

**Legal protection of the folklore and other manifestations of
intangible cultural heritage of Azerbaijan Republic**

Abstract: It is considered legal aspects of protection of the folklore and other manifestation of intangible human creativity. Legislation of Azerbaijan Republic, international legal acts, which regulate state protection of the objects of intangible cultural heritage, is analyzed; it is formulated suggestions to develop new measures of legal protection of historical and cultural (intangible) heritage.

Keywords: intangible cultural heritage; folklore; cultural values; monuments of history and culture, legal protection.

According to article 77 of the Constitution of Azerbaijan Republic, the duty of each citizen is to protect the monuments of history and culture. The state guarantees protection of the monuments of history and culture, provides creation, work and development of the institutions, which carry out scientific research and promotion, create the necessary conditions to rational usage of the monuments.

Historical and cultural heritage consists on the monuments of tangible and intangible manifestations of human creativity. Intangible cultural heritage is a combination of the forms, which based on tradition, of cultural activity of human community. They form to each member of the community the feel of intergenerational continuity and unique identity. Crux of intangible (spiritual) cultural heritage is the fact that this heritage is passed by alive people and perceived by also alive audience. It should be always remained lively in context of modernity, to preserve its creative nature.

In 2003 at 32nd Conference of the General Assembly of UNESCO was adopted Convention "On protection of intangible cultural heritage". Azerbaijan had also

♦**Martynenko Ihar** - Doctor of the Law, Associate Professor, the head of the department of civil law and procedure, Yanka Kupala Grodno State University (Belarus). E-mail: martinenko@tut.by

participated at this Conference. In compliance with article 2 of the Convention, intangible cultural heritage are the following: customs, forms of expression and presentation, manifesting in verbal tradition, traditional music, dances, theatres, customs, rituals, holidays, knowledge, being related to nature and universe; traditional trades, and items and cultural space, which are recognized as part of cultural heritage, passed from generation to generation, recreated permanently, form a sense of unique identity and intergenerational continuity and are also corresponded with international legal documents relating to human rights.

On November 29, 2013 Inter-parliamentary Assembly of the states - participants of the Commonwealth Independent States adopted model law "On protection of intangible cultural heritage" [1]. The model law determines the intangible cultural heritage as combination of spiritual, intellectual and moral and ethical values, which are inherent to ethnic, social or confessional group. These values are reflection of cultural and national unique identity of society and are covering way of life, traditions and forms of their expression, including language, norms and rule of behaviour, faith, rituals, customs, holidays, folklore, technology of producing of the items of folk of applied decorative art, musical instruments, items of everyday life and folk artistic canons, which are reflected in historically combined plots and images and forms of their embodiment.

Folklore is one of the manifestations of intangible cultural heritage. Among the CIS participants, Azerbaijan Republic was the first, which adopted the law protected folklore as one of the manifestation of intangible cultural heritage. We are talking about the law "On legal protection of expressions of Azerbaijani folklore" adopted on 16 May 2003, which effects in the Laws of Azerbaijan Republic by wording of 04.12.2009-no.929-IIIQD, 17.05.2011-no.124-IVQD, 30.04.2013-no.638-IVQD [2].

Folklore is a wide sphere of creative intellectual activity of people, which include verbal folk creativity, musical creativity, folk dances, and artistic forms of rituals; handicraft trades and works of folk applied decorative art, faith. According to

legal relation, works, which based on folk material and developed by a specific person, is related to an area of legal regulation with author's right.

Folklore is brought requirements like to the objects of intellectual property (in particular, like objects of author's right). Inclusion of folklore into the list of objects of author's right will not be destruction of author's legal conception; essential reason, on which the works of folklore might not be used with protection of author's right, is absence of personality of an author. "Author" of the works of folk creativity is national ethnic group or people, which created this work, developing and considering the work their own [3, p. 7].

Legal protection of folklore expressions is protection of expressions of folklore from any illegal usage and other actions that can be caused damage to them. We applied to works of F.I. Chelebiyev when were analyzing the forms of folklore expressions [4, p. 75-85].

Expressions of Azerbaijani folklore are the peculiarities of nature of artistic heritage, which created and preserved by Azerbaijani people, its individuals in verbal form:

- expressions of oral art;
- folk music;
- games;
- dances;
- expressions of folk crafts and applied art;
- other kinds of folklore creativity.

expressions of Azerbaijani folklore might be existed in tangible (material) and intangible (non-material) kinds.

