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LEGAL PROTECTION OF THE INTANGIBLE CULTURAL HERITAGE IN THE REPUBLIC OF MACEDONIA

Abstract: This paper considers the basics of the legal protection of the intangible cultural heritage, seen as an integral part of the national system and model of cultural heritage protection in the Republic of Macedonia. They, as a separate thematic unit, are presented here for the first time in a scope and in a way that provides basic knowledge about them, their creation and the open issues regarding their implementation.

Key words: intangible goods, intangible cultural heritage, protection.

Basic terminology

Within the field of law, in specific legal branches and disciplines, when dealing with *intangible goods* as the subject of regulation or study, one encounters a plethora of words, expressions and/or legal formulations (constructions) used for their *terminological identification*. Usually, in a given context, people use general expressions as generic legal terms, which lack the required precision. In addition, in many instances, people also use special expressions, typical for a specific legal area or discipline. This, in turn significantly contributes to misunderstandings or arbitrary interpretations in practice. Therefore, despite it being a matter of scientific convention, the terminology in question remains susceptible to analysis and thus, not only due to reasons of methodology, rises to the forefront as an aspect that cannot, or at least should not be ignored, especially due to the cognitive function and the sense of the *terminological identification*.

If we look at the *constitutional terminology* in the past and today we will note a medley of expressions wherein we could discern, only partially or

indirectly, the *intangible goods*. Thus, a provision in the *Macedonian constitution* from 1963 which lists specific *material goods* as constitutional categories, at the end, also contains the formulation: “and other national historic and cultural values” (article 32).⁴⁷ Such normative simplification still allows us, through inference, to surmise that the individually unidentified *intangible goods*, as *national historic and cultural values*, has indeed risen to the rank of a *constitutional category*. A similar legal technique was also used to simplify one of the *constitutional amendments* from 1989 (*Amendment XLVII*), which stipulates: “real estate and other objects and valuables of cultural and historic significance.”⁴⁸ In this case, the word “valuables” provided a constitutional basis for expand the coverage of protection to include *intangible goods* as well, having in mind that this amendment formulation uses this word as a synonym to the word “goods”. The current *Macedonian Constitution*, in turn recognizes *intangible goods* in a more general context, in the section devoted to *cultural freedoms and rights*, under the constitutional expression “other types of creative work” or “other types of intellectual creativity” (article 47 paragraph 1 and 2), and, in the *context of protection* only under the category “historic and artistic treasure” (article 56 paragraph 2), subject to interpretation.⁴⁹

In the area of *civil (property) rights*, in the past, people used, among other things, the expression “unsubstantial stuff” (lat. *res incorporales*), regarding *intellectual rights*, i.e. *intellectual property (copyright, inventions)*, but, as such, this term remained unacceptable for the *terminological identification of the intangible goods as a category of protection*.⁵⁰

In the field of *copyright*, in addition to the standard expressions like “*intellectual creation*”, “*intellectual works*”, “*intellectual property*”, the relevant legislation, in specific periods, such as the *Law on Copyright* from 1968 (Federal Legislation), made use of more accurately defined expressions referring only to specific categories of *intangible goods*, encompassed within the legislative expression “*folk literary and artistic creations*” (article 6 and article 52).⁵¹ Today, the current law – *Law on Copyright and Related Rights* from 2010 (article 53),⁵² as well as the previous law from 1996 (article 42),⁵³ covers

⁴⁷ *Constitution of the Socialist Republic of Macedonia* (“Official Gazette of the Socialist Republic of Macedonia” 15/63).

⁴⁸ *Amendments XXIV to LV of the Constitution of the Socialist Republic of Macedonia* (“Official Gazette of the Socialist Republic of Macedonia” 16/89).

⁴⁹ *Constitution of the Republic of Macedonia* (“Official Gazette of the Republic of Macedonia” 52/91).

⁵⁰ For the term “unsubstantial stuff”, see Asen Grupche, *Civil Law – general section*, Skopje, “Kultura”, 1976, 178-179.

⁵¹ “Official Gazette of the SFRY” 30/68.

⁵² “Official Gazette of the Republic of Macedonia” 115/10, 51/11, 147/13.

⁵³ *Law on Copyright and Related Rights* (“Official Gazette of the Republic of Macedonia” 47/96).

copyright, as well as *civil (property) law* all of the “folklore”. Therefore, the *civil (property) law* terminology is an unacceptable *terminological standard* for identifying *intangible goods*.

