Netherlands that the absence of a provision requiring verification of the consent of the donor or recipient of products obtained by biotechnological means undermined the right to self-determination. The Directive concerned only the grant of patents and therefore did not extend to activities before and after grant, whether they involved research or the use of the patented products.

3. Patentability of biological inventions

3.1. Plants and plant varieties

According to Art. 53(b) EPC, a patent shall not be granted if the claimed subject-matter is directed to plant varieties. If a product claim does not specify any particular plant variety, but a **technical teaching which can be embodied in an unspecified number of plant varieties**, the subject-matter of the claimed invention does not relate to a plant variety or varieties within the meaning of Art. 53(b) EPC. Thus, a patent will not be granted for a single plant variety but can be granted if varieties may fall within the scope of the claims. If plant varieties are individually claimed, they are not patentable, irrespective of how they were made (**G 1/98**, OJ 2000, 111).

3.1.1 Definition of the term "plant varieties"

T 49/83 (OJ 1984, 112) first defined the term "plant varieties" as a multiplicity of plants which were largely the same in their characteristics and remained the same within specific tolerances after every propagation cycle. Following on from this, the board in **T 320/87** (OJ 1990, 71) concluded that **hybrid seed and plants**, lacking stability in some trait of the whole generation population, could not be classified as plant varieties within the meaning of Art. 53(b) EPC 1973. In this regard, see also **T 788/07**. In **T 356/93** (OJ 1995, 545) the board held that **plant cells** as such, which with modern technology can be cultured much like bacteria and yeasts, could not be considered to fall under the definition of a plant or of a plant variety. This was confirmed by **G 1/98**, which stated that plant cells should be treated like micro-organisms.

The term 'plant variety' is defined in R. 26(4) EPC in the same way as in Directive 98/44/EC on the legal protection of biotechnological inventions, namely as "any plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety are fully met, can be:

(a) defined by the expression of the characteristics that results from a given genotype or combination of genotypes,

(b) distinguished from any other plant grouping by the expression of at least one of the said characteristics, and

(c) considered as a unit with regard to its suitability for being propagated unchanged."

The words "the expression of the characteristics that results from a given genotype or combination of genotypes" used in R. 26(4)(a) EPC refer to the entire constitution of a