

ORDINANCE no. 19 of January 31st 2007 on the immaterial cultural heritage protection

On the basis of article 108 of the Romanian Constitution, codified, and of article 1, paragraph V. 3 of Law no. 502/2006 on authorizing the Government to issue ordinances, The Romanian Government adopts the present ordinance.

CHAPTER I: General dispositions

Art. 1

The present ordinance regulates the legal status for the immaterial cultural heritage protection.

Art. 2

- (1) For the purpose of this ordinance, immaterial cultural heritage shall be taken to mean all the practices, representations and expression modes of a community's traditional culture, together with the immaterial products and the associated cultural spaces, continuously transmitted by a community.
- (2) The immaterial cultural heritage includes:
 - a) traditional handcraft – the activity whose purpose is to obtain products, provide services or perform works, using tools, instruments and traditional raw materials only, and respecting the features of traditional cultural expression;
 - b) traditional artistic and technical creation – human creativity manifestation, of material, verbal, musical, choregraphical, graphical, architectural expression , characterized as follows:
 1. it is transmitted and recorded without using printing devices or mass and distance communication means in time within a community;
 2. it respects the features of traditional cultural expression;
 - c) contemporary folk culture – the ensemble of the traditional cultural manifestations in its present day realizations, spontaneously produced in time, within or without communities ;
 - d) traditional cultural elements bearers.

Art. 3

- (1) The immaterial cultural heritage protection measures are:
 - a) conservation – represents a systematic and coordinated intervention for protecting the communities' traditional cultural life elements, based on cultural resources specialists' recognizing cultural expression and adopting the following measures:
 1. to elaborate the Romanian immaterial cultural heritage safeguarding strategies;
 2. to establish adequate communities' cultural representations usage and enhancement standards and methods;
 3. to establish consulting, expertise and to homologate commissions, meant to certify the value of artistic bands that propose an improved or stylized folklore repertoire;

4. to retrace material or immaterial traditional life, on which communities hold only spoken or written documentary information;
- b) enhancement by:
 1. supporting the projects that promote the immaterial cultural heritage elements;
 2. supporting the community initiatives to revitalize traditional life manifestations, due to the fact that immaterial cultural heritage elements represent an important source for regional economic development;
 3. supporting common heritage registry projects in multiethnic areas and localities in order to contribute to outlining a real image of the contemporary folk culture.
- (2) The immaterial cultural heritage protection measures stipulated at art. (1) do not apply to:
 - a) the objects that are the result of abusive appropriation of folklore music creation, meaning that the creations of the interpreters representative for a certain culture were taken over and introduced within the universal circuit and depersonalized.
 - b) the recordings, publications, translations, any kind of assumed spoken-narrative or poetic manifestations that thus became commercial objects that lost cultural reference and identity, as well as initial meaning;
 - c) caricatures and commercial products of mediocre quality having as inspiration source emblematic folklore motifs for the spirituality on the Romanian territory.

Art. 4

The Ministry of Culture and Religious Affairs and the subordinated institutions with attributions in the immaterial cultural heritage field have the following obligations:

- a) to protect all ethnic communities' traditional culture, regardless of their manifestation modes and specific language types used to express it;
- b) to financially support the institutions operating in the field of identifying, conserving and systematizing the traditional culture manifestation means, regardless of their language types;
- c) to ensure the traditional culture elements enhancement procedure;
- d) to support the protection of the representative types of the Romanian traditional culture within the communities from abroad;
- e) to support the institution in charge with implementing the immaterial cultural heritage elements conservation strategies;
- f) to protect all kind of immaterial cultural heritage elements against commercial or unfair ideological exploitation, against abusive processing likely to degenerate their original meaning, against national or international pirating, against other detrimental agents;
- g) to support researchers' specialization in the present ordinance regulation field.

CHAPTER II: Traditional craft

Art. 5

For the purpose of the present ordinance:

1. the craftsman is natural body:

- a) who performs the craft using traditional techniques;
 - b) who owns a qualification certificate or graduation diploma for the practiced craft, issued in compliance with Government Ordinance no. 129/2000 on adults' professional training, codified, with the subsequent amendments and completions;
 - c) who is licensed natural body, in compliance with Law no. 300/2004 on licensing natural bodies and family businesses developing independent activities, with the subsequent modifications and completions.
2. Handicraft family business is a company characterized as follows:
- a) the members of a handicraft family business are the only performers of the traditional craft and cannot use human resources from outside the family business unless during an apprenticeship contract;
 - b) at least one member of the handicraft family business owns a qualification certificate or graduation diploma for the practiced craft, issued in compliance with the Government Ordinance no. 129/2000, codified, with the subsequent amendments and completions;
 - c) is authorized, in compliance with Law 300/2004, with the subsequent amendments and completions and complies with the stipulations of this law in practicing the craft.
3. Handicraft trading company is a company characterized as follows:
- a) its main activity purpose is to practice a craft and is classified among the small or medium size companies;
 - b) may develop other economic activities only if they are closely related to the craft and are necessary for capitalizing the handicraft products, services and works;
 - c) is established in compliance with the stipulations of Law no. 31/1990 on trading companies, codified, with the subsequent amendments and completions, and is organized as a limited liability company or general partnership;
 - d) the sole associate, at least an associate, as the case may be, or at least an employee with an individual work contract for an indeterminate period owns a qualification certificate or graduation diploma for the practiced craft, issued in compliance with the Government Ordinance no. 129/2000, codified, with the subsequent amendments and completions.
4. Handicraft co-operative society is the co-operative society characterized as follows:
- a) is established and organized as first degree co-operative society, in compliance with the stipulations of Law no. 1/2005 on the organization and functioning of co-operation;
 - b) most of the co-operating members own a qualification certificate or graduation diploma for the practiced craft, issued in compliance with the Government Ordinance no. 129/2000, codified, with the subsequent amendments and completions.

Art. 6

- (1) The craftsman may use workforce only for an apprenticeship contract, at the workplace.
- (2) The craftsman practicing a traditional craft in compliance with the stipulations of paragraph (1) is creator.

Art. 7

Handicraft family businesses may commercialize their products.

Art. 8

- (1) Traditional handicraft may also be practiced within mobile working units, if the following prerequisites are met:
 - a) the incorporation certificate of the craftsman, of the handicraft family business, of the trading handicraft company or of the handicraft co-operative society, as the case may be, is visibly displayed;
 - b) the qualification certificate or the graduation diploma owned by the person performing the handicraft activity is visibly displayed;
 - c) the handicraft activity is temporarily performed in that place.
- (2) Commercializing the handicraft products outside the commercial areas or producing places is only allowed if the following prerequisites are met:
 - a) the incorporation certificate of the craftsman, of the handicraft family business, of the trading handicraft company or of the handicraft co-operative society, as the case may be, is visibly displayed;
 - b) the qualification certificate or the graduation diploma owned by the person performing the handicraft activity is visibly displayed;
 - c) the name of the product, the producer's name, provenience locality or ethnographic area are labeled on each handicraft product or on their wrappings.

Art. 9

- (1) Professional training in the handicrafts field shall be done in compliance with the provisions of Government Ordinance no. 129/2000, codified, with the subsequent amendments and completions.
- (2) Professional training in the handicrafts field may also be done by craftsmen or within handicraft family business, trading handicraft companies or handicraft co-operative societies.

CHAPTER III: Artistic creation and traditional technique

Art. 10

- (1) Artistic creation and traditional technique performed within human communities by popular creators habitually living within these communities and with the purpose of meeting cultural, material, economic, religious or other types of needs of the members of the respective communities is called popular creation.

- (2) Artistic creation and traditional technique performed with the purpose of meeting other needs than the habitual ones of the members of a human community and outside it is called:
 - a) interpretative creation, for creation modes expressed through story, fairytale, anecdote, riddle, legend, ballad, oration, song, incantation;
 - b) handicraft creation, for creation modes expressed through drawing and decorative model, objects, instruments, tools and installations, recipes or material or nutriment chemical substance preparation instruction.

CHAPTER IV: Distinctive traditional trademark

Art. 11

- (1) Distinctive traditional trademark is the graphic mark, the costume item or any other physical expression created with the purpose of differentiating a popular creation from those from other ethnographic areas, whose legal status is regulated by the stipulations of the present ordinance.
- (2) With a view to adopting a distinctive traditional trademark, the popular creators' organizations shall elaborate, with the support of the institutions authorized to develop activities in the immaterial heritage field, a detailed description of the popular creations marked with the distinctive traditional trademark.
- (3) The description of the popular creations shall contain reference to the techniques, methods, tools and raw materials used, characteristic design elements, chromatic details included, as well as to any other elements that might help correctly and completely identify popular creation.
- (4) Distinctive traditional trademark may be used for any artistic creation and traditional technique that meets the prerequisites stipulated in the description done according to paragraphs (1) and (3).

