

On the Limitation of the Identification of Non-genetic Inheritors from the First Case of Applying for Cancellation of "Non-legacy" in Beijingour

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Abstract. Intangible cultural heritage is the precious wealth of Chinese national spirit, which must be preserved and disseminated reasonably. The confirmation of non-genetic inheritors is one of the key links in the preservation of intangible cultural heritage. Taking the first application for cancellation of intangible cultural heritage in Beijing as an example, this paper discusses the blind area of the review mechanism identified by non-genetic inheritors, the authority and binding restrictions of the identification, understands the limitations of the identification of intangible cultural heritage, and puts forward corresponding improvement and perfection measures to promote the protection and inheritance of intangible cultural heritage.

Keywords: Inheritor of Intangible Traditional Cultural Heritage; China Intangible Traditional Cultural Heritage; Identification of Intangible Heritage Inheritors; Administrative Law Protection; The First Case of Applying for Cancellation of "Non-Legacy" Project.

1. Introduction

General Secretary Xi Jinping pointed out that the Chinese nation was the most important civilization that was independently formed in the evolution of human history and spread to this day. We should attach importance to the protection of excellent traditional cultures of all ethnic groups and actively promote the inheritance and research of human intangible cultural heritage. The sustainable inheritance and development of intangible cultural heritage can not be separated from the activities of inheritors. Identifying non-genetic inheritors can ensure the inheritance of traditional skills and knowledge of intangible cultural heritage and provide stable talent support for the sustainable development of intangible cultural heritage. Non-genetic inheritors also include representative inheritors and general inheritors. Representative inheritors refer to those who play the main role and occupy the core position in the process of intangible innovation and inheritance, while ordinary inheritors refer to those who play an auxiliary role and occupy a secondary position in the process of intangible innovation development and inheritance. Due to different status, the rights and interests are different. In 2013, the ancient building model making skill "Zhaxiao Sample" was included in the district-level intangible cultural heritage list by Xicheng District Government. After Yuan was not recognized as a representative inheritor, he appealed to the Xicheng District People's Government and the Xicheng District Cultural Committee, requesting to remove the fourth batch of the cultural heritage. Taking this as an example, this paper discusses the limitations of the identification of inheritors and puts forward corresponding improvement and perfection measures to promote the protection and inheritance of intangible cultural heritage.

2. The Legal Definition of the Inheritor of Intangible Cultural Heritage and its Identification Management Policy System

2.1. Legal Definition of Non-Genetic Inheritor

Defining the legal connotation of the inheritors of intangible cultural heritage scientifically is the basis for the inheritors to obtain the right protection, and they become the key figures of intangible



cultural heritage from generation to generation by inheriting the living culture. In the document "General Office of the State Council on Strengthening the Protection of Intangible Cultural Heritage in China", the concept of Chinese cultural person is clearly defined. Qi Qingfu's definition of the inheritor of intangible cultural heritage is: "In the process of inheriting intangible cultural heritage of great value, he has rich national and folk cultural traditions, outstanding technology, skills and skills, recognized by social groups and ethnic groups, and has certain influence and influence."

Combined with the relevant provisions of laws and regulations, the concept of intangible cultural heritage inheritor can be defined as: being able to master the skills, knowledge and skills of an intangible cultural heritage skillfully, being recognized by the public, being keen on the inheritance activities of intangible cultural heritage and making outstanding contributions, personally participating in activities such as the exhibition and transmission of traditional skills and traditional culture in the inheritance work, and passing on and imparting his superb skills with high historical, cultural and artistic value to designated natural persons or groups.

2.2. Non-Genetic Inheritor Identification Management Policy System

It has been 19 years since the China government officially signed the Convention for the Protection of Intangible Cultural Heritage in UNESCO on August 10th, 2004. At present, the Interim Measures for the Identification and Management of Representative Inheritors of National Intangible Cultural Heritage Projects, the Measures for the Identification and Management of Representative Inheritors of National Intangible Cultural Heritage and the corresponding laws and regulations have been promulgated throughout the country. At present, five batches of representative inheritors of national intangible traditional cultural heritage projects have been confirmed by the local people's government, and by the end of 2022, a total of more than 3,057 people have obtained the national level. In August, 2002, the Opinions on Further Strengthening the Protection of Intangible Cultural Heritage clearly put forward the requirement of "perfecting the system of representative inheritors" in the General Office of the Central Committee of the Communist Party of China and the State Council, which has been widely recognized nationwide. Specific measures; However, the identification mechanism of national representative inheritors in China has not yet formed a fixed working mechanism in the practice of protecting inheritors, and there are still some limitations.

