



CPVO

Community Plant Variety Office

The Board of Appeal of the CPVO

Martin EKVAD, President of the CPVO

Strasbourg, 29 January 2016

@CPVOTweets

Outline

1. The context in which the Board functions
 - The EU PVP System
2. How does the Board function ?
 - Criteria for appealing
 - Appeal procedure
 - The decision process
 - Fees
3. Example of cases
4. Final remarks and Statistics



1. The EU PVP System

- Operational since 1995
- EU PVR is valid in the 28 member states
- National PVR systems in 24 member states

- 1995-2015; around 54,000 applications
- Annually ~3500 applications
 - 2014: 3600
 - 2015: 3200



The EU PVP System

- 55 % Ornamentals
- 25 % Agricultural
- 15% Vegetable
- 5% Fruit



Criteria for protection

- Distinct
- Uniform
- Stable

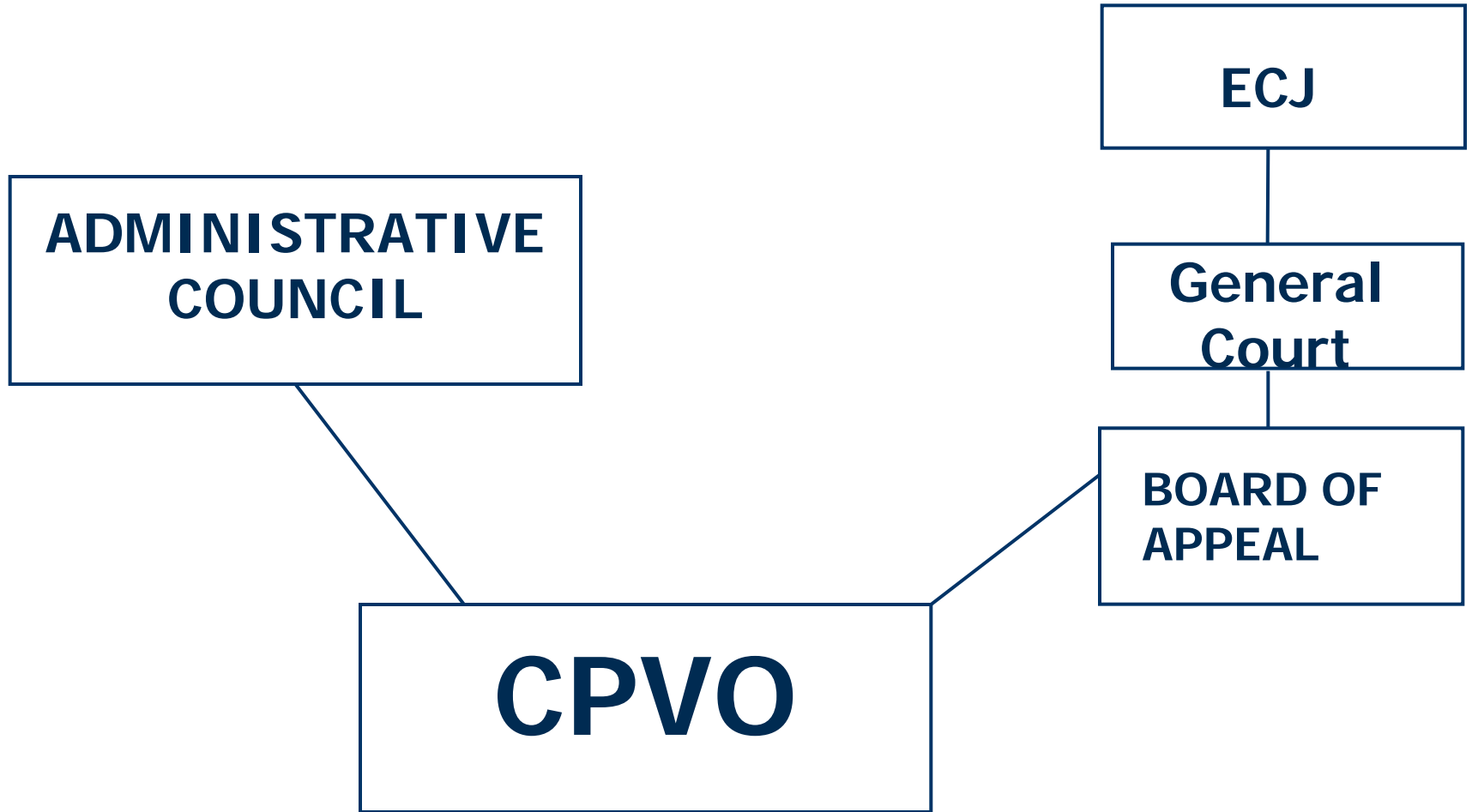
- Variety denomination
- New



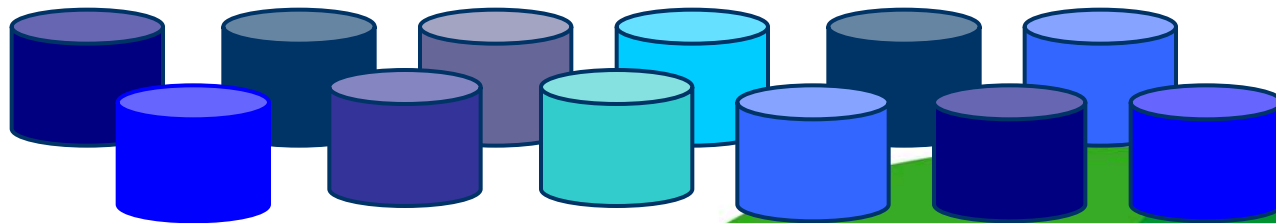
The CPVO

- The CPVO is a self financed EU agency – funded by fees charged for services rendered.
- Staff of 45 people
 - representing 12 nationalities.
- We work in
 - Theory with 24 languages
 - In practice approximately 5 languages.





EXAMINATIONS OFFICES IN THE MEMBER STATES



2. How does the Board function

- **Composition**
- The Chair and his/her alternate are appointed by the Council for 5 years.
