

# On the issue of defining the essence of the object of the intangible cultural heritage: historical retrospective and significance for the development of modern society

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**Abstract.** The authors attempt to consider the reflection of the issues of preserving the intangible cultural heritage in the normative legal acts of the Russian Federation in different historical periods. The paper traces the state position in relation to the manifestations of the intangible cultural heritage as to the unique products of the nation with its language and history. The Purpose (the object) of the paper is the following: on the basis of analysis of historical normative material, to consider the current state and forecast possible options for the formation of Russia's socio-cultural policy with an emphasis on the importance of the intangible cultural heritage.

## 1 Introduction

A human is viewed as a socio-cultural being in any conceptions of society, while culture is a system of values and norms of behavior, socially acquired and transmitted from generation to generation, on the basis of which the life activity of people is organized.

In today's world, there is a steady trend towards globalization. It has a serious impact on the processes of uniting people representing different peoples, religions, countries and continents, be it within the framework of transnational corporations, or in the form of public management processes in various spheres and areas of social development.

Under these conditions, the prerequisites are formed that carry the danger of a rapid disappearance of many objects of the intangible cultural heritage, the complete disappearance of many forms of culture important for the self-identification of man, and the methods of general cultural activity. Today under threat of extinction are manifestations of the intangible heritage, such as habits, skills, oral traditions, language, folk music, dances, feasts, many kinds of folklore, rituals, traditional crafts - in other words, everything that makes up logic and the main content of thousands of years of human history, forming a sense of identity and continuity among those who belong to it.

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## **2 Materials and Methods (Model)**

Methods: the work is based on a variety of sources, such as foreign and domestic legislative monuments of the 13<sup>th</sup> to 15<sup>th</sup> centuries, and international legal and state legal documents of Russia of the 20<sup>th</sup> century and the contemporary period.

The methodological basis of the work is historical-legal, formal-legal, comparative-legal methods and the method of interpretation of legal norms.

## **3 Results and Discussion**

Findings: In the course of the research, interesting facts of normative regulation of the preservation of the intangible cultural heritage in Russia in different historical periods of the country's development were revealed. Possible options of the forecast of development of the Russian Federation legislation in this sphere are made on the basis of the comparative analysis with the legislation of the CIS countries.

Conclusions: In the Russian Federation, a well-thought-out socio-cultural policy is necessary, which, due to many features of the country, cannot be based on mechanical borrowing of samples from other states.

### **3. 1 The relevance of historical experience in the field of modern culture**

Let us move back a thousand years ago, to the expanses from the island of Gotland and circumpolar Bergen to Russian Novgorod, where in the 12<sup>th</sup> to 17<sup>th</sup> centuries an outstanding institution of European economic integration of the Middle Ages, the Hanseatic League was located, that united at various times up to 160 cities, a prototype of future European unions with political and economic influence, with an open market and a representative system of leadership. In these cities, the system of management, transactions, behavior of merchants were strictly regulated by legal documents that contributed to the formation of the rules of trade ethics, employment contracts, various legal forms of legal entities, and pricing. However, the main and special "subject of export" of the Hanseatic cities was the law – the law of Lubeck, Magdeburg, Kulm, and Novgorod as the basis of the property and personal freedoms of man.

The documents that have survived to this day, covering the establishment and organization of the court, the rules of trade, as well as the rules of criminal law and procedure - trade agreements of the 12<sup>th</sup>-15<sup>th</sup> centuries [1], resolutions of the Hanseatic congresses [2], Novgorod's treaties with princes [3], princely statutes, Novgorod scribe books [4], correspondence of the Hanseatic office and merchants [5], Schra collections [6] – all these allow not only assessing the actual historical experience, but also giving it centuries later a new breath at the interstate level of cultural, scientific, and economic contacts. This is evidenced by the large-scale and unique project "Hanseatic cities: restoration of historical ties for modern management in the sphere of culture", launched in 2010, addressing the history of small cities of Russia and uniting 176 cities from 16 countries within the framework of cultural cooperation "Hansa Novogo Vremeni" (Hanse of the New Time).

### **3. 2 Personality as the bearer of ethnic culture**

Historical experience allows us considering objects of the intangible cultural heritage, first of all, from the point of view of close interrelation between the intangible cultural heritage and the material cultural and natural heritage; evaluating them as factors contributing to the rapprochement, exchange and mutual understanding between people, as well as the maintenance of cultural diversity; recognizing their importance as a guarantee of sustainable development, as the crucible of cultural diversity; conformity of objects of the

intangible cultural heritage to a number of properties, such as informativities, expressiveness, attractiveness, representativeness, and associativity [7]. In addition, consideration of the object of intangible cultural heritage occurs from the disposition of several levels of identification of broad strata of historical and cultural experience of human development, ethnoses, and society: from the point of view of cultural, ethnic and personal identity [8].

