

The Law of the Republic of Azerbaijan On Legal Protection of Azerbaijani Folklore Expressions

The present Law regulates relationships arising from legal protection, use and maintenance of protection of national folklore expressions which are a component part of cultural heritage as a special type of intellectual property.

Chapter 1. General Provisions

Article 1. Main Definitions

- 1.0 Main definitions used in the present Law shall have the following meaning:
- 1.0.1 Azerbaijan folklore expressions (hereinafter referred to as “folklore expressions”) – shall mean word art works, folk music, games and dances, works of folk handicraft and applied arts (existing and not existing in a material form) created in a verbal form as well as other products of folk creative work created and protected by Azerbaijani people, its individuals and reflecting traditional artistic values, world view, hopes and wishes, characteristic features of artistic heritage of Azerbaijani people;
- 1.0.2 Legal Protection of folklore expressions
- Protection of folklore expressions from any unlawful use and other actions damaging them;
- 1.0.3 Unlawful use of folklore expressions
Violation of requirements determined by this Law in cases of untraditional and uncommon use of folklore expressions with commercial purpose;
- 1.0.4 Actions damaging folklore expressions
- inaccurate indication of source as well as geographical name of place of creation and (or) name of nation (society) folklore expressions belongs while using folklore expressions in the cases determined by this Law;
- 1.0.5 Traditional use of folklore expressions
- Use of folklore expressions preserving its natural essence, features of content and form and based on the long-term experience of society;
- 1.0.6 Common use of folklore expressions
- Use of folklore expressions in accordance with daily necessities and needs of society.
- 1.0.7 Untraditional and uncommon use of folklore expressions
- Use of folklore expressions with changing its natural essence, content or purpose, destination and artistic form;
- 1.0.8 Commercial Use of folklore expressions
- Publication, making copy, dissemination of the copies, public declamation and performance, cable or ether broadcast as well as use in any mass notification form in order to deliver to public of folklore expressions with the purpose of profit earning.

Article 2. Protected folklore expressions

- 2.1.1 Folklore expressions protected by this Law are the following works consisting of products of folk creative work, artistic folk handicraft and applied arts:
- 2.1.2 Labor, ceremony and children's folklore works, myths, fables, stories, tales, legends, anecdotes, folk-dramas, proverbs, sayings, riddles, works of folk and ashug poetry, bayati and other verbal arts works related to the artistic verbal creative work;
- 2.1.3 Folk songs and dance melodies, ashug melodies, mugam-dastgahs, zarbi- mugams, tasnif, rangs related to folk-professional music and other works of folk music;
- 2.1.4 folk dances, yalli, games, ceremony and holidays and other active works;
- 2.1.5 works of tangible applied arts and folk handicraft, including graphic art-pictures, drawings, succession of images, shade drawings, smithery and engraving works, sculpture, ceramics, earthenware, mosaic, metal wares, copper and bronze articles, works of silkworm breeding, carpet-weaving, copper-smithery, jeweler's art, leather, embroidery, basketry, folklore expressions such as carpets, decorative patterns, clothes and ornaments, tracery, musical instruments, wood-turning, architecture works and other works of this kind.
- 2.1.6 Creation of protected folklore expressions set forth in Article 2.1 of this Law shall not be limited by time and place, newly created folklore expressions shall be added to the range of protected and their legal protection shall be term less.

Article 3. The Legislation of the Republic of Azerbaijan on Legal Protection of folklore expressions

- 3.1.1 The Legislation of the Republic of Azerbaijan on Legal Protection of folklore expressions consists of the Constitution of the Republic of Azerbaijan, the present Law, other normative-legal acts and international agreements to which the Republic of Azerbaijan is a party.
- 3.1.2 If contradiction arises between this Law and international agreements to which the Republic of Azerbaijan is a party, those international agreements shall be applied.

Article 4. Scope of the Law

This Law shall be applied to folklore expressions set forth in Article 2 of this Law and created and maintained by Azerbaijan people, its individuals.

Article 5. Main Directions of the State Policy in the Field of Legal Protection of folklore expressions

- 5.1 The main directions of the state policy in the field of legal protection of folklore expressions are the following:
 - 5.1.1 Maintenance, development of folklore expressions and their transfer to future generations;
 - 5.1.2 Elaboration of the legislative basis providing for legal protection of folklore expressions;
 - 5.1.3 Creation of conditions for international cooperation with the purpose of legal protection of folklore expressions belonging to Azerbaijan people in the territory of foreign states.
- 5.2 With the purpose of legal protection of folklore expressions the relevant executive body implements the following actions within its competence:

- 5.2.1 Elaborates proposals on improvement of current legislation in accordance with the international experience;
- 5.2.2 Represents the Republic of Azerbaijan in international organizations engaged in legal protection of folklore expressions and organizes cooperation in this sphere;
- 5.2.3 Represents and defends state interests in cases of violation of the requirements set forth by this Law on the use of folklore expressions.