- The Members are appointed by the Administrative Council for 5 years (a list of 19 persons)
 - Technical experts
 - Legal experts
- A sitting BoA is made up of the Chairman & 2 members
- The Chair selects the 2 members for each case



The Appeal Procedure

- Legislative basis : Art 67 of the Basic Regulation (EC) 2100/94 (BR)
- Art 73 BR : Actions may be brought before the Court of Justice against decisions of the Board of Appeals on appeals



Parties to proceedings (Art 68BR)

- **Entitlement to appeal and parties to appeal proceedings**
- Any natural or legal person may appeal
 - addressed to that person, or
 - against a decision which, addressed to another person, is of direct and individual concern to the person
- The **Office** shall, be party to the appeal proceedings.



Decisions subject to appeals

Nullity / cancellation of a CPVR (*art. 20 and 21 of B.R.*)

Compulsory exploitation rights (*art.29 and 100 para. 2*)

Objections to the grant of a CPVR (*art. 59*)

Refusal of an application/ Grant of a CPVR (*art. 61 and 62*)

Approval/amendment of variety denominations (*art. 63 and 66*)

Fees (*art. 83*)

Apportionment of costs (*art. 85*)

Establishment of the Registers/ Public inspection (*art. 87 and 88*)

An appeal has **suspensory effect** of the contested decision unless otherwise decided by the CPVO



How to lodge an appeal ?