The mechanism of cultural identification is designed to ensure the orderly life of man, which he receives in the community of other people, consciously or unconsciously identifying himself with the cultural orientations of this society. Ethnic identity is built on the basis of the worldview and world understanding of every nation. Personal identity is based on the fact that each person is the bearer of the culture in which he grew up. It is associated with the idea of his place and role as a member of a social or ethnic group, his abilities and business qualities.

### **3.3 Legal regulation of the cultural and historical heritage of Russia in the 20<sup>th</sup> century**

In state-legal documents of Russia from the beginning of the 20<sup>th</sup> century and until the 1990s, the category of cultural and historical heritage is gradually expanding and transforming from the term “monument of antiquity” to the generalized concept of “monument of history and culture”. Attention is drawn to the fact that all categorical classifications that occur in the normative legal acts of the period under consideration from the point of view of law recognize only material objects of culture as “monuments of history and culture”. The basis for this position is the belief that it is the material (tangible) form of the “monument of art and culture” as an expression of its essence of being that falls into the sphere of legal regulation, acquires the status of property and turns into an object of ownership [9].

Based on the first legislative acts of 1918 - 1920s on the protection of cultural monuments, objects that received the status of monuments in accordance with the established procedure fell under a special legal regime. They were subject to state registration and protection, no matter, who they belonged to. The possibilities for the economic use of historical and cultural monuments for practical purposes, or their value content, both material and artistic were the main criteria for the state registration [10].

Registering, protecting and restoring monuments was led by specially created organizations - the Board for Museum Affairs and the Protection of Art and Antiquities at the People's Commissariat of Education, the Museum Department of the Main Directorate for Scientific Institutions of the People's Commissariat of Education and the Central State Restoration Workshop. At the same time, a number of objects of material culture passed into the ownership of the state: the Hermitage, the Moscow estates of Ostankino, Kuskovo, the Arkhangelskoye, the Tretyakov Gallery, the Leo Tolstoy House in Moscow, the Chernyshevsky Museum in Saratov, and the Polenov Manor. After the abolition of the right of inheritance in 1918, the nationalization of private collections began, and the ban on the export of art and antiquities abroad was introduced. The Russian Academy of the History of Material Culture, founded in April 1919, served the purposes of the scientific protection of historical and cultural monuments.

As for the intangible (spiritual) culture, those of its objects that fell into the sphere of legal regulation were subject to another legal regime. In particular, they were recognized as works of science, literature or art, discoveries, inventions, objects of toponymy, etc. Their protection and use was ensured respectively by the legislation on the state publishing [12], the recognition of scientific, literary, musical and artistic works as public domain [13], and by the copyright [14].

The essence of the normative legal approach with respect to the intangible (spiritual) culture was expressed in the opinion that its products are intangible goods. These are, first of all, ideas, thoughts, images that are only fixed in a concrete material form in order to be accessible to man, so that they could not be considered as objects of property rights. Preservation and use of many significant cultural values, such as the values of people's morality, aesthetics, and traditions, took place outside the law and did not receive the impact of legal norms until the 1960s - 1980s. In the framework of the existing copyright law, the notion of an object of intangible (spiritual) culture also had no legal formalities until the early 1990s.

Nevertheless, it is during this period that the most important principles are being formed which allowed the monuments of the intangible (spiritual) culture being preserved, and to broadcast and reproduce their value content.

First of all, it is necessary to note the state position in relation to the monuments of history and culture as to the unique products of the nation with its language and history. This postulate was declared in the Basic Law of the country, which throughout its historical transformation, proclaimed "free development of national minorities and ethnographic groups inhabiting the territory of Russia" [15], "free self-determination of nations" [16], "the foundations of peaceful cohabitation and fraternal cooperation of peoples" [17], and placed at the center of the corner "the will and interests of the working people of all nations and nationalities of the country" [18]. Thanks to the political and cultural campaign of the authorities in the national issue, so-called indigenization, held in the 1920s - 1930s, the national language, script, culture were preserved that did not allow losing the mental identity of the peoples living on the territory of Russia.