3. The Criteria for the Identification of Intangible Cultural Heritage Inheritors and Their Limitations

3.1. Non-Genetic Inheritor Identification Criteria

Inheritor is the dynamic carrier of intangible cultural heritage. How to select the real inheritors of intangible cultural heritage in China will directly affect how to inherit this type of living heritage of Chinese civilization. Five requirements for the inheritor of intangible cultural heritage to confirm: first, the intangible cultural heritage that must be confirmed must be provided by the ancestors; Second, we must inherit the lifestyle in person; Third, we must inherit the original culture; Fourth, we should consciously pass it on to future generations; Fifth, it must have considerable social representation, authority and influence, and only when the above requirements are met can it finally be recognized as the inheritor of intangible cultural heritage.

3.2. Case Review

In 2013, the People's Government of Xicheng District of Beijing listed "making small samples of ancient building models" as the fourth batch of district-level intangible cultural heritage. However, Yuan Mou, a craftsman, sued the Xicheng District Government and the Xicheng District Cultural Committee to the court because he was not recognized as a representative inheritor, and applied to cancel the "making small samples" of ancient building models as a catalogue of intangible cultural heritage. According to Yuan, according to the requirements of the Law of People's Republic of China (PRC) on Intangible Cultural Heritage, the cultural authorities must collect meaningful material

information during the national survey of intangible historical and cultural heritage, which is a major indicator for the confirmation of intangible historical and cultural heritage. It is also unfair that the defendant did not collect representative material data in accordance with the provisions of the law and conducted relevant research in the study of the plaintiff's intangible historical and cultural heritage. In accordance with the provisions of the Intangible Cultural Heritage Law, the cultural authorities of the people's government at the county level shall record the intangible cultural heritage that is endangered after investigation or other means, collect relevant physical materials, or take other necessary protective measures. Because neither defendant can be identified as the representative successor of the project, it is impossible to actually inherit the project. The defendant Xicheng District People's Government argued that according to Article 7 of the Intangible Cultural Heritage Law, Xicheng District Government is not a qualified defendant in this case, and requested the court to dismiss the plaintiff's lawsuit according to law.

Xicheng District Cultural and Cultural Committee argued that, firstly, the ownership of intangible cultural heritage protection projects mentioned in the Intangible Cultural Heritage Law does not belong to anyone, and no one can ask for revocation. Second, the Opinions of the General Office of the Beijing Municipal People's Government on Strengthening the Protection of Intangible Cultural Heritage in this Municipality stipulates that the Municipal People's Government shall approve and announce the iconic list of intangible cultural heritage; The list of representative projects of intangible cultural heritage at or above the county level shall be reviewed by the people's government at or above the county level and then submitted to the Municipal People's Government for approval. Therefore, the Xicheng People's Government of Beijing, as the specific implementation unit of the national intangible cultural heritage representative project, and the Xicheng District Cultural Education Committee of Beijing, as the most specific implementation agency of the project, should not be the main victim of this case. Thirdly, the specific work of the Xicheng District Government of Beijing to include "small samples of ancient building models" in the list of intangible cultural heritage projects in Xicheng District conforms to legal procedures. The social service center of China Cultural Import and Export Project, a public welfare organization of Guang'anmenwai Street, which was inspected by the Ministry of Culture of Xicheng District, Beijing, was confirmed by the heads of the Ministry of Culture of Xicheng District, Beijing and People's Republic of China (PRC). Fourthly, since the beginning of this work, Beijing Xicheng District Cultural and Education Commission has carried out extensive education and publicity activities and popularization by organizing personnel training, publishing and disseminating brochures, and selecting social organizations. Article 29 of the Intangible Cultural Heritage Law stipulates that representative projects in intangible cultural heritage shall be recognized as representative projects by the people's governments of the State Council, autonomous regions and municipalities directly under the Central Government, and may be identified as representative project inheritors. This standard does not include the main person in charge of districts and counties in the category that the state must identify as representative inheritors, but there is still a lack of legal provisions that must be identified as representative inheritors in China.