According to article 2 of the Law "On legal protection of the expressions of Azerbaijani folklore" dated on 16 May 2003, protected expressions of folklore are the expressions of folk artistic creativity, works of the folk crafts and applied art:

- relating to oral creativity working, ritual and children's expressions of the folklore, myths, legends, traditions, fairy tales, dastans (dastan is an epic work in the folklore or literature of the Middle East and South-East Asia; the dastans are the

folklore or literature обработкой of heroic myths, legends and fairy tales plots), jokes, folk dramas, proverbs, sayings, riddles, expressions of folk and ashug poetry (an ashug is the folk singer-poet, tale's narrator among some people of Caucasus, Turkey and Persia), bayati (bayati are one of the richest genre of the Azerbaijani folklore and are mainly for poetic expression of lyric and philosophical sense of man. The consist on the four lines, each line - from seven syllables) and other expressions of folklore;

- folk songs and dancing melodies, folk professional music - ashug tunes (these melodies are traditional and are passed from generation to generation; under this one motives are intended for heroic poetries, other ones - only for lyric ones), mugam-destgyakhs (the elements of polyphony is for inherent mugams, ex. выдерживание в аккомпанементе опорных stages of vocal melodies), zerbi-mugams (distinctive particular of zerbi-mugams are precise accompanying under improvisation-mugam performance of vocal party by a singer), tesnifs (tesnif is a small vocal genre of Azerbaijani national classic music), rengi (rengi are a pure instrumental genre of mugam art, they are a completed on form and contents instrumental pieces, and possess with strict periodic metro rhythm and are performed in accompanying by percussion instrument) and other musical expressions of folklore;

- folk dances, yalla (yalla is an Azerbaijan national dance, which is one of the widespread collective country round dances, it is performed as round dancing, often under accompanying choir singing), games, events and holidays and other expressions of motion;

- expressions of sensible applied art and folk creativity, including graphic professional drawing, pictures, plot images, shadow patterns, embossing and carving works, sculptures, ceramics, clay articles, mosaics, works on metal, sericulture, carpet weaving, jewellery and коженное дело, вышивка, мастерство плетения корзин, cloth as expression of folklore art, ornaments, patterns, musical instruments, joinery, architectural matters and similar with it expressions.

Creation of protected expressions of the folklore are not limited by the time and space, new created expressions of the folklore are also included in the list of protected ones, and there is a permanent their legal protection.

Main directions of state policy in area of legal protection of the folklore expressions are concluded in creation of conditions for international cooperation with purpose of ensuring legal protection the folklore expressions, which belong to Azerbaijani people, on territory of foreign states; formation of legislative base ensuring legal protection of the folklore expressions; legal protection, development and passing the folklore expressions to the future generations.

Rules of the folklore expressions use are concluded in the following.

The first, use of the folklore expressions in traditional and common form, including with purpose of commerce, *is free* in territory of Azerbaijan Republic.

The second, use the folklore expressions in non-traditional and uncommon form (i.e. use with change of natural meaning, essence, contents or purpose, assignment and art form of the folklore expressions) with commercial purpose of the folklore expressions under any form of publication, copying and distribution of the samples, any public declamation or performance, broadcasting of the folklore expressions, and also any other forms of public distribution should not damage its natural meaning and contents.

Use of the folklore expression in commercial purposes is an activity with goal of profit receiving through publication, reproduction, distribution of samples, public declamation and performance, broadcasting of the folklore expressions, and also use in form of any public distribution.

In compliance with article 8.1 of the Law "On legal protection of the Azerbaijani folklore expressions" upon use at all publications, public performances of the folklore expressions should be exactly indicated their source, geographical name of origin place and (or) people (community), to which belong certain folklore piece.

Legal violations upon using the folklore expressions.

Manifestations of the folklore should be protected from commercial use out of traditional one, i.e. from distortion, embezzlement, falsification, plagiarism.