The common history of cultural elements, the common destiny of peoples and their cultures was based on the existence of a single territory of residence, so-called historical and ethnographic regions. The beginning of the creation of an administrative and territorial structure was laid down in April 1923 by the decision of the 12<sup>th</sup> Congress of the RCP (B) "On Regionalization" and continued with a steady periodicity until the 1960s. On the one hand, this contributed to the unification of such groups of peoples as the "peoples of the Volga region and the Kama region", "the peoples of Siberia and the Far East", on the other hand, it contributed to the emergence of similar forms of economic activity and, consequently, typologically similar cultural phenomena under the same geographical conditions - economic and cultural types, including elements of traditional production, such as farming, gathering, hunting, and fishing.

In 1930s - 1940s, the instruments of legal regulation of relations in the sphere of intangible (spiritual) culture experienced a powerful influence of the state ideology. Revolutionary propaganda, party ethics and the imposition of civil ceremonies replaced forms of traditional culture and life. Soviet unification and proletarian culture implanted a nihilistic attitude towards folk customs. Original historical and cultural space was filled with the monuments of socialist construction.

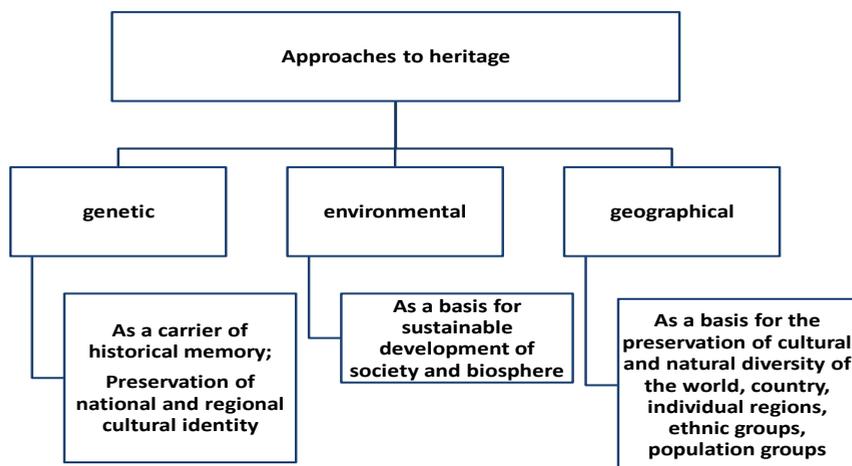
It is at this time that many of the artistic and historical monuments of religious architecture disappear, and the destruction of values and the expansion of the practice of exporting and selling abroad antiquities and art took place [19].

In subsequent years, the problems of accounting, protection, and legal regulation of historical and cultural monuments continued to be fixed in a number of normative legal acts, but they were mostly descriptive in nature, based on the enumeration of objects of cultural value and did not disclose their essence [20]. Nevertheless, an evidence of active attention to the study of objects of intangible (spiritual) culture was a positive moment of the 1950s - 1960s. The premises to that was the legal fact - the transfer of the whole standard-setting activities for the preservation of historical and cultural monuments to the level of national republics. In the course of the legislative work of the republics of the

USSR and practical actions aimed at examining all historical and cultural monuments located on their territory, and also because of national patriotism, a new attitude to the objects of intangible (spiritual) culture is formed as to the unique examples of the national culture, regardless of the level of their aesthetic value, which must be protected by the state along with monuments of material culture.

Hundreds of archaeological and ethnographic expeditions were organized in the country by the State Museum of Ethnography of the Peoples of the USSR, historical expeditions of the State Historical Museum, and dozens of ethnographic expeditions were conducted by each republican and regional museum of local lore [21].

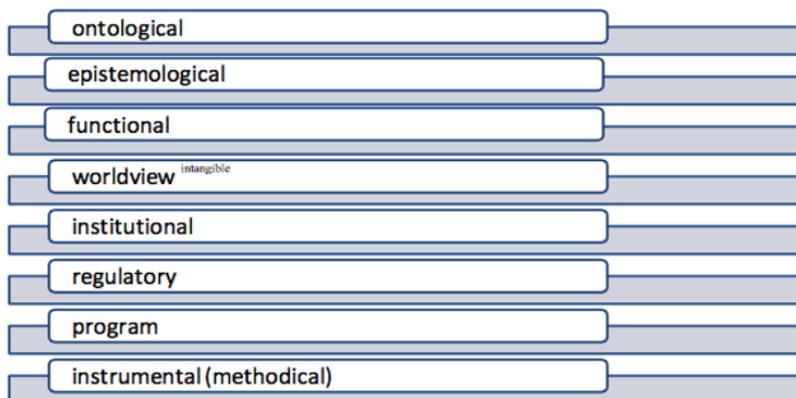
In 1967, under the Central Council of the All-Russian Society for the Protection of Monuments of History and Culture, a Section of monuments of musical culture was created, which promoted the ancient Russian musical art, recorded the best examples of folk choreography and musical folklore. On the initiative of the Institute of the History of Arts and the Ministry of Culture of the USSR, publication of the “Monuments of Russian Musical Art” (1972-1997) took place. On the basis of the restoration of cultural and historical landscapes, the collection of ancient artifacts, a revival of the historical appearance of the monuments began on the territories of Solovetsky, Pskov, Kirillo-Beozersky, and Ryazan historical and architectural museums-reserves, organized in the 1970s.



