicant for the registration of an appellation of origin or a geographical indication does not rectify the situation within the time limit, responsible authority

(3) Upon the substantiated request of the applicant for the for the registration of an

- (3) The responsible authority shall decide to deny the registration of an appellation of origin or a geographical indication if the applicant for the registration of an appellation of origin or a geographical indication does not comment reasons referred to in paragraph 1 of this Article.

**Conversion of the Application for the Registration of an Appellation of Origin
Into the Application for the Geographical Indication and Vice Versa
Article 24**

- (1) Upon the request of the applicant for the registration of an appellation of origin or a geographical indication submitted before the end of the proceedings and upon the payment of the prescribed fee, application for the registration of an appellation of origin can be converted into the application for the registration of a geographical indication, and vice versa.
- (2) In the process of examination of the fulfillment of the requirements for the registration of an appellation of origin, where the requirements for the registration of an appellation of origin have not been met but the requirements for the registration of a geographical indication have been met, the responsible authority shall suggest to the applicant for the registration of an appellation of origin to convert such application into the application for the registration of a geographical

Period of Validity of an Appellation of Origin and a Geographical Indication
Article 26

Period of validity of the registered appellation of origin or a geographical indication shall not be limited.

**IV. PROCEEDINGS UPON THE APPLICATION FOR THE RECOGNITION
OF THE STATUS OF THE AUTHORIZED USER
OF THE INDICATION OF THE GEOGRAPHICAL ORIGIN**

**Initiation of the Proceedings for the Recognition
of the Status of the Authorized User**
Article 27

- (1) The procedure for recognizing the status of an authorized user of an appellation of origin or a geographical indication shall be initiated by filing the application for recognizing the status of an authorized user of an appellation of origin or a geographical indication.
- (2) The application for recognizing the status of an authorized user of an appellation of origin or a geographical indication may be submitted by natural or legal persons who, within the geographical area, produce products marked by the name of such geographical area, as well as associations of such natural or legal persons.
- (3) Prescribed fee shall be payable for filing of an application for recognition of a status of an authorized user of an appellation of origin or a geographical indication.

Essential Elements of the Application
Article 28

- (1) Essential elements of the application for recognition of a status of an authorized user of an appellation of origin or a geographical indication sh

Filing Date of the Application
Article 32

- (1) The application for the recognition of a status of an authorized user of an appellation of origin or a geographical indication shall be entered in the appropriate register referred to in Article 10, paragraph 1 of this Law only if it contains essential elements referred to in Article 28 of this Law.
- (2) The filing date and the filing number shall be indicated on the application referred to in paragraph 1 of this Article filed directly to the responsible authority that contains essential elements referred to in Article 28 of this Law and the applicant shall be issued a certificate.
- (3) Where the application for the recognition of a status of an authorized user of an appellation of origin or a geographical indication does not contain essential elements referred to in Article 28 of this Law, responsible authority shall invite the applicant to rectify the situation within 30 days from the date the information was received, with the warning that the application will be rejected.
- (4) If the applicant for the recognition of a status of an authorized user of an appellation of origin or a geographical indication rectifies the situation within the time limit, a filing date of the motion rectifying the situation shall be recognized, by a specific decision, as a filing date for such an application, and the application shall be entered in the appropriate register of applications.
- (5) If the applicant for the recognition of a status of an authorized user of an appellation of origin or a geographical indication does not rectify the situation within the time limit, the responsible authority shall reject the application.

Sequence of Examination of Applications
Article 33

- (1) Applications shall be examined in the order determined by their filing dates.
- (2) Notwithstanding paragraph 1 of this Article, an application shall be decided upon in an expedited procedure:
 - 1) Where of the procedure before the court, customs authorities or inspectorate has been initiated, if the court, customs authorities or inspectorate so require;
 - 2) If the application for an international registration of an appellation of origin or a geographical indication has been filed.
- (3) In cases referred to in paragraph 2 of this Article a request for an expedite examination of the application shall be submitted and special fee paid.