1. Decision of the CPVO

2. Sending & publication of the decision

3. Lodging of the appeal

- Within 2 months of the publication
- 1/3 appeal fee (500 euros)

4. Grounds of appeal

- Within 4 months of the publication

5. Rectification procedure by the CPVO

6. Remittal to the Board of Appeal

- 2/3 of the appeal fee (1000 euros)



Decision process of the Board

Composition of the Board: 1 chairman + 2 members



Step 1: Nomination of the rapporteur and the other member



Step 2 : Opinion of the rapporteur



Step 3 : Oral proceedings in Angers



Step 4 : Decision of the Board within 3 months of the oral proceedings.



Step 5 : Possible appeal to the General Court



Fees

Appeal fee = 1500 euros per appeal lodged

1/3 are due on receipt of the appeal

2/3 are due, on request of the Office, within one month from the remittal of the appeal to the Board of Appeal

The appeal fee may be **reimbursed** in certain circumstances



3. Examples of cases

- **Gala Schnitzer**

- Appeal on two grounds

- Procedure – the CPVO had allowed a second sample since the first sample was virus infected
- Distinctness; the candidate variety was not distinct

- BoA : CPVO was not entitled to allow a second sample; did not rule on distinctness

- GC: Yes, CPVO was entitled to allow a second sample

- CJEU: agreed to the GC



What should the BoA do about the Distinctness ground

?

Examples of cases

- BoA re-opened the case
 - Decided that the variety was not distinct
 - President had accepted an additional characteristic too late
- GC: Agreed with the BoA
- CJEU
 - Pending



Examples of cases

- Case A011/2008 *Santa Fe*
 - CPVO refused; variety not uniform
- Appellant:
 - the growing conditions were not good at the Examination Office
 - the Examination Office mixed up plants
- BoA:
 - No evidence of problems with the growing conditions



Examples of cases

- Case A004/2004 *Ginpent*
- Third party:
 - asked the CPVO to amend a Variety Denomination for a protected variety
- CPVO
 - Refused
- BoA:
 - Confirmed the decision of CPVO



Examples of cases

- Case T-187/06 *Schröder v CPVO, Sumcol*
- The appraisals of scientific and technical complex questions justify a limited scope of judicial review by the Court
- Court should only examine that when the authority was finding facts and applied the law there is no manifest errors or misuse of powers
- The Office/BoA enjoys a wide discretion
- This means in practice that the BoA is for complex technical examinations in principle last instance