**Fig. 1.** Aspects of the social institution of the “preservation of intangible cultural heritage”.

The Law adopted in the USSR in 1976 became the basis of the system of legislation on the use and protection of historical and cultural monuments of the 1970s-1980s. The Article 1 of the Law was a fundamentally new provision, which related the works of spiritual creativity to the monuments of history and culture along with works of material culture. In the Article 5 of the Law, the objects of intangible (spiritual) culture were classified and considered as the forms of documentary monuments. In particular, it referred to the written and graphic documents, ancient manuscripts and archives, records of folklore and music [22]. The Regulation on the Protection and Use of Historical and Cultural Monuments (1982) [23], as well as the Statute on the State Archival and Museum Funds of the USSR (1980, 1983) [24] became the continuation of the legislative policy. However, the major event, which allowed changing the view on the nature of objects of non-material (spiritual) culture and the basis for their legal regulation, was the establishment of a new international

typology of cultural monuments and the official introduction of the term “cultural heritage”, reflected in the UNESCO Convention of 1972 “On protection of World Cultural and Natural Heritage” [25]. In 1988, after the ratification of this international document by the USSR, monuments of intangible (spiritual) culture began to be regarded as an integral part of the cultural heritage and acquired the form of a single object with a certain scientific or social value.



**Fig. 2.** Approaches to the definition of the essence of the social institution of intangible cultural heritage.

A broad approach to the assessment of the essence of the social institution of the “preservation of intangible cultural heritage” involves quite a number of aspects, including the following:

- The ontological aspect, allowing to distinguish objects of intangible cultural inheritance: spiritual culture (oral folk art, music and dances), traditional actions (rituals, customs), production processes (trades, traditional crafts and technologies);
- The epistemological aspect aimed at changing the world outlook, the revival and preservation of knowledge about the past, and the restoration of “public memory”;
- The functional approach that is very informative and includes the human-creative or humanistic function, the function of translating social experience or historical continuity, informational, communicative, value or axiological, semiotic or signative, and normative functions;
- The worldview (or moral and ideological) aspect, which is reduced to the respect of cultural diversity and creativity of mankind, a sense of identity and continuity, and active search for new approaches to the preservation of intangible cultural heritage;
- The institutional approach that combines both traditional and new mechanisms, the structures of retransmission of the heritage from generation to generation (museum funds, workshops, reserves, eco-museums, eco-villages, manors, military historical and natural reconstructions, numerous museum theatrical performances characterizing cities and streets, excursions, performances, military historical clubs, role modeling clubs, etc.);
- The normative (regulatory) aspect, containing legal and regulatory regimes, including regulatory legal acts on the protection and restoration of intangible cultural heritage sites; norms of copyright and patent law; norms of habits and traditions; Christian traditions and ancient rituals (as for example, maternity, wedding, funeral and memorial rites);
- The program aspect that reflects the main areas of preservation of the intangible cultural heritage (oral traditions and forms of expression, performing arts, habits, rites and festivals, knowledge of nature and the Universe, knowledge and skills associated with traditional crafts);

– The instrumental (methodological) aspect that consistently includes the identification of objects of the intangible heritage in real life, the analysis of the possibility and expediency of their preservation, the acquisition of such objects and their modeling, preservation or reconstruction of mechanisms for the transmission (retransmission) of the heritage from generation to generation; and their actualization.

### **3.4 UNESCO regulatory activities for the protection of the intangible cultural heritage**

Recently, the fate of objects of intangible (non-material) cultural heritage has come to the center of close attention of the scientific community. The threat of extinction of intangible manifestations of the culture of peoples is widely discussed at international scientific forums.

Thus, the World Intellectual Property Organization (WIPO) Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore (IGC), established in 2000, is the forum, at which WIPO Member States discuss intellectual property issues arising in the context of access to genetic resources and the common use of benefits [26].