Upon use of the folklore expressions by physical persons and legal entities the following actions are considered to be violations:

- upon use the folklore expressions one committed violation of the requirements of article 6.2 of the Law "On legal protection of the Azerbaijani folklore", and namely: use the folklore expressions with purpose of commerce in non-traditional and uncommon form, under publishing, copying and distributing of the samples, any public declamation, performance or broadcasting;

- direct or indirect distribution of the folklore expression and presenting them as their own or introducing society in misconception in relating to source of creation of the folklore expressions or use them as expressions other country, which are not being actual source;

- use deliberately distorted folklore expressions and directly or indirectly performed to the public, which is caused damage by the interests of society (country);

The law stipulates remedies of civil and legal protection of the folklore expression. So, appropriate public bodies have right to demand to stop the actions, which violate the rules of legal use of the folklore expressions or create threat of their violation.

According to article 10 of the Law "On legal protection of the Azerbaijani folklore expressions", in addition to the remedies of civil and legal protection, it might be applied measures of financial punishment to offenders (exacted profit or pay compensation).

According to article 165-2 of Code of Criminal of Azerbaijan Republic, violation of requirements on use of the folklore expressions causes a considerable damage is implied by criminal responsibility. Under "considerable damage" is understood a sum in more than one thousand manat.

Qualified corpus delicti: repeatedly commission of the same offence by a group of persons on previous concert or organized group (art. 165-2 of Code of Criminal) [5, p. 146].

Direct object: combination of public relations appeared under use of the folklore expressions. Objective side: actions violating provisions of the law "On legal use of

the folklore expressions" of May 16, 2003. Objective side of the crime is characterized by obligatory availability of damage in considerable size, causal connection between deed and consequence of it.

Subjective side: deliberate form of guilt as result of direct or indirect intention. Subject of crime is common, i.e. capable physical person reached age of 16 year old.

In **conclusion** we should note that Ministry of culture and tourism of Azerbaijan Republic worked out a project "*State program on protection intangible cultural heritage of Azerbaijan in 2011-2020*", has been carrying out preparation works of *the State register monuments of intangible cultural heritage of Azerbaijan*, establishing of portfolio bank of the subjects of intangible cultural heritage and *the State cadastre of the elements of infrastructure of intangible cultural heritage of Azerbaijan*.

Thus, the state guarantees of safe-keeping objects of intangible cultural heritage in interest of the present and future generation all people and ethnic communities of certain territory.

In development of the conclusion, we offer to supplement the law with the following conceptual provisions, which are concerned legal protection of intangible cultural heritage of Azerbaijan Republic.

1. Under **public protection of the objects of intangible cultural heritage** is understood a system of legal, organizational, financial, material and technical, informational and others measures, which are applied by the bodies of governmental authority to detection, registration, studying of the objects of intangible cultural heritage, prevention their disappearing or damage, control for safe-keeping and use of the objects of intangible cultural heritage.

Public protection of the objects of intangible cultural heritage includes the next:

- public control for observance of legislation in protection and use of the objects of intangible cultural heritage;
- governmental registration, forming and conducting of register of the objects of intangible cultural heritage;
- production expert examination of the objects of intangible cultural heritage;

- establishment of responsibility for damage or destroying of the objects of intangible cultural heritage.

2. **Carrier of intangible cultural heritage** is a physical person (a group of physical persons), who possess by unique knowledge, abilities and experiences in area of traditional folk culture: language, folklore, traditions, customs, artistic crafts and trades, executive and decorative applied art.

Bibliography

1. Informational bulletin. 2014, no. 60. p. 2, p. 178.
2. On legal protection of expressions of Azerbaijani folklore: the law of Azerbaijan Republic of May 16, 2003, no. 460-III // Collection of legislative acts of Azerbaijan Republic, 2003, no. 8, art. 406; 2009, no. 12, art. 971; 2011, no. 6, art. 462.
3. Shekhbuzova M.K. Legal protection of the folklore manifestation. Dissertation of PhD in Law, Stavropol, 2002.
4. Chelebiyev F.I. On concept of octave, register and appropriate terms in Azerbaijani mugan art//Izvestiya of RSPU after Hertsen. Public and humanitarian sciences (philosophy, history, culturology, linguistics, literature, law). S. Petersburg, 2008, no. 11(72), p. 75-85.
5. Criminal law of Azerbaijan Republic. Especial part (in schemes and definitions): Study guide/edited by Prof. M.N. Imaly. Baku, Juridical literature, 2012.