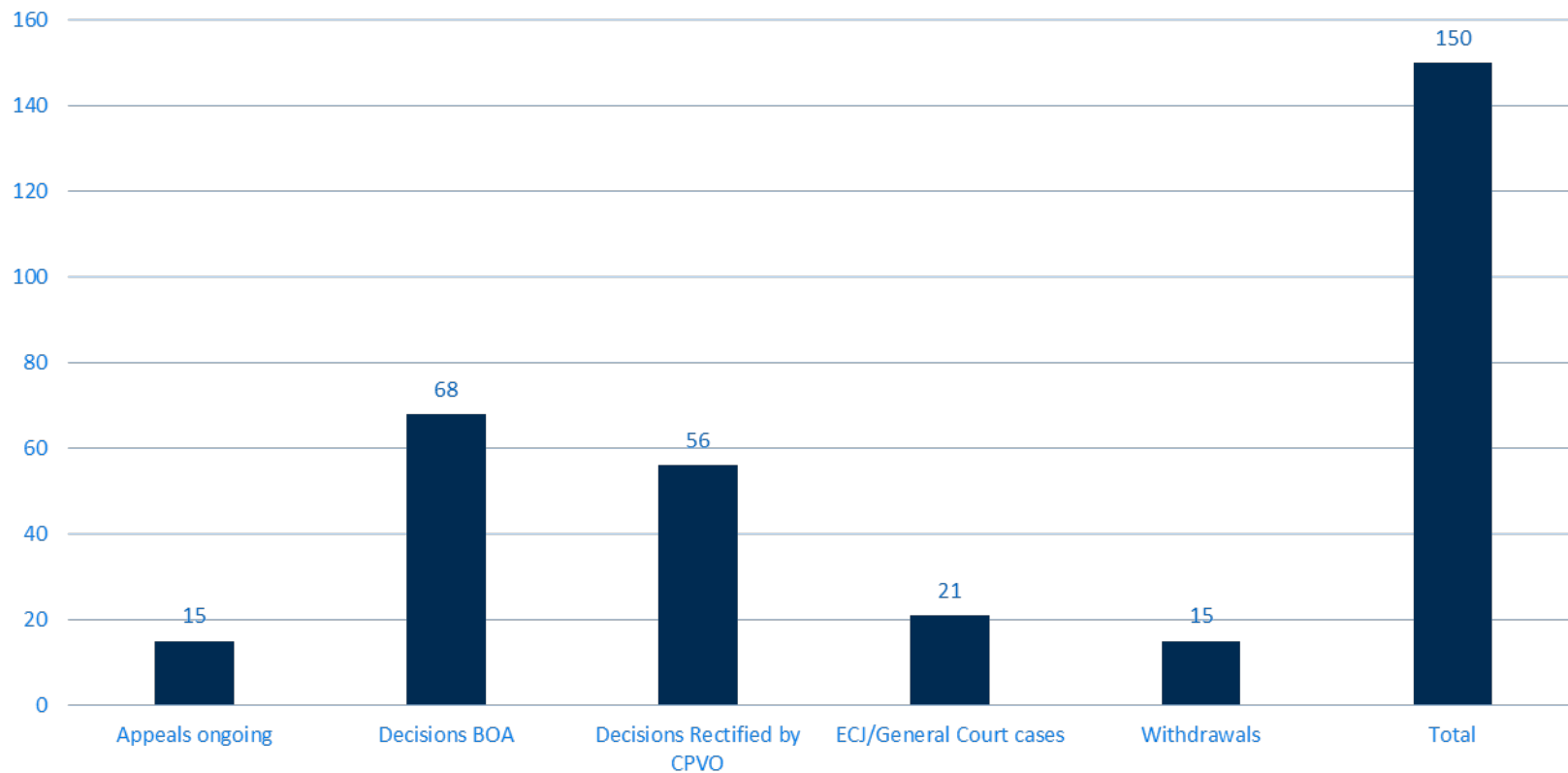


Examples of cases

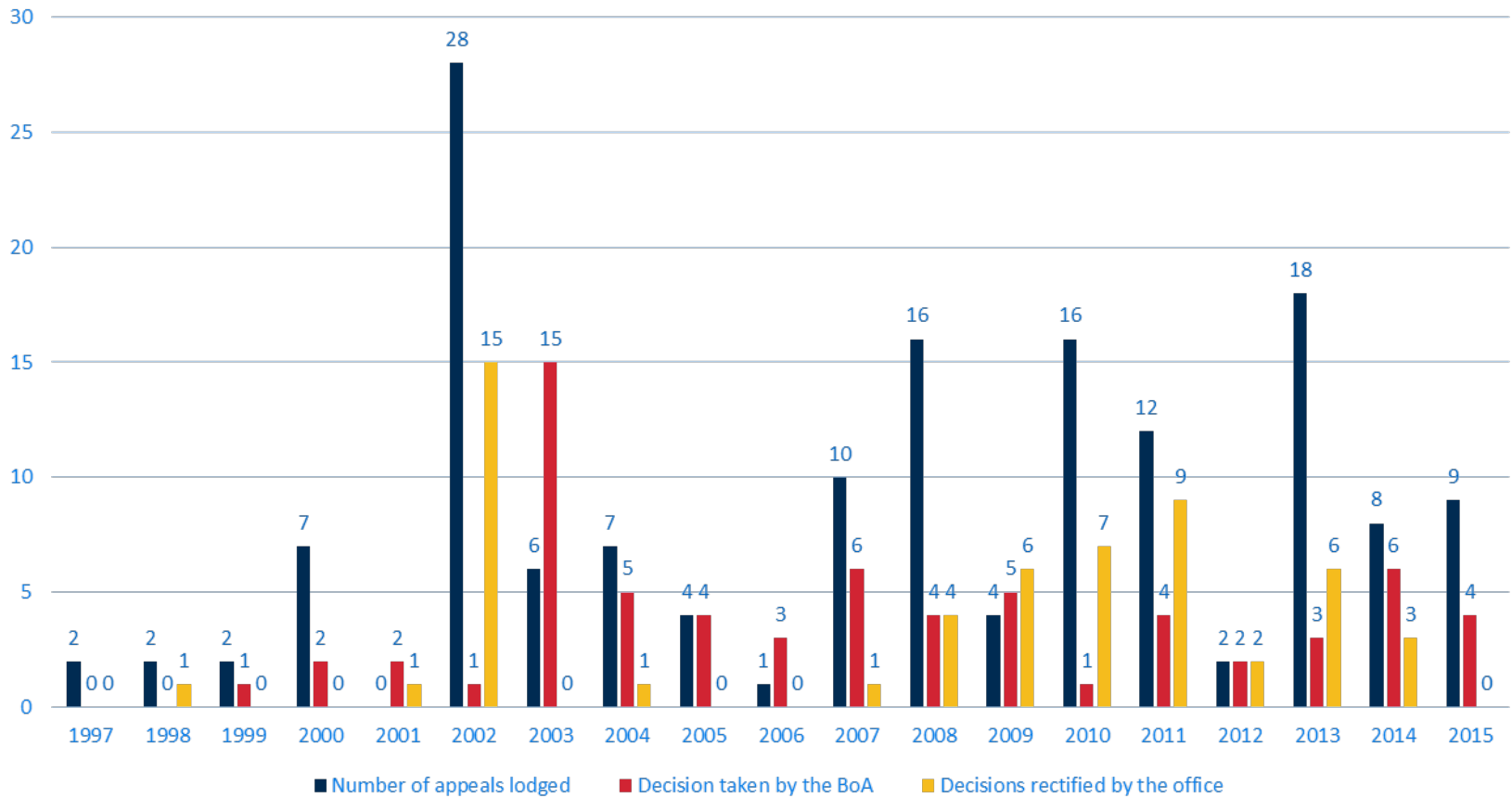
- Joined Cases T-133/08, T-134/08 and T-177/08
 - **BoA** concluded that the appellant had been duly summoned and held the oral hearing without the appellant
 - **GC**: Breach of the principle of the right of being heard
 - BoA have to redo the cases