The UNESCO normative activities for the protection of the intangible cultural heritage began with a request of the Government of Bolivia (1973), which, in order to protect folklore, proposed the adoption of a Protocol to the Universal Copyright Convention. So, in 1976, with the assistance of UNESCO and WIPO, the Committee of Governmental Experts adopted the Tunisian Model Law, which mentioned the protection of folklore. In 1982, UNESCO, together with WIPO, issued the model provisions for national legislation on the protection of folklore against illegal use and other damaging actions, but the treaty based on this document has not entered into force.

In 1989, UNESCO adopted a Recommendation on the preservation of folklore, according to which “folklore” was recognized as a part of the universal heritage of mankind, and in June 1999, at the International Conference, it was recognized that the term “folklore” should be expanded, since it does not correspond to the scale of the problems and the type of the definition used. The traditional carriers, traditional knowledge and values, contributing to their creation, as well as creative processes, as a result of which they are born, were recognized as a priority.

The main directions in understanding the problem of the intangible cultural heritage were set forth in the First World Culture Report of UNESCO in 1998, where this problem was posed not only in relation to the rights of ethnic minorities, but also in connection with the awareness of the importance of preserving traditions and habits, lifestyles, and languages for the intellectual and cultural resources of mankind [27].

Traditional knowledge or cultural expressions are created in accordance with the rules, procedures and customs of a particular community, that is, they determine the method of creation, rather than the knowledge itself [28].

The concept of “traditional knowledge” is used internationally in the narrow sense and refers to knowledge as such, in particular to knowledge created as a result of intellectual activity in the traditional context, including know-how, practices, skills and innovations. Traditional knowledge can be found in a wide variety of contexts, such as agricultural knowledge, scientific knowledge, technical knowledge, environmental knowledge, medical knowledge, including knowledge of relevant medicines and knowledge associated with biodiversity, etc.” [29].

At the present stage, these concepts are widely used both in the legal field of the CIS countries – intangible cultural heritage [30], folklore [31], and in the legislation of the constituent entities of the Russian Federation – folklore [32], intangible cultural heritage [33], traditional folk culture [34].

The three main UNESCO Conventions in the field of culture are the Convention for the Protection of the World Cultural and Natural Heritage (1972) [35], the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) [36] and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) [37] that constitute a comprehensive legal framework for UNESCO actions to protect cultural diversity.

It should be noted that according to the International Convention for the Safeguarding of the Intangible Cultural Heritage, adopted in 2003 by the General Conference of UNESCO, the intangible cultural heritage includes customs, forms of representation and expressions, knowledge and skills, as well as related tools, items, artifacts and cultural spaces recognized by communities, groups and in some cases by individuals as a part of their cultural heritage. The mechanisms of preservation and protection are determined by the national legislation of the countries.

The preservation of the intangible cultural heritage must correspond to the status of an independent direction of the state policy aimed at the revival, reconstruction and development of public memory, the property, which is so important and necessary for modern civilization. The understanding of geographical space as a geo-cultural region with the possibility of human potential development is an important component of that.

## 4 Conclusion

High speed of information dissemination and changes in economic and political life are characteristic features of the modern world. In the Russian Federation, a socio-cultural policy is being formed, where preservation of the intangible cultural heritage of the peoples of Russia is of great importance. The socio-cultural policy of the state is influenced by the approach to culture, which is realized in society through legal mechanisms.

There is an attempt to restore historical ties for modern management in the sphere of culture. The results of the analysis of the regulatory and legal framework of Russia in the early 20th century were the conclusions that the legal regulation promoted the rapprochement, exchange and mutual understanding between people, as well as the maintenance of cultural diversity.

Despite the fact that before 1990, the intangible cultural heritage was not legally registered in the Russian legal field, the principles of reproduction of its value content were formed precisely in the period of 1950s-1960s, when the functions of norm-setting activities aimed at the preservation of historical and cultural monuments were transferred to the republican level.

A fundamental approach and more precise directions in the legal regulation of the preservation of the intangible cultural heritage were worked out by UNESCO.

On our opinion, there may be several options for further development of events:

Firstly, this is Russia's accession to the UNESCO Convention "On the Safeguarding of the Intangible Cultural Heritage (2003)" and the incorporation of the created logical structure of the preservation mechanism into the national legislation;

Secondly, this is the inclusion of a section on the intangible cultural heritage in the cultural legislation that is being reformed today;

Thirdly, this is the creation of a special independent legal mechanism in the Russian legal field.

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37. *Convention for the Protection and Promotion of the Diversity of Cultural Expressions* (Paris, 2005)