International law, specifically the *international monument law* by the end of the 20th century, used official *international terminological standards* including the terms “*traditional and popular culture*” (French: *culture traditionnelle et populaire*) and “*Traditional Culture and Folklore*”. At the beginning of the 21st century these expressions also included the international expression “*Intangible Cultural Heritage*” (French *patrimoine culturel immatériel*).⁵⁴

Within *comparative monument law*, during the second half of the 20th century, the national legislation of the countries whose protection model also included *intangible goods*, used official expressions such as: “*unsubstantial cultural goods*”, “*folklore elements*” (South Korea), “*intangible cultural goods*”, “*folklore cultural goods*” (Japan), “*folklore expression*”, “*toponymical heritage*” (Honduras), “*living heritage*” (Venezuela), “*intangible cultural goods*” (Croatia) etc.⁵⁵

The *Macedonian Monument Law*, particularly the older legislation referring to the *museum and cinematic activities* from 1952, employed the expressions “*traditional spiritual culture*”, “*traditional lore*” and “*folklore*”,⁵⁶ and the regulations enacted right before the end of the 20th century, particularly the *Law on Culture* from 1998, officially used the generic expressions: “*spiritual works*” (article 5, paragraph 1), “*spiritual cultural treasure*” and “*protection and use of the spiritual cultural treasure*” (article 59, paragraph 5).⁵⁷ Today, the current *monument terminology* also includes the terms: “*intangible goods*”, “*spiritual cultural good*”, “*cumulative spiritual cultural good*” and “*spiritual cultural heritage*” replaced, in 2014, with the expression “*intangible cultural heritage*”. The types of *intangible cultural heritage*, in turn, were named using the current legislative terminology: “*folklore goods*”, “*language*” and “*toponyms*”.

⁵⁴ See notes 20 and 22.

⁵⁵ For more details, see Jovan Ristov, *Monument Terminology – Generic Terms for Protected Goods with a Selection of Definitions*, Skopje, NIPMC, 1997, and a summary of the protection models from the same author: *Monument Law in Macedonia, Volume One*, Skopje, “Kultura” - NIPMC, 2003, 23-32.

⁵⁶ Article 2 from the *Regulation of the Ethnological Museum in Skopje* (“Official Gazette of the Socialist Republic of Macedonia” 36/52) and article 1 of the *Regulation for the establishment of the national Film Archives of the PRM* (“Official Gazette of PRM” 6/52).

⁵⁷ “Official Gazette of the Republic of Macedonia” 31/98, 49/03, 66/03-consolidated text, 82/05, 24/07, 116/10, 47/11, 51/11, 136/12, 23/13, 183/13, 44/14, 61/15, 154/15.

Holistically speaking, the issue of *terminological identification of intangible goods* still remains current, especially from the point of view of the *terminological standardization of the object of protection*.

Historic context

Intangible cultural heritage and its *protection* are relatively new legal categories in the world and therefore in the *Macedonian legal order* as well. These concepts were explicitly established in the *national legal system*, by the end of the 20th century, after many years of insisting and failed attempts to create the *constitutional and legislative bases* necessary to introduce these concepts in the *cultural heritage protection system*. Namely, in a few decades, since 1945, the former common country, the *Yugoslavian Federation (DFY, FPRY, SFRY)* as well as the *Macedonian legal system* protected only *material goods* (movable and immovable) of various kinds, categorized under the generic term: *Monuments of Culture*.

The need to expand the protection scope and include *immaterial goods* became current by the end of 1987, with the official proposal to *protect the traditional oro dance "Teshkoto"* as a *monument of culture*. However, the legal system then did not have any *constitutional nor legal bases* for acting on such a suggestion of the *Traditional Folk Songs and Dances Ensemble "Tanec"* submitted to the relevant authorities at the time, i.e. *the Culture Committee of the Socialist Republic of Macedonia*.

The first attempt to regulate this subject matter was made within the legislative project from 1998, i.e. *the Proposal for Enacting the Law on Cultural Treasure*, prepared during the *public consultation for the draft amendments of the Constitution of the SFRY and the Constitution of SRM* from 1974.⁵⁸ This legislative project, under the key generic term referencing the subject of protection, i.e. *the cultural heritage*, favored at the time, included the *intangible goods* as well, categorized under the derived generic term: *intangible cultural treasure*, described as: "*folk songs, dances and other creations, customs and other folklore elements, traditional handcrafts and performing arts of cultural and historic significance*" (article 1, line 3 of the Proposed Law).

During that time, more specifically at the beginning of 1988, at the time of the public consultations about the *draft constitutional amendments*, the professional circles in the area of *protection of the monuments of culture* made the initial efforts to create *constitutional bases for the protection of intangible goods*. Thus, at the *Yugoslav Advisory Meetings* on the topic "*Constitutional*

⁵⁸ This legislative project was prepared in the *Republic's Committee for Education, Culture and Physical Culture* (November 1988), but was never properly reviewed and enacted due to omissions of conceptual nature.

Amendments and the Protection of Cultural Goods”;⁵⁹ only to participants raised the issue of the *protection of the cultural goods*, one from *SR Macedonia*⁶⁰ and one from *SR Croatia*.⁶¹ In addition, the author wrote a paper raising the issue in the Macedonian periodicals in the area of culture.⁶² As a result, as previously mentioned, one of the *constitutional amendments* of the time, provided a *constitutional basis* for expanding the scope of the *protection* to include the *intangible goods (values) of cultural and historic heritage*. However, the normative advances of that time were short lived, having in mind the breakup of the common country and the proclamation of the independence of the *Republic of Macedonia*.

