



UNESCO Chair

UnitelmaSapienza

University of Rome

Intangible Cultural Heritage
and Comparative Law



Intangible Cultural Heritage and Legislation in Türkiye

Ahmet Erman ARAL

UNESCO Chair on Intangible Cultural Heritage in Formal and Informal Education

UnitelmaSapienza.it

Background on Türkiye's Experience in ICH

- **Top Policy Documents – The Basis**
- **Constitutional Law**
 - Protection of cultural assets – private ownership (Article 63)
- Ministry of Culture and Tourism – **Strategic Plan** (2019-2023)

Background on Türkiye's Experience in ICH

- **Ratification** of the UNESCO ICH Convention: **2006**
- Establishment of the **ICH Experts Committee** at Turkish NatCOM for UNESCO (2006)
- **Department of ICH** at the Ministry of Culture and Tourism (2007) – competent body
 - **ICH boards** on provincial level (inventory and identification)

Background on Türkiye's Experience in ICH

- **Elective course dedicated to ICH** in secondary education: **Folk Culture** (2006)
- **UNESCO Chair** on ICH in Formal and Informal Education (2017)
- The number of UNESCO-accredited NGOs is **seven**

Background on Türkiye's Experience in ICH

- **Twenty-one** inscribed elements on UNESCO Lists (four more expected this year)
- Research on ICH is **identified as one of the priorities** by Turkish Higher Education Council (2018)
- **Cooperation protocol** signed between Culture and Education Ministries (2019)

Background on Türkiye's Experience in ICH

- ICH not have his own legislation but...
 - ✓ a **group of experts** discussed opportunities at Ministry of Culture (2017)
 - ✓ **Ad-hoc working group** was established at Turkish NatCOM for UNESCO in 2021-2022

The Focus of First Discussions on the Topic

- **Law draft** proposed by a folklorist to establish the Research and Collection Institution for Turkish Folk Culture (1976)
- The book **Copyright of Folk Culture Products** (1990)
- The approach similar to **UNESCO Recommendation** on the Safeguarding of Traditional Culture and Folklore (1989)

Studies and Developments on ICH and Legislation in Recent Years

- **Unauthorized use** of traditional knowledge: economic and moral-spiritual aspects
- Ontological and technical discrepancies
- Need for **sui-generis legislation**

ICH and Legislation: Different legal spheres

- **Food Security**

- Law on Veterinary Services, Phytosanitary, Food and Animal Feed (2010 - Ministry of Agriculture and Forestry)
 - The use of **traditional methods** in the production, processing or distribution of food
- Law on **Organic Farming** (2004) – the production or raising of organic products by using soil, water, plant, animal and natural resources
- Regulation on **Turkish Food Codex** (2011-revised in 2020)
 - It contains **microbiological criteria codex** for culinary elements (some of which are inscribed on the **UNESCO Representative List**)

ICH and Legislation: Different legal spheres

- **Health Care**

- Regulation on **Traditional Herbal Medicinal Products** (2014)
- Regulation on Clinical Research of **Traditional and Complementary Medicine Practices** (2019)

ICH and Legislation: Different legal spheres

- **Gender Equality**

- Strategy plans and papers by Ministry of Family and Social Policies, General Directorate on the Status of Women
 - The Strategy Paper and Action Plan on Women's Empowerment (2018-2023)
 - ❖ **women's equal access** to cultural life and opportunities
 - The 4th National Action Plan and Strategy Document for **Combating Violence Against Women** (2021-2025)
 - ❖ Research on folkloric elements to **identify positive examples in oral traditions** (proverbs, folk tales) to fight violence against women

ICH and Legislation: Different legal spheres

- **Knowledge and Practices Concerning Nature and Universe**
 - The 11th Development Plan (2019-2023)
 - The link between **traditional knowledge and intellectual property** to be strengthened
 - Regulation on **Geographical Indications and Traditional Product Names**
 - Regulation on Registration, Production and Marketing of **Local Agricultural Products** (2019)

Legal Measures for Inclusive Economic Development

Income Generation and Sustainable Livelihoods

- The 11th Development Plan (2019-2023)
 - **prevent monopolization of production of cultural products**
- Strategic Plan of the Ministry of Agriculture and Forestry (2019-2023): **conserving biodiversity**
 - Creation of **database for traditional information**
- Presidential Decision on Registration and Support of **Traditional Coastal Fisheries (2021)**
 - Sustainable management for traditional fisheries

Legal Measures for Inclusive Economic Development

Tourism, Legislation and ICH

- The basis: Law on the **Encouragement of Tourism** (1982-revised in 2021)
- Regulation on the **Qualifications of Tourism Facilities** (2019)
 - reference to **sustainable tourism**
 - restaurants to offer **selections from local products**
- Regulation on **International Health Tourism** and **Tourist Health** (2017)
 - complementary medicine practices

Other Relevant Legislation Documents

- The Directive Regarding the Identification and Registration of ICH (2020)
 - **Identification Card** for Practitioners and Bearers
 - **Registration** to Information and Documentation Center for Folk Culture

Other Relevant Legislation Documents

- Regulation on Folk Culture Archives
 - ✓ specifies the **procedures to be applied to folkloric materials**
 - ✓ Defines **principles to make use of the archive**

Law Draft on the Safeguarding of ICH

- Based on the final report of the **ad-hoc working group** established at Turkish NatCOM for UNESCO (2021-2022)
- **Bearer, practitioners and cultural spaces** are at the forefront

Law Draft on the Safeguarding of ICH

○ Law draft is composed of **four parts**

❖ **1. Intangible Cultural Heritage**

- identification
- safeguarding (inventory and research projects)
- cultural spaces necessary for the viability of ICH
- use of ICH elements
- obligation to refer to communities and location
- illegal use
- industrial property rights
- support, sponsorship and cultural investments
- Additional financial contribution (to be collected from property tax)

Law Draft on the Safeguarding of ICH

- Draft bill is composed of **four parts**

- ❖ **2. Sanctions**

- in the case of misconduct > administrative fine
- confiscation
- private law

Law Draft on the Safeguarding of ICH

- Draft bill is composed of **four parts**
 - ❖ **3. Commission for the Safeguarding of ICH and Provincial Boards**
 - ❑ Duties, Authority and Mode of Operation
 - ❑ Membership
 - ❑ Regulation on Provincial Boards,
 - ❖ **4. Final Clauses**
 - ❑ Reference to putting the regulations and provisions of law into force

Concluding Remarks

- ICH is embedded in legislation but in a **scattered fashion**
- **Notion of ICH does not exist** in domestic law
- **Lack of interest** in The 2003 Convention **among lawmakers and legal scholars**
- **Lack of coordination** between relevant ministries (reluctance)

Concluding Remarks

- **No connections** between laws, regulations, directives
- ICH currently subject of **soft law** mechanisms
- Need for **solid sanctions**