Art. 12

- (1) Popular creators may associate with a view to adopting the distinctive traditional trademark.
- (2) Popular creators may associate into an association or a foundation with a view to adopting the distinctive traditional trademark.
- (3) If there are several popular creators' organizations in one ethnographic area, they will agree to choose a single distinctive traditional trademark.

Art. 13

The distinctive traditional trademarks for each ethnographic area shall be inventoried by the Ministry of Culture and Religious Affairs, through the National Centre for the Conservation and Promotion of Traditional Culture.

Art. 14

The associations or foundations which, according to their statutes, develop activities in the field of traditional cultural expression, but they are not popular creators' organizations cannot adopt a distinctive traditional trademark.

CHAPTER V: Living human thesauruses

Art.15

If, for an element of the immaterial cultural heritage or for a popular creation occupation, there are popular creators perceived by a community as landmark for that field or occupation, they are declared living human thesauruses.

Art. 16

The popular creators stated at article 15 have the following rights:

- a) they enjoy the status of evaluator or trainer for the field or occupation they practice;
- b) they are entitled to material or financial support from the public institutions with attributions in the immaterial cultural heritage field, with a view to organizing initiation or professional training courses for young people or adults, in the field or for the occupation they practice, in compliance with the law,
- c) they participate to national or international specialized fairs, exhibitions, relevant for the nature of their activity, organized in Romania or abroad, all the afferent expenses being discounted by the central public institutions, for international fairs, respectively by the local public institutions for the national fairs.

Art. 17

The criteria on whose basis popular creators are declared living human thesauruses are elaborated by the National Commission for safeguarding the immaterial cultural heritage and approved by order of the minister of culture and religious affairs.

CHAPTER VI: non-conventional archives

Art. 18

The non-conventional folklore archives are organized within the specialized institutions with attributions in the immaterial cultural heritage field; it is there that the most important items of the immaterial cultural heritage are collected, inventoried and kept, by attaching them on any type of material support.

Art. 19

The institutions that create and / or administer documents belonging to the immaterial cultural heritage have the following obligations:

- a) to respect the national and international scientific criteria for evaluating and drafting the documents for the immaterial cultural heritage items;
- b) to organize the whole filling-cabinet and file system required by the scientific method through which each of the immaterial cultural heritage item was identified;

- c) to ensure the optimum conservation and protection conditions for each document bearing an immaterial cultural heritage element, meant to keep them from physical degradation and fraudulent use;
- d) to elaborate and enforce periodical programs for conducting research activities on the condition of the elements belonging to the immaterial cultural heritage;
- e) to publish scientific works with the fundamental studies results, for avoiding dilettantism and counterfeiting;
- f) to support the projects that stimulate young people's interest for the immaterial cultural heritage field;
- g) to protect, when required, information confidentiality and informer's identity.

CHAPTER VII: The National Commission for safeguarding the immaterial cultural heritage

Art. 20

The National Commission for safeguarding the immaterial cultural heritage, institution without legal personality and subordinated to the Ministry of Culture and Religious Affairs shall be established; its attributions imply coordinating the immaterial cultural heritage protection and promotion activities, developed on the basis of the Ministry of Culture and Religious Affairs cultural policies.

Art. 21

The organization, functioning and attributions of the National Commission for safeguarding the immaterial cultural heritage are established by order of the minister of culture and religious affairs, no later than 60 days after the present ordinance comes into force.

Art. 22

The National Commission for safeguarding the immaterial cultural heritage declares the living human thesauruses for the immaterial heritage field and drafts the National Immaterial Cultural Heritage List.

CHAPTER VIII: Contraventions and sanctions

Art. 23

- (1) Using a distinctive traditional trademark without the written agreement of the popular creators organization that adopted it, as well as using a distinctive traditional trademark without complying with the stipulations of article 11, paragraph (4) are contraventions and shall be sanctioned with fine (from 500 lei up to 2.000 lei).
- (2) Legal bodies perpetrating the contraventions stated at paragraph (1) shall be sanctioned with fine (from 1.000 lei up to 3.000 lei) and suspension of their activity for up to 2 years.

Art. 24

- (1) The ascertainment of the contraventions stated at article 23 and the enforcement of the sanctions stipulated in the present ordinance shall be done by the staff authorized by minister of culture and religious affairs.
- (2) The stipulations of Government Ordinance no. 2/2001 on the legal status of contraventions, approved with amendments and completions by Law no. 180/2002, with the subsequent amendments and completions shall be applied to the contraventions stated at article 23.

Art. 25

The present ordinance comes into force 3 days after being published in the Romanian Official Journal, Part I.

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PRIME MINISTER

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