

Original Paper

Review and Reflection: The Perfection of the Legal Protection
System for Representative Inheritors of Intangible Cultural
Heritage of Ethnic Minorities

Xueping Wu^{1*}

¹ Sichuan Minzu College, Kangding, Sichuan, China

* Xueping Wu, Lecturer of Law School of Sichuan Minzu College, Kangding, Sichuan, 626001, China

Received: January 3, 2024 Accepted: January 18, 2024 Online Published: February 7, 2024

doi:10.22158/sshsr.v5n1p93 URL: <http://dx.doi.org/10.22158/sshsr.v5n1p93>

This paper is a phased research result of the research project of Sichuan Grassroots Public Cultural Service Research Center 'Construction of Public Cultural Service System in Ganzi Prefecture: Protection and Inheritance Based on Intangible Cultural Heritage' (Project No.: JY2020C02).

Abstract

The protection of representative inheritors of intangible cultural heritage of ethnic minorities is the basis of inheriting intangible cultural heritage. By combing the provisions on the representative inheritors of intangible cultural heritage in China's existing legal norms, combining with practical problems, examining the shortcomings of existing provisions, this paper puts forward optimization ideas from three aspects: improving the identification mechanism of inheritors, stipulating the rights of inheritors clearly, and strengthening the protection of the rights of inheritors, so as to realize the research goal of protecting the representative inheritors of intangible cultural heritage of ethnic minorities.

Keywords

intangible cultural heritage of ethnic minorities, representative inheritors, legal protection

1. The Present Situation of Legal Protection of Representative Inheritors of Intangible Cultural Heritage of Ethnic Minorities

Combined with the development process of the protection of intangible cultural heritage of ethnic minorities in China, it reflects the characteristics of continuous exploration and improvement. First of all, the content of the protection of intangible cultural heritage of ethnic minorities continues to expand, the scope continues to expand, and protection measures are further improved. Secondly, the ways of working

on the protection of intangible cultural heritage of ethnic minorities are gradually diversified. The protection mode of intangible cultural heritage of ethnic minorities has changed from separate and classified protection to overall and comprehensive protection. Finally, the legal protection system of intangible cultural heritage of ethnic minorities is constantly improving and the legal norms are more sound. On the legislative level, it has gradually risen from the protection of departmental law to the protection of basic law. The promulgation and implementation of the “Intangible Cultural Heritage Law of the People’s Republic of China” marks that the legal protection of intangible cultural heritage has entered the level of national legislation. In terms of system construction, the legal norms of intangible cultural heritage protection have shifted from decentralization to integration (Zhao, 2014).

The “Intangible Cultural Heritage Law of the People’s Republic of China” is the most important legal basis for the protection of intangible cultural heritage inheritors of ethnic minorities. The law consists of six chapters and fifty-four articles. The contents are general principles, investigation of intangible cultural heritage, list of representative projects of intangible cultural heritage, inheritance and dissemination of intangible cultural heritage, legal liability and supplementary provisions. Article 1 of the “Intangible Cultural Heritage Law of the People’s Republic of China” stipulates: “In order to inherit and carry forward the excellent traditional culture of the Chinese nation, promote the construction of socialist spiritual civilization, strengthen the protection and preservation of intangible cultural heritage, this law is formulated”, and the legislative purpose is to inherit and carry forward the excellent traditional culture of the nation through the protection of intangible cultural heritage, and then promote the construction of socialist spiritual civilization. From the perspective of the specific systems of the Intangible Cultural Heritage Law, the legal system of administrative protection of intangible cultural heritage in China is unique, such as the investigation permission system of overseas organizations and individuals, the support for ethnic, remote and poor areas, the protection planning and the special protection planning system in specific areas. At the same time, it also draws on the relevant international conventions and the country’s advanced legal system. China’s “Intangible Cultural Heritage Law” highlights Chinese characteristics and problems in the identification system of inheritors and the list of representative projects.

Inheritors of intangible cultural heritage play an increasingly important role in maintaining and promoting cultural diversity. China has issued a series of normative documents from the central to local governments to protect the rights of intangible cultural heritage inheritors. The “Intangible Cultural Heritage Law of the People’s Republic of China” and the “Identification and Management Measures for Representative Inheritors of National Intangible Cultural Heritage” are important basis for protecting the legitimate rights and interests of inheritors. The legal protection of intangible cultural heritage inheritors can effectively activate the internal motivation of inheritors and maintain the vitality of cultural heritage. However, due to the impact of globalization, industrialization and modernization, intangible cultural heritage inheritors are also facing great challenges. In particular, the inheritors of intangible cultural heritage of ethnic minorities are not fully guaranteed in terms of financial support, inheritance places,

learning and training, which affects the effective inheritance of intangible cultural heritage of ethnic minorities. Therefore, combined with the practical problems faced by the inheritors of intangible cultural heritage in China, we should think about the effective legal protection system of the inheritors of intangible cultural heritage of ethnic minorities, so as to promote the protection, inheritance and development of the inheritors (Huang, 2020).