Examination of Completeness of the Application
Article 34

- (1) An application for the recognition of a status of an authorized user of an appellation of origin or a geographical indication shall be complete if it contains all the elements referred to in Articles 29-31 of this Law.
- (2) If the responsible authority determines that the application referred to in paragraph 1 of this Article is not complete, it shall notify the applicant in writing, stating the reasons, and invite the applicant to regularize the application within 30 days.
- (3) Upon the substantiated request of the applicant for the recognition of the status of an authorized user of an appellation of origin or a geographical indication and the payment of the prescribed fee, responsible authority may extend the time limit referred to in paragraph 2 of this Article

- (2) Upon the substantiated request of the applicant for the recognition of the status of an authorized user of an appellation of origin or a geographical indication and the payment of the prescribed fee, responsible authority may extend the time limit referred to in paragraph 1 of this Article for as long as it finds appropriate, but not longer than 3 months.
- (3) The responsible authority shall decide to deny the recognition of a status of an authorized user of an appellation of origin or a geographical indication if the applicant does not comment reasons referred to in paragraph 1 of this Article.

Conversion of the Application for the Recognition of a Status of the Authorized User of an Appellation of Origin Into the Application for the Recognition of a Status of an Authorized user the Geographical Indication and Vice Versa

Article 37

- (1) Where in the proceedings upon the application for the recognition of a status of an authorized user pursuant Article 24 of this Law, a conversion of an application for the registration of the appellation of origin into the application for the registration of the geographical indication has taken place, the applicant for the recognition of the status of an authorized user of an appellation of origin or a geographical indication that has been converted shall, along with the payment of the prescribed fee, submit the request to convert the application for the recognition of a status of an authorized user of the appellation of origin into the application for the recognition of status of an authorized user of a geographical indication, or vice versa.
- (2) The responsible authority shall notify without delay all the applicants for the recognition of a status of an authorized user of an appellation of origin or a geographical indication that the request for the conversion of an appellation of origin or a geographical indication has been submitted pursuant Article 24 of this Law.
- (3) The responsible authority shall issue an individual decision on conversion of the appropriate application.

Decision on Payment of the Fee for the Recognition of a Status of an Authorized User

Article 38

- (1) Where the application for the recognition of a status of an authorized user of an appellation of origin or a geographical indication meets the requirements under this Law for the recognition of the status of an authorized user of an appellation of origin or a geographical indication, the responsible authority shall invite the applicant to pay the fee for the recognition of the status of an authorized user of an appellation of origin or a geographical indication for the first three years and the costs of publication of the information on the authorized user of an appellation of origin or a geographical indication, and to furnish evidence of payment.

- (2) Where the applicant does not furnish the evidence of payment referred to in paragraph 1 of this Article within 30 days, the application shall be considered withdrawn, and the responsible authority shall declare withdrawal by an individual decision.
- (3) In the case referred to in the paragraph 2 of this Article, an applicant for the for the recognition of a status of an authorized user of an appellation of origin or a geographical indication may request the restoration to the previous condition, within 3 months from the date the decision to reject the application has been served.

**Decision to Recognize a Status of an Authorized User
and Entry Into the Appropriate Register
Article 39**

Where the applicant for the recognition of a status of an authorized user of an appellation of origin or a geographical indication furnishes the evidence of payments referred in Article 38, paragraph 1 of this Law, the responsible authority shall issue a decision on recognition of the status of an authorized user of an appellation of origin or a geographical indication and the recognized status of the applicant, along with the prescribed bibliographical data, shall be entered into the Register of Authorized Users of Appellations of Origin or the Register of Authorized Users of Geographical Indications, as the case may be.

**Issuance of the Certificate and Publication of the Information
of the Status of the Authorized User
Article 40**

- (1) An authorized user of an appellation of origin or a geographical indication shall be issued a certificate verifying the status of an authorized user of an appellation of origin or a geographical indication and the prescribed information shall be published in the official publication.
- (2) The content of the certificate verifying the status of an authorized user referred to in paragraph 1 of this Article shall be regulated by a specific regulation.