It was confirmed by the trial court that since Yuan was the producer engaged in "making small samples of ancient building models" and the person in charge of the project's application for intangible cultural heritage, whether the project was included in the intangible cultural heritage list would not have a substantial impact on his personal rights and obligations. During the trial of the case, Yuan complained that "making small samples of ancient building models" would be deleted from the national intangible historical and cultural heritage list, and it would not have an impact on him personally. There is no legal contract relationship between the original plaintiff and the Xicheng District Government for the activity of "making small samples of ancient buildings" as a national intangible cultural heritage list, so it is neither in line with the legal charges against the Xicheng District Government nor the legal prosecution conditions.

3.3. Limitations of the Identification of Non-Genetic Inheritors

The determination of representative inheritors is the basis and necessary condition for the effective preservation, inheritance and development of intangible cultural heritage. However, there are some shortcomings in the identification system of representative inheritors in China at this stage:

(1) the blind spot of the review mechanism identified by the non-genetic inheritor.

There are also some blind spots in the specific operation process and conditions of intangible cultural heritage identification. In this case, the Xicheng District People's Government argued that according to the Opinions of the General Office of Beijing Municipal People's Government on Strengthening the Protection of Intangible Cultural Heritage in this Municipality, qualified applicants must first apply to the cultural and tourism authorities in their respective administrative regions, and only after the approval of the administrative departments for cultural management can the applicants who have passed the examination report to the administrative departments for cultural management step by step. In the whole review process, the relevant departments need to collect and file the operating conditions of the reporting company at home and abroad, and finally evaluate it. The whole procedure is rigorous and authoritative. However, the selection period of non-genetic inheritors is long and consumes huge resources; In addition, due to the complexity and diversity of intangible items in the review process, sometimes there may be insufficient data support, resulting in incomplete or inaccurate information in the review process, and examiners may have certain subjectivity in the identification of non-genetic inheritors, which may lead to distortion or error in the identification results.

(2) Restrictions on the authority and binding force of non-genetic inheritors' identification

Article 29 of the Intangible Cultural Heritage Law also requires the relevant authorities to determine the representative inheritors, but at present there is no special provision for determining the representative inheritors in our legislation. This means that even if an intangible project is recognized as intangible, the relevant inheritors and communities are not subject to special protection or requirements at the legal level. If the representative inheritors can't get the government's attention and support, and can't get certain rights and interests, then the general inheritors can't be included in the existing administrative law identification system. One of the more important reasons why Yuan was not selected as a representative inheritor in this case is that he did not have enough social influence, because most of the activities such as government funding and subsidies, inheritance and exchange were mainly carried out by representative inheritors. Although the intangible cultural heritage identification is of certain importance and symbolic significance to inheritors and communities, its actual influence is limited. The identification result will not directly provide special treatment in terms of economic support, protection of rights and interests or resource allocation. Inheritors and communities still need to face various challenges, such as market competition, economic pressure and changes in the inheritance environment. This is also a manifestation that his rights and interests as a general inheritor have not been protected. Therefore, the government should not ignore the status of general inheritors. Although the representative inheritors are officially recognized, if all the interests are tilted towards them, it will inevitably lead to the dissatisfaction of other intangible cultural heritage inheritors, which will also affect the development of inheritance activities and bring adverse consequences for the protection of intangible cultural heritage. The Intangible Cultural Heritage Law and the Measures all include representative inheritors in the scope of recognition. However, there are many ordinary inheritors who are engaged in the inheritance of intangible cultural heritage but cannot be recognized as representative inheritors. Most of them are not representative and often cannot be recognized by law. To sum up, at present, the definition of intangible cultural heritage and its inheritors is too narrow, and the identities of some intangible cultural heritage inheritors can not be recognized, which leads to their rights and interests can not be effectively guaranteed. The production and life of such inheritors have not been paid attention to and protected, and their inheritance activities can not be supported accordingly.

(3) The group inheritors of intangible cultural heritage are excluded from the existing scope of identification.