2. The Dilemma of Legal Protection of Representative Inheritors of Intangible Cultural Heritage of Ethnic Minorities

2.1 The Dilemma of Identification of Inheritors

Articles 29, 30 and 31 of the “Intangible Cultural Heritage Law of the People’s Republic of China” mainly involve the system of inheritors. Some provinces also involve the inheritor system in their intangible cultural heritage protection systems, but on a national scale, there are still a considerable number of local legislations that have not yet followed up.

Article 29 of the “Intangible Cultural Heritage Law of the People’s Republic of China” is the main legal basis for the identification of intangible cultural heritage inheritors in China. However, it has strong principle, no specific standards and requirements are designed, and the subordinate law lacks complete and comprehensive institutional support. There is a conflict between multi-level and multi-sector identification in the identification of inheritors. At the same time, the conditions for the identification of the inheritors are abstract, and the operability of the identification procedure is not strong. The current procedure for the identification of inheritors in China is individual application or recommendation by relevant departments. After receiving the application materials or recommendation materials, the competent department of culture and tourism shall organize experts to review and report them step by step. The Ministry of Culture and Tourism shall conduct material review and organize expert review to determine candidates, and finally determine the qualifications of inheritors after publicity. However, governments at all levels often have quota restrictions when applying for inheritors, which may exclude some people with the conditions of inheritors from the applicants, and the number of people who actually obtain the qualifications of inheritors is far less than the number of applicants. In addition, many intangible cultural heritage inheritors live in the countryside, and their scope of life is relatively small. They do not know much about the administrative confirmation and declaration system of inheritors, and miss the opportunity to declare representative inheritors at all levels, which also causes the loss of intangible cultural heritage inheritors resources.

Article 30 of the “Intangible Cultural Heritage Law” stipulates that the cultural authorities of the people’s governments at or above the county level shall support the representative inheritors of representative intangible cultural heritage projects to carry out inheritance and dissemination activities and take corresponding measures. The inheritance of intangible cultural heritage is based on human beings. It is endless and handed down from generation to generation. Whether the inheritors can actively, initiatively and reasonably carry out inheritance activities is an important factor in determining the effective

inheritance of intangible cultural heritage. However, the real dilemma is that most of the inheritors are older and live a hard life, and young people are reluctant to learn traditional skills. Although the certified inheritors can receive certain funding, the amount of government subsidies is limited. It is an important measure to improve and implement the existing reward system and administrative help system to arouse the enthusiasm of inheritors. Article 37 of the “Intangible Cultural Heritage Law” stipulates: “The state encourages and supports the use of the special advantages of intangible cultural heritage resources, and on the basis of effective protection, the rational use of intangible cultural heritage representative projects to develop cultural products and cultural services with local, ethnic characteristics and market potential. The development and utilization of representative projects of intangible cultural heritage should support representative inheritors to carry out inheritance activities and protect the objects and places that are part of the project. Local people’s governments at or above the county level should support the units that make rational use of representative projects of intangible cultural heritage. Units that make rational use of representative projects of intangible cultural heritage shall enjoy tax incentives stipulated by the state in accordance with the law.” However, there are still some problems in the implementation of the above system: the standard of reward and payment is not clear, and the procedure is not clear. At the same time, the funds invested by local governments in the special protection of intangible cultural heritage are limited. The inheritors who can be funded are often representative inheritors of intangible cultural heritage at or above the provincial level, and some other project representatives who have not become representative inheritors have little material security. Therefore, it is very important to construct a reward mechanism that pays attention to both material rewards and spiritual rewards, which can not only reflect the socialist core values but also mobilize the enthusiasm of the inheritors. It is very necessary to construct an administrative supply system that takes into account the interests of representative inheritors and general inheritors, not only embodies the connotation of administrative help, but also has the procedural control requirements necessary for modern supply administration (Wen, 2015).

2.2 The Subject of Rights of Intangible Cultural Heritage Is not Clear

China’s “Intangible Cultural Heritage Law” has not made clear provisions on the subject of rights of intangible cultural heritage, which is bound to cause difficulties in the protection of intangible cultural heritage. Clarifying the subject of rights of intangible cultural heritage is the premise to determine the subject of litigation and the basis for its protection. There are two different views on the ownership of the subject of intangible cultural heritage rights: some scholars claim that the subject of intangible cultural heritage rights is an individual or a group or nation; other scholars advocate that intangible cultural heritage should belong to the country. Intangible cultural heritage is usually a cultural product that reflects the common will of a certain nation from generation to generation. The subject of rights includes not only individuals, but also a certain nation, which has the attribute of collective interests. Collective interests not only refer to the interests of the uncertain majority, but also emphasize the uncertainty of the main members. Therefore, within a certain group or ethnic group, intangible cultural heritage cannot be monopolized by a certain person, and representative inheritors or other individuals