In 1991, during the *public consultation regarding the draft constitution of the Republic of Macedonia*, this issue became current again, considering that the proposed text did not contain provisions referring to *the protection of intangible goods*.⁶³ Namely, at the time, the author, through the institution that he managed, submitted several *remarks, suggestions and proposals to the Constitutional Issues Committee of the Parliament of the Republic of Macedonia*.⁶⁴ As a result, the *Constitution of the Republic of Macedonia* incorporated provisions regarding the so called *guaranteed protection of intangible goods*, covered under the constitutional expression: “*historic and artistic treasure*”. In this case, the author attempted to officialize the expression “*cultural heritage*” as a *constitutional term* encompassing both the *material and the intangible goods of cultural, historic, scientific, artistic and other similar significance*, and not only the *structures and objects of special cultural and historic significance* as proposed in the *draft constitution of the Republic of Macedonia*. Nevertheless, the current constitutional provision (article 56, paragraph 2) does contain the *constitutional basis for the protection of intangible goods*, but it has one serious deficiency, i.e. it does not provide the

⁵⁹ The advisory meetings were held on the 17th of March 1988, in Belgrade and they were organized by the *Alliance of the Associations of Yugoslavian Conservators, the Yugoslavian Commission for Cooperation with UNESCO* and others, and appropriate conclusions were adopted based on five speeches. The materials from the advisory meetings were also published (*Гласник Друштва конзерватора Србије*, Београд, 13, 1989, 189-211).

⁶⁰ Јован Ристов, „Уставните промени и заштитата на спомениците на културата во СР Македонија“, *Исто*, 200-204.

⁶¹ Јерица Љубенко, „Заштита споменика културе и приједлози измјена и допуна Устава“, *Исто*, 196-199.

⁶² Јован Ристов, „Преиспитување на уставната концепција за заштита на спомениците на културата“, *Културен живот*, Скопје, КПЗ, 3-4 (март-април), 1988, 4-7.

⁶³ For the purposes of the public consultation, the text of the *draft Constitution of the Republic of Macedonia* was published in the daily press (see the newspapers “Nova Makedonija” and “Večer” from the 26th of August 1991).

⁶⁴ Act of the *National Institute for Protection of the Monuments of Culture – Skopje*, 01-1338 from the 13th of September 1991.

same *constitutional status* for the *intangible goods* as for the *material goods of special cultural and historic significance*. Namely, the *Macedonian constitution* does not recognize the category: *intangible goods of special significance*, nor the category: *special protection of intangible goods*.⁶⁵

Internationally, a long time after the 1973 *Bolivia* initiative, while *SR Macedonia* made efforts to create the necessary *constitutional and legislative bases for the protection of intangible goods*, the first *international act* from this field was enacted in 1989. This was the *UNESCO Recommendation for the Protection of Traditional and Popular Culture*, in the Macedonian language translated from the English original version, published under the title: *Recommendation for the Protection of the Traditional Culture and Folklore*.⁶⁶ In addition, during the last decade of the 20th century, *UNESCO* intensified the activities in the subject area, first in 1994, through the *Living Human Treasures* program (French. *Trésors humains vivants*), and then in 1997/1998 through the *Proclamation of Masterpieces of the Verbal and Intangible Heritage of Humanity* (French *Proclamation des chefs-d'oeuvre du patrimoine oral et immatériel de l'humanité*). At the beginning of the new century (2001), *UNESCO's General Conference* decided to draft and to enact a special *international legal instrument for protection of the intangible cultural heritage*.⁶⁷

In 2001, the *Republic of Macedonia* started to draft a *new law on the protection of the cultural heritage*. In the meantime, in 2003 the *Convention for the Safeguarding of the Intangible Cultural Heritage* was adopted (French *Convention pour la sauvegarde du patrimoine culturel immatériel*).⁶⁸

The first phase of the legislative project procedure for the *Proposal for Enacting the Law on Cultural Heritage* (November 2002), employed, as a derived generic term, the expression: *spiritual cultural heritage*, which entailed the three types of *intangible goods* at the time: *the folklore goods, the toponyms*

⁶⁵ More details about the current constitutional terminology and the constitutional bases for the protection of the material and intangible goods, see Јован Ристов, *Инструменти за заштита на културното наследство*, Скопје, 2008, 23-26.

⁶⁶ *The recommendation* is an act of the *General Conference of UNESCO*, adopted by the 19th of November 1989 in *Paris*, originally entitled: *Recommendation on the Safeguarding of traditional Culture and folklore/Recommandation de l'UNESCO sur la sauvegarde de la culture traditionnelle et populaire*, For the text in the Macedonian language, see Јован Ристов, Лидија Топузовска, *Темелни акти на УНЕСКО за заштита на културното наследство*, Скопје, МНК ИКОМОС, 2006, 283-290.

