

MODERN LEGAL FRAME OF INTANGIBLE CULTURAL HERITAGE: COMMUNITY PERSONIFICATION PROBLEM¹

Prof. Dr. Ivan Kabakov

The roundtable organized on 12.04.2018 within the framework of the Sofia Municipality Library "European Days of Intangible Cultural Heritage" raised *the issue of the personification of the community with heritage* as a key to understanding the peculiarity and importance of the intangible heritage in the conservation system and the socialization of the cultural heritage, as well as its management and use as a strategic resource for the development of modern societies.

The modern legal framework of intangible cultural heritage suggests the study and discourse of various topics in view of the dynamically running processes and the diversity of points of view and interests in modern societies. For this reason, a topic reflected in the current legislation was chosen, but required further debate in search of mutually acceptable solutions by stakeholders involved. In the course of the discussions, they have constituted or stated different positions for observation and participation in the processes of preservation, socialization and management of the intangible cultural heritage, with particular attention being paid to the opinions expressed by lawyers, economists, folklorists, culturalists, representatives of the Ministry of Culture and the community. Finding a solution to the problem of community personification as a subject of conservation, socialization, and management of intangible cultural heritage has shown to be a long process, and the debates of the roundtable are only the starting point for further interrelated debates and themes.

In the quality of a moderator and to provoke attendees to participate, Prof. Ivan Kabakov put some important strategic issues, followed by questions about the discourse and presentation of potential legal forms for a personification of the community by the current legislation of the Republic of Bulgaria, as some information

¹ The presentation of the discourse from the roundtable organized in the Sofia Municipality Library reflects the personal opinion and the impressions of the author and did not involve the other participants with the positions expressed.

for reflection by the participants in the roundtable on the contemporary legal framework of the intangible cultural heritage.

They can be presented in the following way:

- Why is the community thought to be a subject of conservation, socialization, and management of intangible cultural heritage?

The modern globalized world, with its dynamics and diversity, gradually "rehabilitates" communities as a contextualist and a form of meaningful existence in which the individual finds his vocation and recognition in conditions of individualized consumption before all experiences and not commodities in the period of Late (Giddens) and Reflective Modernity (Beck). The legal system is also not lagging behind these processes, offering legal definitions of different character and purpose communities. Most commonly used is the bind with legacy definition of a community of the Council of Europe Framework Convention on the Importance of Cultural Heritage for Society and, more specifically, "the heritage community consists of people who value specific aspects of cultural heritage and what they wish, within the framework of the public actions undertaken, are sustainable to preserve and pass on to future generations "(Article 2b of the Council of Europe Framework Convention).

But what about the public authorities at the national, regional and local level and what could be their (new) purpose and responsibility, if we empower communities to preserve, socialize and manage the intangible cultural heritage? This appeared to be a problem that was also debated at the roundtable of stakeholders with a view to finding mutually acceptable solutions for the benefit of society.

- Why is the "heritage community" linked to its protection, socialization and governance?

This problem affects the essence of intangible cultural heritage and is its distinctive characteristics but also reflects the processes of democratization of modern societies, while the community is "woven" in the form of expression and preserves the memory it carries by transmitting specific knowledge and skills. Some of the forms of expression do not only include performance similar to the musical

folklore that was made clear in the course of the discussion, but also leave material artifacts which, however, sometimes have no information on how they are produced, showing the significance of the intangible heritage of preserving memory in the system conservation and management of cultural heritage.

- However, how can this community be personified to have a "face" and a "spokesperson" (Kabakov 2015: 94) through which it can organize itself and participate in social processes and trade turnover without using community centers or museums as an organizational "crutch", but to rely on their partnerships, specialized expertise and different purpose that complement and support community action?

In this connection, granting of subjective (*rights*) as the right of cultural heritage under Art. 4 of the Council of Europe Framework Convention on the Importance of Cultural Heritage for Society, including author's rights as part of the objectified and material forms of memory is of key importance to the lawyers involved in the discourse when the communities are assisted by public authorities regarding the upholding of the rule of law against the various private and sometimes illegitimate interests in society.

Prof. Ivan Kabakov also raised the following questions, and proposed to the attention of the participants, concrete legal forms for community personalization, available in the current legislation of the Republic of Bulgaria, to provoke discourse on the subject:

1. What other definitions of communities relevant to the preservation of intangible cultural heritage may be used, in addition to the definition in Art. 2b of the Council of Europe Framework Convention on the Importance of Cultural Heritage for Society?