**Validity of the Status of the Authorized User
Article 41**

- (1) Status of the authorized user of an

(2) Upon the application of the authorized user of an appellation of origin or a geographical indication, accompanied with the evidence that requirements

1 . Vdeb i r c2244 described by t-9 authorievaw have been oshct r-9 tatid 6(u)1(c)4. by t-9 1545eribedcfationus v

Relation to the Previously Registered Trademark
Article 44

- (1) The provisions of this Law shall not prejudice the conditions for the registration, validity of the registration or the right to use the trademark which is identical or similar to a registered geographical indication or an appellation of origin, if the application for the registration of the concerned trademark has been done in a good faith or the trademark rights have been acquired by the use in good faith prior to the filing of the application for the registration of a geographical indication or an appellation of origin, as the case may be.
- (2) A geographical indication or an appellation of origin shall not be registered where, in the light of a trademark's reputation and renown and the length of time it has been used, such registration could mislead the consumer as to the true identity and characteristics of the product.

Use of the Personal Name
Article 45

The provisions of this Law shall in no way influence any person to use his/her

Article 50

Termination of the Geographical Indication Based on the Court Decision

Article 53

- (1) Any interested person may file a suit before the competent court in order to establish that certain geographical indication became generic, i.e. usual name for certain product.
- (2) Registered geographical indication shall cease to be valid based on the final and enforceable decision of the court establishing that it became generic, i.e. usual name for certain product.
- (3) Registered geographical indication that is registered and protected in its country of origin as an appellation of origin, cannot be declared as generic, i.e. usual name for certain product, for as long as such protection is valid in the country of origin.
- (4) After the responsible authority receives the court decision referred to in paragraph 2 of this Article, it shall enter the decision in the appropriate register and publish the prescribed information on termination of the geographical indication in its official publication.

VIII. TERMINATION AND REVOCATION OF THE STATUS OF AN AUTHORIZED USER

Termination of the Status of an Authorized User of an Appellation of Origin or a Geographical Indication

Article 54

Status of an authorized user of an appellation of origin or a geographical indication shall be terminated before the time referred in Article 41, paragraph 1 of this Law lapses, if:

- 1) An authorized user of an appellation of origin or a geographical indication renounces his right - on the first day subsequent to the day on which the responsible authority receives the motion of renunciation;
- 2) An appellation of origin or a geographical indication ceased to be valid based on the decision of the responsible authority pursuant Articles 52 or 53 of this Law - on the day set in the decision concerned;
- 3) A legal person who is the authorized user ceased to exist or a or if the natural person who is the authorized user has died - on the day the legal person ceased to exist or on the day of death, except where the right has been transferred to the successors in right of the legal person.

Revocation of the Decision to Recognize the Status of an Authorized User

Article 55

- (1) Upon the application of an interested person, the responsible authority may revoke a decision to recognize the status of an authorized user of an appellation of origin or a geographical indication if it determines that the conditions prescribed

by this Law for the recognition of the status of an authorized user of an appellation of origin or a geographical indication, have ceased to exist.

- (2) In the proceedings initiated upon the application for the revocation of a decision to recognize the status of an authorized user of an appellation of origin or a geographical indication, an authorized user of an appellation of origin or a geographical indication must prove the existence of the conditions prescribed by the law for the recognition of the status of an authorized user of an appellation of origin or a geographical indication.
- (3) If the applicant for the revocation of a decision to recognize the status of an authorized user of an appellation of origin or a geographical indication renounces the application, the responsible authority may continue the proceedings *ex officio*.
- (4) Provisions of Article 36 of this Law shall apply *mutatis mutandis* to the proceedings initiated upon the application for the revocation of a decision to recognize the status of an authorized user of an appellation of origin or a geographical indication.
- (5) The status of a person inserted in the appropriate register as the authorized user of an appellation of origin or a geographical indication shall be terminated on the first day subsequent to the day the decision to revoke a decision to recognize the status of an authorized user of an appellation of origin or a geographical indication became final and enforceable.