⁶⁷ According to the promotional file: *Promouvoir la Convention pour la sauvegarde du patrimoine culturel immatériel*. Paris, UNESCO, 2003.

⁶⁸ *The Convention* was adopted on the 17th of October 2003 (*Paris*), and entered into force on the 20th of April 2006. *The Convention* was ratified by the *Republic of Macedonia* by law, on the 28th of April 2006 ("Official Gazette of the Republic of Macedonia - International Agreements" 59/06). For the text of the *Convention*, see *Foundation Documents...*, op. cit. 149-167.

and the traditional handcrafts, each with its own legislative definition (article 5 of the Proposal). The next, second phase of the procedure for that legislative project: *Draft Law on the Protection of the Cultural Heritage* (July 2003), *intangible goods*, as the subject of the protection, were categorized under the same generic term: *spiritual cultural heritage*, and the different *types of spiritual cultural heritage* included: *the folklore goods* (article 22), *the language* (article 23) and *the toponyms* (article 24).⁶⁹ The third and last phase of this legislative project – *Proposed Law on the Protection of the Cultural Heritage* (January 2004), basically preserved the normative solutions offered by the *Draft Law*, with minor editorial interventions regarding *folklore goods* (article 24) and no interventions regarding the definitions of *language* (article 25) and *toponyms* (article 26).

During the first two phases of this legislative project, the changes and additions to the *Law on Culture* from 2003, among other things, partly remedied the ambiguities in the original text from 1998. Namely, the original text of that law used two official, key generic terms, i.e. the broader term *cultural treasure* and the more specific term *monument of culture*. The first term encompasses the entire *“material and spiritual work”*, without any eligibility threshold (article 5, paragraph 1), and the second term referred to *“cultural treasure of special cultural and historic significance”* (article 5, paragraph 2 of the original text of the Law). In 2003, in order to identify the *segment of the material and spiritual work (cultural treasure)* that can and should be a part of *the monument legal protection*, the generic term *cultural heritage* was introduced and it encompassed only those goods *“whose protection, as a permanent value, is of public interest and of significance for the history, culture, art, science and technology”* and the term *“monument of culture”* was completely abandoned (article 5, paragraph 2 of the amended text of the law). In addition, the legislative term from 1998 *“protection and use of the spiritual cultural protection”* (article 59) was also abandoned. In 2003, this in fact removed the potential conceptual difference between the *Law on Culture* from 1998 and the *cultural heritage protection legislative project*.⁷⁰

Normative framework

The current *intangible cultural heritage protection* normative framework comprises several laws and implementing regulations from the

⁶⁹ For the purposes of the public consultations, the text of the *draft law on the protection of the cultural heritage* was published in the daily press (see Vest from the 9th of August 2003).

⁷⁰ More details on the confusion created by the original text of the *Law on Culture* from 1998, see Jovan Ristov, *Instruments...*, op. cit. 31-36.

field of *cultural heritage protection* and *related areas*, on one hand and several *international acts* on the other hand.

A key regulation in this field is *the Law on Cultural Heritage Protection* from 2004⁷¹ and 4 *bylaws* enacted on the basis of the law, namely the *Rule Book on the National Cultural Heritage Registry* from 2005,⁷² the *Rule Book for Valorization, Categorization and Revalorization of Cultural Heritage* from 2005, with the associated changed and additions from 2013,⁷³ the *National Cultural Heritage Classification* from 2006⁷⁴ and the *Rule Book on the Content and the Method for Maintaining the Protection Records...*, from 2008.⁷⁵ In the related areas, in addition to the *Constitution of the Republic of Macedonia* from 1991 (article 56, paragraph 2) and the *Constitutional Amendment IX* from 2001,⁷⁶ which replaced the original text of this constitutional provision, there are 5 pertinent laws, namely: the *Law on Culture* from 1998; the *Law on the Use of the Macedonian Language* from 1998;⁷⁷ the *Law on the Local Self-Government* from 2002,⁷⁸ the *Law on the City of Skopje* from 2004⁷⁹ and the *Law on Copyright and Related Rights* from 2010. Internationally, on the other hand, there are three relevant *ratified conventions* from a legal standpoint, namely: the *Convention for the Protection of Intangible Cultural Heritage* from 2003; the *Convention on the Protection and Promotion of Cultural Expression Diversity* from 2005⁸⁰ and the *Framework Convention of the Council of Europe on the Significance Cultural Heritage in Society* from 2005.⁸¹ In addition, because of their significance and in spite of the fact that they do not have any legal effect, three other international acts are also considered relevant: the

⁷¹ *The law* was enacted on the 19th of March, published on the 2nd of April, and entered into force on the 10th of April of that year, and started to apply from the 1st of January 2005, so far it has been changed and augmented multiple times ("Official Gazette of the Republic of Macedonia" 20/04, 71/04 – correction, 115/07, 18/11, 148/11, 23/13, 137/13, 164/13, 38/14, 44/14, 199/14, 104/15, 154/15).