cannot exclude other members of the group or ethnic group from enjoying intangible cultural heritage. “Traditional knowledge is the intellectual achievement of traditional clan spiritual production and intellectual labor. In the definition of property rights, property should be defined as producer ownership (Yan, 2006).” Intangible cultural heritage is the cultural wealth created and inherited by the common ancestors of a nation or group in a specific environment. It is the common property of the nation. The owner of this common property should be the ethnic group, not only the individual. Individuals cannot transfer or dispose of intangible cultural heritage. However, under the premise of emphasizing that intangible cultural heritage belongs to the group, how to ensure that the representative inheritors of intangible heritage get appropriate benefits in material and spiritual aspects is worth considering. At present, some scholars advocate taking the relevant groups of intangible cultural heritage and the representative inheritors as the subject of rights, that is, establishing the dual subject model of rights (Chang, 2016). This model takes into account the collective interests of intangible cultural heritage and the protection of the interests of representative inheritors, which is reasonable. In the litigation about the protection of intangible cultural heritage, if a certain intangible cultural heritage has a clear individual inheritor, the inheritor can be identified as the subject of individual rights. If an intangible cultural heritage cannot determine the individual inheritor, the nation that created this intangible cultural heritage or local government can be used as the subject of group rights.

3. The Way of Legal Protection of Representative Inheritors of Intangible Cultural Heritage of Ethnic Minorities

3.1 Improve the Inheritor Identification Mechanism

Article 29 of the “Intangible Cultural Heritage Law” and Article 8 of the “Measures for the Identification and Management of Representative Inheritors of National Intangible Cultural Heritage” respectively stipulate the criteria for the identification of intangible cultural heritage inheritors. The conditions for being identified as the representative inheritors of intangible cultural heritage, especially the representative inheritors of national intangible cultural heritage, are stricter. Too strict conditions will affect the enthusiasm of some people engaged in the practice of intangible cultural heritage inheritance to declare and continue to engage in the work of intangible cultural heritage, which is not conducive to the protection and inheritance of intangible cultural heritage. The candidate range of representative inheritors of intangible cultural heritage should be appropriately expanded. As long as the per capita of intangible cultural heritage that is proficient in its inheritance should be eligible to participate in the identification of inheritors. At the same time, the “actively carry out inheritance activities and cultivate successor talents” in the existing declaration conditions should be regarded as the obligation that the inheritor should fulfill after being identified rather than the declaration conditions. Appropriate soften the terms of the declaration conditions will encourage more people to engage in the practice of intangible cultural heritage.

According to the “Measures for the Identification and Management of Representative Inheritors of National Intangible Cultural Heritage”, eligible individuals can declare or be recommended as representative inheritors of national intangible cultural heritage. According to Articles 10, 11 and 12 of the Measures, the starting method for the identification of representative inheritors of national intangible cultural heritage is individual application or recommendation by others. Government departments play a leading role in the follow-up review and identification, but this identification mechanism has the disadvantage of narrow scope of identification. It is suggested that the duty and responsibility of discovering and identifying the inheritors of intangible cultural heritage as the cultural and tourism sector, rather than just the right, should not only be the passive audit application, but also the active discovery and identification with informed consent. At the same time, an incentive mechanism should be constructed to adapt to the “individuals and units that discover and recommend intangible cultural heritage inheritors”.

3.2 Clearly Stipulate the Rights of Inheritors

Article 31 (1) of the “Intangible Cultural Heritage Law” and Article 18 of the “Measures for the Identification and Management of Representative Inheritors of National Intangible Cultural Heritage” both stipulate the obligations of representative inheritors of intangible cultural heritage, but the above laws and management measures do not involve the provisions of the rights of inheritors. While stipulating the obligations of the inheritor, it should also clarify the rights enjoyed by the inheritor. The rights of inheritors should include material rights and spiritual rights, among which the right of inheritance should be the most important content. Although the law will carry out inheritance activities and cultivate successor talents as the obligation of inheritors, it should also be the content of inheritance rights. The right of inheritance is a collective right, which should include the right of inheritors to carry out inheritance activities, the right to choose successors, and the right to choose the way of inheritance. The second paragraph of Article 31 of the “Intangible Cultural Heritage Law” clarifies the adverse consequences of the inheritors’ failure to fulfill their inheritance obligations, but there are no sanctions for infringement or obstruction of the inheritors’ inheritance of intangible cultural heritage according to law.