Chapter II. The Rules of Use of Folklore Expressions

Article 6. The requirements on the use of folklore expressions

- 6.1 The forms of traditional and common as well as commercial use of folklore expressions in the territory of the Republic of Azerbaijan shall be free.
- 6.2 During untraditional and uncommon commercial use of folklore expressions the purpose, destination and artistic form of folklore expressions can be changed without damaging their natural essence and content in the form of publication in any form, making of copies, dissemination of copies, public declamation or performance, broadcast by ether or cable means as well as in any other mass notification form with the purpose of presentation to public.
- 6.3. Legal and natural persons of other states shall be entitled to use folklore expression outside the territory of the Republic of Azerbaijan in commercial purpose only with authorization of relevant executive body and with payment of fee for use. That fee shall be transferred to the account of relevant executive body and used for promotion of intellectual creativity, also safeguarding and enrichment of folklore expressions.
- 6.4. The rule of permission for commercial use of folklore expressions outside the territory of the Republic of Azerbaijan by legal and natural persons of other states and amount of the fee for use shall be determined by the relevant executive body.

Article 7. Exemptions from the use of folklore expressions

- 7.1. Use of folklore expressions for the following purposes shall not be deemed untraditional and uncommon form:
 - 7.1.1. where folklore expressions have been used for the creation of original author (authors) work;
 - 7.1.2. where folklore expressions have been used in original author (authors) work in form of illustration in extent expedient to use.
- 7.2. The following accidental forms of use of folklore expressions shall not be deemed untraditional or uncommon:
 - 7.2.1. upon use of folklore expressions which can be seen or heard during any current event in order to provide information by the means of photography, broadcasting, sound recording, provided that the use will be carried out in the extent necessary for the purpose of information;
 - 7.2.2. use of folklore expressions by including description of subject matters containing folklore expressions into photos, movies or television broadcast in places permanently open for free entrance.

Article 8. Indication of the source while using folklore expressions

- 8.1 The source as well as place-name of place of origin of the folklore expressions in use and (or) name of the nation to which it belongs shall be precisely indicated in every published work, and in cases of public performance and notification of folklore expressions.
- 8.2 While using folklore expressions in cases set forth in Article 7 of this Law the requirements of Article 8.1 shall not be applied.

Article 9. Law Infringement while using folklore expressions

- 9.1 While using folklore expressions by natural persons and legal entities the following actions shall be considered as law infringement:
- 9.1.1 Fortuitous or premeditated violation of requirements set forth in Article 6.2 of this Law while using folklore expressions;
- 9.1.2 Premeditated or careless violation of requirements set forth in Article 8.1 of this Law while using folklore expressions;
- 9.1.3 use of folklore expressions with ascribing of folklore expressions directly or indirectly presented to the public to himself or misleading public concerning the source of origin of folklore expressions or introducing folklore expressions as works belonging to the country which is not their actual source;
- 9.1.4 use of folklore expressions directly or indirectly presented to public by premeditated misrepresentation of folklore expressions, by damaging cultural interests of the State.
- 9.2 The amounts withheld for violation of rules on use of folklore expressions set forth in this Law on the basis of writ on violation of rules on use of folklore expressions submitted by the relevant executive body shall be transferred to the state budget and directed to encouragement of creative work in the field of intellectual property, maintaining of the state policy in the field of copyright and legal protection of folklore expressions.

Chapter III. Protection of intellectual property rights to folklore expressions

Article 10. Civil Remedies of Protection of Rights

- 10.1 The relevant state bodies shall be entitled to request interruption of actions violating or threatening to violate the rules on lawful use of folklore expressions.
- 10.2 At the time of addressing the court concerning protection of folklore expressions the following sanctions can be applied in addition to general civil remedies upon plaintiff's request:
- 10.2.1 withholding profits gained by infringer as a result of infringement of rights;
- 10.2.2 payment of compensation in the amount from 100 times to 50 thousand times of conventional financial units instead of withholding profits
- 10.3 Sanctions on penal actions shall not exclude application of civil remedies.

Article 11. Pirated copies

Any copies of folklore expressions subject matters prepared (produced) or distributed with violation of requirements on use of folklore expressions set forth in this Law shall be considered

as pirated copies and confiscated in accordance with the procedure provided for by the legislation.

Article 12. Liability for violation of requirements on the use of folklore expressions

Persons guilty of violation of the requirements set forth in this Law while using folklore expressions shall entail civil, administrative and criminal liability.

Chapter IV. Final provisions

Article 13. Legal protection of folklore expressions in foreign countries

Legal protection of folklore expressions of foreign countries in the territory of the Republic of Azerbaijan and legal protection of folklore expressions of the Republic of Azerbaijan abroad shall be regulated based on the international agreements to which the Republic of Azerbaijan is a party.

Article 14. Relation with the Other Forms of Protection

This Law shall not restrict the forms of protection provided for by copyright legislation, other normative-legal acts applicable to folklore expressions of other intellectual and industrial property types and related to maintenance of folklore expressions, and international agreements to which the Republic of Azerbaijan is a party.

Article 15. Interpretation

The interpretation of legal protection provided for by this Law as a form hampering creation of folklore expressions and their normal use shall be inadmissible.

Article 16. Effective date of the Law

The present Law shall take effect from the publication date.

The President of the Republic of Azerbaijan

Heydar ALIYEV

Baku, May 16, 2003

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