⁷² "Official Gazette of the Republic of Macedonia" 25/05.

⁷³ "Official Gazette of the Republic of Macedonia" 111/05 and 130/13.

⁷⁴ "Official Gazette of the Republic of Macedonia" 37/06.

⁷⁵ "Official Gazette of the Republic of Macedonia" 10/08.

⁷⁶ *Amendments IV to XVIII to the Constitution of the Republic of Macedonia* ("Official Gazette of the Republic of Macedonia" 91/2001).

⁷⁷ "Official Gazette of the Republic of Macedonia" 5/98, 89/08, 116/10, 187/13, 152/15.

⁷⁸ "Official Gazette of the Republic of Macedonia" 5/2002.

⁷⁹ "Official Gazette of the Republic of Macedonia" 55/04.

⁸⁰ *The Convention* was adopted on the 20th of October 2005 (*Paris*), and the *Republic of Macedonia* ratified it with a law from 2007 ("Official Gazette of the Republic of Macedonia – International Agreements" 47/07). For the text of the *Convention* published before its ratification, see *Foundation Documents...*, op. cit. 303-327.

⁸¹ *The Convention* was adopted on the 27th of October 2005 (*Faro, Portugal*) and entered into force on the 1st of December 2009. The *Republic of Macedonia* ratified it with a law from the 21st of February 2011 ("Official Gazette of the Republic of Macedonia – International Agreements" 25/11).

Recommendation for the Protection of Traditional Culture and Folklore from 1989; *UNESCO's Universal Declaration on Cultural Diversity* from 2001⁸² and the *Declaration of the Integrated Approaches to the Protection of the Material and Intangible Cultural Heritage* from 2004.⁸³

The *Law on Cultural Heritage Protection*, which represents a *code* of sorts, regulates the issues common to all categories of *cultural heritage*, as well as the specific issues of its protection. Thus, regarding *intangible goods*, this law regulates the following issues in particular: *the definition of the term intangible cultural heritage* (article 3, paragraph 4); *basics of protection* (article 5, paragraphs 1-5 and 8); *implementation of the protection* (article 6, paragraphs 1 and 4); *the entities authorized to perform activities related to the protection of the intangible heritage* (article 8, paragraph 5); *the types of intangible heritage and the related definitions* (articles 24-26); *the categorization* (articles 28 and 29); *the classification* (article 33); *protection records* (article 34); *the valorization and revalorization* (article 35); *documentation* (article 36); *establishment of protection* (articles 40 and 41); *urgent proclamation* (article 43); *changes to and termination of the protection* (article 44); *registration* (articles 45 and 46); *nomination for the acquisition of international status* (article 47); *national strategy* (article 49); *the regime of protection* (article 54^a); *scientific ownership* (article 62, paragraph 4); *making records, care and utilization* (article 101) and other provisions. The aforementioned *bylaws* further elaborate some of these issues.

The national regulations for *protection of the intangible cultural heritage* have been mostly harmonized with the *Convention for Protection of the Intangible Cultural Heritage*.

Status and institutional framework

The protection of the intangible cultural heritage, unlike the *protection of the material cultural heritage*, does not have the status of an *activity from the area of culture*, nor does it have the status of a *protection activity*, like the *monument activity* (*activity for protection of the immovable cultural heritage*) and the *activities for protection of the movable cultural heritage* (*protection of library, museum and audiovisual goods*). Therefore, in this sphere there are no *specialized professional institutions* (*national and local*) *for protection of the intangible cultural heritage*. In such an

⁸² Act of the *UNESCO General Conference* from the 2nd of November 2001 (*Paris*), published in the Macedonian language (see *Foundation Documents...*, op. cit. 293-301).

⁸³ Act of the *expert participants on the International Conference "Protection of the Material and Intangible Cultural Heritage: Towards an Integrated Approach"* (*Nara, Japan, 20-23 October 2004*), so far not published in the Macedonian language (for the text of the *Declaration*, see note 21).

environment, the *protection of the intangible cultural heritage* has been institutionally substituted with the model of *authorized entities*, determined by relevant decisions of the *minister of culture*. In 2005, the Minister of Culture authorized the following entities *Folklore Institute “Marko Cepenkov” – Skopje (for folklore goods)* and the *Institute for the Macedonian Language “Krstev Misirkov” – Skopje (for the language and the toponyms)*.⁸⁴ This does not preclude the possibility to determine other *authorized entities*, for a specific kind, group, subgroup or types of *intangible goods*. This is an operational issue and can be resolved in accordance with article 8, paragraph 5 of the *Law on Cultural Heritage Protection*.