Although the "small sample of ancient building model" discussed in this paper does not belong to the identification of group inheritors, if the inheritors of intangible cultural heritage are simply identified as individual representative inheritors and the significance of the existence of group inheritors is ignored, the connotation and integrity of intangible cultural heritage will be separated and the intangible cultural heritage will be fragmented. This practice of replacing groups with individuals will easily lead to conflicts between inheritors. Once the interests are unbalanced, it will inevitably affect the relations within groups and destroy the original harmonious atmosphere.

4. Improve the Intangible Cultural Heritage Inheritor Qualification System.

4.1. Improve the Evaluation System of Representative Inheritors and Implement Dynamic Management of Duty Performance

First, improve the evaluation system and carry out assessment. A scientific and reasonable cultural evaluation index system has been formed, and through the combination of cultural administrative department evaluation and third-party evaluation. Evaluate the performance of the representative inheritors of intangible heritage, publicize the assessment results to the public, and take the results as an important basis for continuing to obtain the qualifications and corresponding rights of the representative inheritors of intangible heritage. Second, implement agreement management and strengthen responsibility. Inheritance agreement is the main basis for the evaluation of representative inheritors, and the relevant cultural departments should sign the Inheritance Agreement with representative non-genetic inheritors and stipulate their rights and obligations. According to the project type, inheritor's age, physique and other conditions, the specific objectives and tasks of teaching, teaching, practice, collection, sorting and preservation within the contract period are listed. Third, implement dynamic management and implement the exit mechanism. Based on the comprehensive investigation and evaluation of the performance of the representative inheritors of the project, the dynamic management of the project should be implemented to optimize the team of project inheritors and promote the continuation of the project. If there is a serious violation of laws, regulations, morality, morality and other acts, resulting in serious social impact, the qualification of its representative inheritor should be revoked; The successors who resort to deceit and refuse to perform their inheritance rights without reason shall be given corresponding warnings until they finally quit.

4.2. To Build a General Inheritor Qualification System, to Mobilize the Enthusiasm of Inheritors

Representative inheritors are only a small part of intangible cultural heritage inheritors, and more are unidentified general inheritors. The lack of legal status of such inheritors will greatly weaken the protection power of intangible cultural heritage, and then affect the actual effect of intangible cultural heritage protection. National and local governments can actively carry out cultural communication activities by formulating corresponding administrative and legislative measures, which have mastered the basic knowledge and technology of intangible cultural heritage, but the representativeness or influence can not confirm the general inheritors who are evaluated as representative inheritors, and provide corresponding spiritual or material benefits to such inheritors to protect and mobilize their enthusiasm. The law can divide the obligations of representative inheritors and general inheritors differently. The identification of general inheritors is also conducive to strengthening the talent pool of intangible cultural heritage and improving the echelon system of intangible cultural heritage talents. When the representative inheritors of intangible cultural heritage are too old or ill to inherit intangible cultural heritage projects well, which affects the normal inheritance work, the general inheritors play a vital role at this time, which can ensure the normal development of intangible cultural heritage inheritance work in an emergency.

4.3. Improve the Qualification System of Group Inheritors.

The intangible cultural heritage project system is huge and complicated, so it can't be passed on by individual inheritors, and it needs the cooperation of a group or even a specific region. But at present, the identification of group inheritors is only clarified in some places through legislation. Therefore, the Measures for the Identification and Management of Representative Inheritors of Provincial Intangible Cultural Heritage in Guangdong Province divides the representative inheritors of national intangible traditional cultural heritage in Guangdong Province into individuals and groups according to the requirements of Article 8. But it is still in the exploratory stage.

5. Conclusion

The inheritance and protection of intangible cultural heritage needs the joint efforts of the government, individuals and organizations. Through the revision of relevant laws and regulations, giving the inheritor the status of interest representative and legal subject can clarify the content of his rights and obligations and stimulate the public's enthusiasm, identity and consciousness for cultural inheritance and protection. The Law on Intangible Cultural Heritage should define the specific responsibilities of intangible inheritors in the form of basic laws, and build a four-level inheritance identification system of "country-province-city-county". The texts of local policies and technical specifications should make flexible clauses, improve supporting measures and protection clauses, and refine the main responsibility provisions according to their own specific conditions, so as to provide a strong institutional guarantee for the continuous dissemination and innovation transformation.

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