Articles 39 and 40 of the “Intangible Cultural Heritage Law” involve the protection of the rights of inheritors, but the coverage is limited. Among them, is the staff of the cultural authorities and other relevant departments responsible for violating the customs and habits of the respondents when conducting activities other than intangible cultural heritage surveys? What kind of responsibility? The law does not stipulate. At the same time, if a subject implements other acts that hinder the inheritance and protection of intangible cultural heritage, rather than destroying the physical objects and places of intangible cultural heritage components, how to deal with it, the law is not clear. These are related to the basic content of the rights of the inheritors. Therefore, while stipulating the obligations of the inheritors, the law should also clarify their rights so that the intangible cultural heritage can be inherited smoothly (Cui, 2014).

3.3 Strengthen the Protection of the Rights of Inheritors

Inheritors play an important role in the protection and inheritance of intangible cultural heritage. Therefore, strengthening the protection of the legitimate rights and interests of inheritors is the key to protecting intangible cultural heritage. Article 31 (2) of the “Intangible Cultural Heritage Law” and Article 22 of the “Measures for the Identification and Management of Representative Inheritors of National Intangible Cultural Heritage” clarify the specific conditions for the administrative organs to cancel the qualifications of inheritors, but it does not provide institutional guarantee for the subject of the disqualified inheritor. When the competent cultural department makes a decision that is unfavorable to the inheritor, such as revoking the qualification of the inheritor, it should first serve the decision in writing and inform the inheritor in time, explain the reasons for making this decision, and inform the disqualified inheritor of its right to express opinions and defend. By giving the inheritors the above rights, the two sides can fully communicate and express their views, which is conducive to the inheritors to accept the results and ensure the correctness of the decision. In addition, when there are great differences in the identification and revocation of the inheritor’s inheritance qualification, the cultural department may initiate the hearing procedure according to the authority or the application of the inheritor or the interested party.

The dilemma of the decrease in the number of people willing to learn intangible cultural heritage skills encountered in the process of inheritance of intangible cultural heritage is related to the lack of material security for intangible cultural heritage inheritors. The second paragraph of Article 17 of the “Measures for the Identification and Management of Representative Inheritors of National Intangible Cultural Heritage” stipulates that the inheritors of national intangible cultural heritage have no source of economic income and have real difficulties in life. The administrative department creates conditions to ensure their basic living needs. Non-national intangible cultural heritage inheritors do not have this treatment. At the same time, there is no clear source of funds and subsidy standards. The provisions are vague and easy to implement in practice. The inheritance and protection of intangible cultural heritage cannot be separated from the efforts and persistence of the inheritors. Therefore, once the identity of the inheritors of intangible cultural heritage is determined, it should provide basic guarantees for their lives, including regular living subsidies and financial support for the inheritors of special hardship. In addition, the inheritors should be included in the medical security system, and the inheritors without medical insurance should be given medical insurance, so that they have no worries.

On the one hand, the law gives the rights to the inheritors of intangible cultural heritage, on the other hand, it should stipulate perfect rights relief measures. Without relief, there is no right. Although Articles 40 and 42 of the “Intangible Cultural Heritage Law” involve the issue of legal liability, the types of infringement only include the destruction of objects and places that are part of the intangible cultural heritage, and the applicable conditions of administrative responsibility and criminal responsibility. There is no provision for the content of the right relief of the inheritor. Whether the inheritor can enjoy the rights of intangible cultural heritage, including the right of inheritance, not only needs the law to stipulate

these rights from the entity to the procedure, but also needs effective relief measures when the rights are violated. In order to achieve the purpose of protecting and inheriting intangible cultural heritage, the law should stipulate a perfect relief system for inheritors' rights. Relief measures can include composition, conciliation and litigation, and should be clear about the applicable situation, effectiveness and the way of mutual connection of these relief measures. Among them, litigation is the last line of defense and the most powerful way to protect the rights of inheritors. It should set the right of action for the inheritors and solve the obstacles for the inheritors to protect their rights by litigation.

References

- Chang, J. K. (2016). Legal protection of intangible cultural heritage of ethnic minorities in Gansu Province. *Journal of Guizhou University (Social Science Edition)*, 34(3), 143-147.
- Cui, C. (2014). Legal protection of the rights of inheritors of intangible cultural heritage. *Journal of Shenyang University of Technology (Social Science Edition)*, 7(3), 212-215.
- Huang, J. (2020). *Research on the legal system for the protection of intangible cultural heritage inheritors*. Nanning: Guangxi University for Nationalities.
- Wen, X. J. (2015). Reflection and development of administrative law protection of intangible cultural heritage inheritors. *Guangxi Social Sciences*, 5, 189-193.
- Yan, Y. H. (2006). *On Intellectual Property Protection of Traditional Knowledge* (pp. 193-198). Beijing: Law Press.
- Zhao, H. J. (2014). *Legal protection of intangible cultural heritage in Xinjiang* (pp. 167-169). Beijing: People's Publishing House.