The relevant *state administrative authority*, with clearly specified responsibilities regarding the *protection of intangible cultural heritage* is the *Cultural Heritage Protection Office*, an authority within the *Ministry of Culture* with the status of a *legal entity*. In fact, the *Office* is positioned to act as a *first instance authority*. It contains a special organizational unit called *Intangible Cultural Heritage Protection Department* with a few employees that have the status of *civil servants*. In addition, the pertinent law envisions that the organizational structure of the *Office* should have a separate advisory body called *Intangible Cultural Heritage Board* (article 145, paragraph 1, item 10 of the Law), but this legislatively mandated provisions has not been implemented.

The second instance *state administrative authority* is the *Ministry of Culture*. It also has other responsibilities within this area, especially: *enactment of bylaws, financing of the protection, oversight functions* etc.

The *intangible cultural heritage protection* institutional framework also contains the *Government of the Republic of Macedonia* who has several roles related to the *proclamation, nomination* etc. In addition, the *National Cultural Heritage Council* also exists at that level as an advisory and coordinating body of the *Government*, and its responsibilities are specified in article 159 of the Law.

At the level of the *units of local self-government*, according to the pertinent regulations, the responsible entities include: *the municipalities, the municipalities within the City of Skopje and the City of Skopje*. They are responsible for: *caring for the folklore, the customs, the traditional handicrafts and other similar cultural values, organizing cultural events, fostering various specific forms of creative work* etc. (article 22, paragraph 1, item 5 of the Law on the Local Self-Government and article 10, paragraph 1, item 5 and article 15, paragraph 1, item 5 of the Law on the City of Skopje).

⁸⁴ *Decision for Determining an Authorized Entity for Protection of Folklore Goods and Decision for Determining an Authorized Entity for Protection of the Language and the Toponyms* from 2005 (“Official Gazette of the Republic of Macedonia” 17/05).

Internationally, *UNESCO* already has an *Intergovernmental Committee for Intangible Cultural Heritage Protection* formed in accordance with articles 5 and 6 of the *Convention* from 2003. The highest authority of the *Convention* is the *General Assembly of the Signatory States*(article 4 of the *Convention*).

Subject of protection: status categories and their legal identification

The Macedonian cultural heritage protection model recognizes 2 (two) *basic legal categories* pertaining to the *legal protection of monuments*, to which the rules for *protection of cultural heritage* apply. These are: (a) *unprotected material and intangible goods*, jointly classified under the legal expression “*goods, reasonably assumed to be cultural heritage*”, also known as *potential cultural heritage* and (b) *the protected material and intangible goods*, classified jointly under the legal term “*protected goods*”.

The legal category – *goods reasonably assumed to be cultural heritage*, according to the legal definition, includes: *the material and intangible goods entered, as potential cultural heritage, in the official records or which deserve to be protected as cultural heritage, irrespective of the fact that they have not been recorded as such* (article 11, item 28 of the *Law on Cultural Heritage Protection*). These goods are protected in a scope and in a manner specified by the law (article 5, paragraph 5).

The legal category – *protected goods* includes the following *status categories*: *cultural heritage, temporarily protected goods, national treasure and reserved archeological zones*. With respect to *intangible goods*, both *basic legal categories* fall under the subject of protection. However, only the first two *status categories*, i.e. *cultural heritage and temporarily protected goods* are relevant for the “*protected goods*”.

The status category of *cultural heritage*, in addition to the *material* also includes the *intangible goods which, as an expression or testimony of human creation in the past and the present, due to their scientific and cultural values, properties, contents or functions, have cultural and historic significance and which are subject to a specific legally mandated regime for the purposes of protection and use* (article 2). The derived legal expression and term “*intangible cultural heritage*”, in turn entails the *various forms and manifestations of human spiritual creation in the past, recognized by the communities, groups and individuals as their own cultural heritage, conveyed from generation to generation on the territory of the Republic of Macedonia* (article 3, paragraph 4). In this case, it is worth noting that the term *intangible cultural heritage* entails only the *intangible goods from the past* and not from the *present*, as per the legal definition of the term *cultural heritage*. This discrepancy or *collision* related to the *legal identification of the subject of protection* can have a

negative impact in practice, especially when dealing with the protection of the *language* and the *toponyms*, as specific *types of intangible cultural heritage*.

The status category of *temporarily protected goods*, according to the current legal definition, entails only the *material goods (movable or immovable) reasonably assumed to represent cultural heritage and protected ex lege or on the basis of a specific act for protection of that type* (article 30, paragraph 1). However, it is worth noting that another provision of the *Law on Cultural Heritage Protection* stipulates that *temporarily protected goods* shall also include *intangible goods* in the process of being *proclaimed cultural heritage*, during the process, as *temporarily protected goods ex lege* (article 38, paragraph 3). This is obviously another case of *internal collision between legislative provisions*, precisely with respect to *intangible goods*.