IX. CIVIL LAW PROTECTION

Protection in the Event of Infringement of Registered Indication of Geographical Origin Article 56

- (1) In the event of infringement of a registered indication of geographical origin, an action may be filed and the plaintiff may request the following:
 - 1) Determination of the infringement of an appellation of origin or a geographical indication;
 - 2) Prohibition of acts that infringe an appellation of origin or a geographical indication;
 - 3) Reimbursement of damages and justifiable legal costs and expenses;
 - 4) Publication of the court decision at the expense of the defendant;
 - 5) Confiscation and destruction, without any compensation, of any products created or obtained by infringing an appellation of origin or a geographical indication;
 - 6)

- (2) If the infringement of an appellation of origin or a geographical indication was intentionally or by gross negligence, the plaintiff may request from the defendant the compensation amounting up to three times of the amounts of direct damage and lost profits combined.
- (3) In considering the claims referred to in paragraph 1, items 5 and 6 of this Article, the court shall take into account the need to maintain proportionality between the gravity of the infringement and the measures ordered, as well as the interests of third parties.
- (4) Appropriate provisions of the Law of Obligations² shall apply to those issues concerning damages for infringement of rights that are not provided for by this Law

**Infringement of Registered Appellation of Origin or
Geographical Indication
Article 57**

- (1) Any unauthorized use of protected appellation of origin or a geographical indication by any economic operator within the meaning of Articles 42 and 43 of this Law shall constitute an infringement of an appellation of origin or a geographical indication.
- (2) The imitation of the registered appellation of origin or geographical indication shall also constitute an infringement of an appellation of origin or a geographical indication.

**Right to File an Action
Article 58**

- (1) An action for infringement of an appellation of origin or a geographical indication

X. PROVISIONAL MEASURES

Provisional Measure of Seizure or Removal from the Circulation Article 60

- (1) Upon the request of the plaintiff who makes it probable that his appellation of origin or a geographical indication is or shall be infringed, the court may, ending a final decision, issue a provisional measure of:
 - 1) Confiscation and/or withdrawal from the market of products made or obtained by infringement of an appellation of origin or a geographical indication;
 - 2) Confiscation and/or withdrawal from the market of implements (equipment, tools) predominantly used in the production of products infringing appellation of origin or a geographical indication;
 - 3) Prohibition of the further performance of acts infringing appellation of origin or a geographical indication.
- (2) A request for the grant of a provisional measure may be filed even before filing an action, provided that the action is filed not later than 30 days from the execution of the provisional measure.
- (3) Where there is risk of irreparable harm being caused or where there is demonstrable risk of evidence being destroyed, the court may order a provisional measure without the defendant being heard, whereas the defendant must be notified of the execution of the provisional measure without delay, but not later than five days from the execution of the provisional measure.
- (4) The court may instruct the applicant to furnish additional evidence of the infringement of appellation of origin or a geographical indication or of the imminent risk of the infringement thereof, and order him to provide a security in order to prevent any abuse.
- (5) An appeal against the court decision on the provisional measure referred to in paragraph 1 of this Article shall not stay the execution of the decision.
- (6) Appropriate provisions of the Law on Enforcement Procedure shall apply to those issues concerning the institution of provisional measures that are not provided for by this Law

Securing of Evidence Article 61

- (1) At the request of the plaintiff who makes it credible that his/her right has been infringed, and that there is a reasonable doubt that the evidence of that will be destroyed or that it will not be possible to obtain it later on, the court may order a provisional measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected.
- (2) For the purposes of Paragraph 1 of this Article, the securing of evidence shall mean the inspection of premises, books, documents, databases, etc., as well as the

seizure of documents and infringing goods, interrogation of witnesses and expert witnesses

- (3) The court order for measures to secure evidence shall be served to the person from which evidence is to be collected, on the occasion of the collection of evidence, and to an absent person, as soon as that becomes possible.
- (4) Provisional measure to secure evidence

(2) The enforcement of this Law shall commence 6 months from the day on which this Law enters into force.

Article 67

On the day of commencement of enforcement of this Law, the Law on Indications of Geographical Origin (Official Gazette of Serbia and Montenegro No. 20/06) shall cease to be effective.