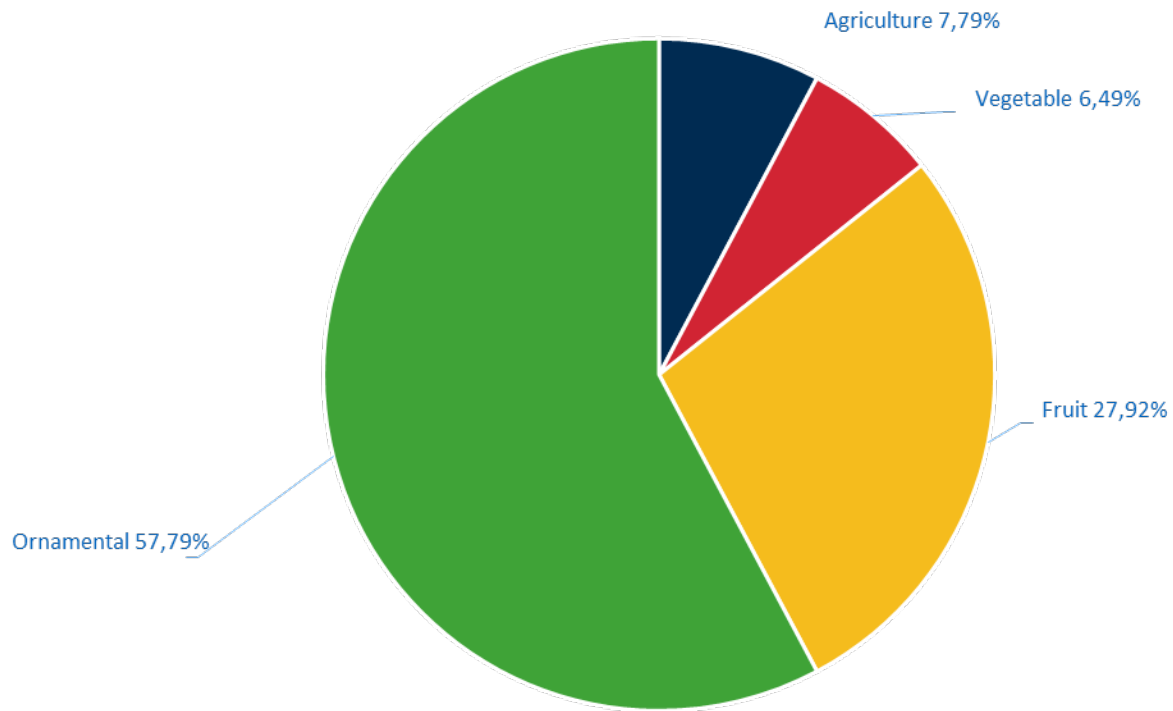
4. BOARD OF APPEAL: Statistics (01/01/1997 – 27/01/16)



Statistics



Number of appeals by sector:



■ Agricultural 7.79% ■ Vegetable 6.49% ■ Fruit 27.92% ■ Ornamental 57.79%



Legal basis appeals lodged

Article 61 BR	Rejection	. Distinctness	22
		. Uniformity	9
		. Submission plant material	4
		. Entitlement	4
		. Novelty	4
Article 62 BR	Grant		13
Articles 63&66 BR	Variety denomination		3
Article 83 BR	Fees	. Non payment annual fees	68
Article 59	Objections	Objections	1
Article 20 BR	Nullity		8
Article 21 BR	Cancellation	. (Non) cancellation of a CPVR	3
Article 87 BR	Registries	. Change of variety denomination	2
TOTAL (1997-2016)			154



16 Decisions were Appealed to the General Court (first instance)

- T-95/06 'Nadorcott'
- T-187/06 'Sumcol 01'
- T-187/06 DEP I 'Sumcol'
- T-133/08 'Lemon Symphony'
- T-134/08 'Lemon Symphony'
- T-135/08 'Gala Schnitzer'
- T-177/08 'Sumost 01'
- T-242/09 'Lemon Symphony'
- T-367/11 'Southern Splendour'
- T-91/14 'Gala Schnitzer'
- T-92/14 'Gala Schnitzer'
- T-767/14 'Oksana'
- T-140/15 'M02205'
- T-425/15 'Seimora'
- T-426/15 'Seimora'
- T-428/15 'Sumost'



5 Decisions appealed to the Court of Justice (second instance)

- C-38/09 'Sumcol 01'
- C-38/09P-DEP 'Sumcol 01'
- C-534/10 'Gala Schnitzer'
- C-546/12P 'Lemon Symphony' / 'Sumost'
- C-625/15P 'Gala Schnitzer'



Final remarks

- Limited number of appeals
- Oral hearings in most cases
- Rules of Procedure for appeals can be improved
- Technical / legal field - with quite some discretion to the CPVO
- BoA gives important guidance to the CPVO and parties
- Important body – “last instance” for technical matters
- All in all – the appeal proceedings work very well



Further studies

- Booklet of CPVO case law online
 - – paper format can be sent on request
- Case law database on the CPVO website
 - BoA cases
 - Appeals to CG and CJEU
 - Certain cases from the European Patent Office
 - PVR Infringement cases from national courts
- www.cpvo.europa.eu



THANK YOU!

@CPVOTweets