The legal identification of the subject of protection also entails the stratification of *cultural heritage* into *classes and types*. In that regard, in addition to the *intangible cultural heritage (monuments, monument complexes and cultural landscapes)* and the *movable cultural heritage (archeological, ethnological, historic, artistic and technical objects, archive materials, library, audiovisual and phonoteque goods)*, a separate class shall include the *intangible cultural heritage* together with its three subtypes: *folklore goods, language and toponyms*. The term *folklore goods*, as a type of *intangible cultural heritage*, entails: *customs, rituals, tales, fables, folk songs, proverbs, riddles, dances, games, rare crafts, traditional skills and other expressions of the intangible folk creations* (article 24). The *language* subtype entails the *literary or standard language and its alphabet, as well as the local dialects of that language* (article 25), and the *toponyms* subtype entails *hydronyms, oikonyms, horonyms, dromonyms, agronyms, dendronyms and other indigenous, local and official names relevant to the toponymy of the Republic of Macedonia* (article 26). At the same time, the rationale behind the subdivision of the *cultural heritage* into the aforementioned 3 *classes and 15 subtypes*, relates to the need to specify their *legal nature*, considering the big differences with respect to the relevant *legal regime*. Thus, for example, for the *intangible cultural heritage*, many issues regarding the *immovable and/or movable cultural heritage* (ownership, possession, expropriation, concession, export, import, restitution, dislocation, archeological and conservation investigations, accidental discoveries, conservation projects, direct, integrated, environmental, security, and military humanitarian protection etc.) bear no relevance whatsoever for the *intangible cultural heritage*. Conversely, the specific issues typical only for the *intangible cultural heritage* bear no relevance for the *material cultural heritage*.

Instruments for protection

The Macedonian cultural heritage protection model entails multiple *protection instruments* related to the *intangible cultural heritage*. These

include: *classification, protection records, documentation, valorization, categorization, establishment, modification and termination of protection, registration and nomination for an international protection status.*

The classification instrument, according to the *National Cultural Heritage Classification*, with respect to *intangible goods* and in addition to the *subtypes*, also distinguishes 21 *groups*, 91 *subgroups*, 196 *types* and 321 *subtypes of intangible cultural heritage*. On the other hand, the *folklore goods* subtype distinguishes 7 *groups*, 40 *subgroups*, 331 *types* and 285 *subtypes of goods*; the *language subtype* distinguishes 6 *groups*, 17 *subgroups*, 32 *types* and 36 *subtypes of goods*, while the *toponyms* subtype distinguishes 8 *groups*, 34 *subgroups* and 33 *types of goods*. The existing *National Classification* requires additional work.

The inventorisation comprises different types of *protection records*, namely: (1) *basic records*, i.e. *general inventories* by good types (*folklore goods, language and dialects and toponyms*); (2) *central records*, i.e. *central inventory of intangible goods of cultural and historic significance* and (3) *special records* or more specifically the *National Representative List of Intangible Cultural Heritage*. The content of these *protection records* is standardized with the previously mentioned *rule book* from 2008.

The *intangible goods documentation* is an open issue, primarily with respect to the *records standardization*. The envisioned *bylaw (rule book)* for this normative matter has not been enacted (article 36, paragraph 2 of the Law).

Valorization consists of a professional and a scientific estimation of the value and the properties of the goods against predetermined criteria, with a view of protecting the goods and placing the goods under an appropriate regime of protection. *The right to valorize* has been entrusted to *authorized entities*, or, in exceptional cases, to the special committee formed by the *Minister of Culture* (article 35, paragraph 5, item 3 and paragraph 8 of the Law). *The basic intangible goods valorization criteria*, specified in the relevant *rule book*, include: (1) *Value* (ethnological/folkloristic, ethnomusicological, ethnochoreological, philological, linguistic/phonetic, phonological, morphological, lexicological, semantic, etymological, dialectological, onomastic/toponomastic etc.); (2) *Properties* (authenticity, uniqueness, diversity, integrality, preservation, age, rootedness, affiliation); (3) *Function* (cultural, historic, artistic, scientific, educational, social and communications etc.); (4) *Significance* (cultural, historic, artistic, scientific, educational, social and communications etc.); (5) *Additional*: capability and harmonization (article 3, paragraph 2, item 3, paragraph 2, item 1-9, paragraph 4 and paragraph 5, item 1 and 2 of the *Rule Book*). The relevant procedure involves the preparation of an appropriate *valorization report*, *review* of the report and drafting of a *cultural heritage proclamation proposal*.

Categorization means determination of the level of significance of the cultural heritage in public interest, with a view of prescribing an appropriate

level of protection and other specified purposes. There are 2 *categories*: (1) *cultural heritage of special significance* (the higher category), with 2 *subcategories* – *exceptional significance* and *great significance* and (2) *significant cultural heritage* (lower category). *The categorization* is performed together with the *valorization*, according to *special criteria*. This includes three criteria with respect to *cultural heritage of exceptional significance* (1. *Exceptional testimony of human creative genius*; 2. *Distinctiveness* and 3. *High level of authentic preservation*), three criteria with respect to *cultural heritage of great significance* (1. *Authentic testimony for the cultural and social folk traditions*; 2. *Particularity* and 3. *High level of authentic preservation*) and two criteria with respect to *significant cultural heritage* (1. *Replicability* and 2. *Low level of authentic preservation*).