2. Who is the "spokesperson" and representative of the "Heritage Community"?

3. If we assume that the "heritage community" could be represented by an organization, formal or informal (created in the form prescribed by the law) is preferable?

4. If the formal organization is preferred to be the legal entity through which to personify the community:

- Community center by the law for the National Community centers
- Non-profit organization for public or private benefit registered under the Act on Non-Profit Legal Entities
- Business organization / commercial companies registered under the Commercial Law
- Cooperative under the Law on Cooperatives
- State enterprise / LTD or PLC under Art. 62, para. 2 of the Commercial Code
- Municipality Enterprise / LTD or PLC under Art. 62, para. 2 of the Commercial Code

5. How can collective goods and community rights be managed in order to provide income for its self-organization and development as a result of its participation in social relations and market interactions?

6. What specialists and researchers are needed by the "heritage community" to self-organize and participate fully in public relations and market interactions?

Assoc. Prof. Vladya Borisova presented the World Intellectual Property Organization (WIPO) as definition of "*community of origin*". It is a combination of local people who live in self-determination and have the right to traditional and local knowledge and skills as a result of their collective activities. In order to have an informed debate with more points of view, besides the definition of "community of origin", Assoc. Prof. Borisova shared the problems encountered in the elaboration of the concept and its application in different countries, each of whom retains the right to legislating and resolutions at a national level in order to protect traditional knowledge and skills as intellectual property and inexhaustible resource for economic development in the modern knowledge economy. In this respect, Assoc. Prof. Borisova pointed out *two methods for use and access* - legal and illegal, the latter

expressing the unauthorized use without the consent of the "community of origin" of their traditional knowledge and skills in a way different from the traditional one. This definition, according to Prof. Kabakov once again asks who is the "spokesman" of the "community of origin", if we are to avoid obtaining permission and negotiating with an illegitimate representative of the community.

The speech of Prof. Mila Santova is extremely valuable who argued *the necessity of the Register of elements of the intangible cultural heritage, as well as of the work on its continuous updating* and in connection with the obligations of the users to indicate the origin of their form of expression. The question was raised as to who would sanction access to the register as well as the inclusion of new forms of expression in it, carriers of memory and elements in the field of intangible cultural heritage, in view of the exceptional delay by the national coordinator in Bulgaria of the processes of replenishing the Registry pursuant to the obligations of the country under Art. 12 of the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage.

Prof. Santova pointed out that WIPO's efforts are mainly focused on an economic outcome, and that of the 2003 Convention - the "ideal" result of identity protection. However, they find a crossing point in today's contemporary concepts of sustainable development. It was pointed out that the World Intellectual Property Organization (WIPO) definition emphasizes the economic aspects, but more needs to be considered about the cultural aspects and the sustainability of the intangible cultural heritage. It has also been noted that the heritage community is not sustainable and therefore very difficult to define.

Thus, in the discourse, the concept of *sustainable development* appeared, whose three "classic" ladders - ecological, social and economic "distributed" according to Prof. Kabakov, work on a "community of origin" of WIPO (economic aspects), the formation of a "community with heritage" under Art. 2b of the Council of Europe Framework Convention on the Importance of Cultural Heritage for Society (Social Aspects) and the Conservation of the Intangible Cultural Heritage of the 2003 UNESCO Convention (Cultural Aspects). It is obvious, according to Prof. Kabakov, the shifting of the concept of the fourth pillar – *cultural sustainability* or the culture as a

source of sustainable development in the Hawkes and Birkeland studies (Kabakov 2015: 266). The participants in the organized roundtable united around the need for regular and thematic debates on the preservation, socialization and management of the intangible cultural heritage, as the discussion in the Sofia Municipality Library was only a first step in the realization of such intentions and expectations.

Literature

1. Kabakov, I. Dilemmas of Culture. Sofia. Univ. ed. "St. Kliment Ohridski, 2015.
2. Framework Convention of the Council of Europe on the Importance of Cultural Heritage for Society. - IN: International legal protection of cultural heritage. compilers. I. Kabakov, K. Russev. Sofia. MK, 2008.