Revalorization means *professional and scientific estimation of the values and the properties of the cultural heritage, with a view of confirming, expanding, strengthening or reducing the effect of protection, including protection revocation or termination*. It applies to *protected goods* and it involves the drafting of an *intangible cultural heritage revalorization report*. Basically, the same rule that apply to *valorization*, also apply to *revalorization*, and when it includes *recategorization*, the criteria for *categorization* apply as well.

Regarding the *establishment of protection, material and intangible goods* differ substantially. Namely, *intangible goods* can acquire the status of *protected goods* only by having been *proclaimed as cultural heritage*, and *ex lege*, only as an exception, as *temporarily protected goods* in case of an *official cultural heritage proclamation proposal* in the appropriate category. They do not have a recognized status of *cultural heritage ex lege*, like some *material goods*, nor can they acquire the status of *temporarily protected goods* based on a *protection act*. Nevertheless, depending on the *categorization*, either the *Cultural Heritage Protection Office* enacts the *proclamation decision* (in the event of the lower category) or the *Government*, or the *law* in exceptional cases (in the event of *the proclamation of cultural heritage of special significance*).⁸⁵

The national cultural heritage registers the *protected intangible goods* in the *Main Ledger, part III – Intangible Cultural Heritage* and *Part IV – Cultural Heritage of Special Significance* (in the event of heritage of this category). *The cultural heritage protection office*, registers the heritage based on the *protection act*. In addition, the *Additional Registry of Temporarily Protected*

⁸⁵ In the period 2009-2014, the *Government of the Republic of Macedonia* took decisions proclaiming 57 individual and group intangible goods as cultural heritage of special significance (“Official Gazette of the Republic of Macedonia” 117/09, 88/11, 99/11, 101/11, 118/14, 120/14).

Goods, registers *intangible goods having the status of temporarily protected goods ex lege*, based on the *registration decision*.

The *nomination* for obtaining the *international status* refers only to the *immovable and intangible cultural heritage of special significance*. The *Government* makes the final decision upon a proposal from the *Ministry of Culture* and a *prior opinion of the National Cultural Heritage Council*. In this case, this involves the *nomination for registration in the representative list of intangible cultural heritage* and potentially the registration in the *list of intangible cultural heritage requiring urgent protection*, within the meaning of article 16 and 17 of the relevant convention.⁸⁶

Protection regime

The Macedonian *intangible cultural heritage* protection model comprises *two levels of protection regime*, namely *first level protection regime* relevant for the *cultural heritage of special significance*, requiring *special/strict protection* and *second level protection regime* relevant for the *significant cultural heritage and temporarily protected goods ex lege*, requiring *guaranteed/limited protection*. A key deficiency of the existing protection model relates to the vaguely defined contents of the relevant *protection regime levels*. In that respect, one finds it curious that none of the enacted *intangible cultural heritage proclamation acts* contain provisions regarding the relevant *protection regime* correspondent to the previously determined *category* or *subcategory*.

The open issue regarding the distinction between the *first and the second level protection regime*, has been, to a certain extent, substituted on a secondary legislation level, with the changes and additions to the relevant *Rule Book* from 2013, which specifies the *protection measures*. Namely, these include: 1. *Ensuring the accessibility of the intangible goods to the public*; 2. *Fostering the continuous conveyance and nurturing of the goods in their indigenous and other milieus*; 3. *Ensuring the sustainability of the goods through: identification, documentation, scientific research, protection, stimulation, conveyance of the tradition to descendants through formal and non-formal education and revitalization of the abandoned segments of the good*; 4. *Development of scientific, technical and artistic studies, as well as research methodologies for effective protection of the intangible cultural heritage*; 5. *Continuation of the research of the goods with appropriate*

⁸⁶ The representative list of intangible cultural heritage in UNESCO, currently registers 3 intangible goods: “the traditional custom St. Forty” – Shtip “Kopachka – traditional oro dance from the village Dramche, Pijanec region” and “Male polyphonic singing from Dolni Polog, Republic of Macedonia”.

documentation in all types and methods of contemporary recording, as well as professional and scientific valuation; 6. Incentivizing the community and the group practicing the good, to identify, define and convey the good; 7. Popularization and promotion of the good by organizing exhibition, professional assemblies, folklore exhibits, festivals, concerts, as well as through the electronic media, audiovisual recordings etc.; 8. Education of staff to convey the knowledge and the skills by way of workshops, seminars, formal and non-formal education.

Conclusion

The legal protection of the intangible cultural heritage in the Republic of Macedonia forms an integral part of the single cultural heritage protection system. It possesses a sound normative basis, profiled in accordance with the modern protection principles, the international standards and the particularities of the intangible creations in this country. Nevertheless, it still requires further promotion of the existing protection model, both with respect to the normative and institutional framework, as well as with respect to the practical implementation of the intangible cultural heritage protection.

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