

Mandate of the Special Rapporteur in the field of cultural rights

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(Please use this reference in your reply)

18 March 2024

Excellency,

I have the honour to address you in my capacity as Special Rapporteur in the field of cultural rights, pursuant to Human Rights Council resolution 46/9.

In this connection, I would like to bring to the attention of your Excellency's Government my observations regarding the **draft law on Measures for the Preservation and promotion of the intangible cultural heritage, the protection and strengthening of the Greek-language song and orchestral music delivery of Greek language song and the protection and dissemination of Greek-language, in the context of the preservation and promotion of the intangible cultural heritage.**

According to the information received, a public consultation on the draft law was launched by the Ministry of Culture in February 2024.

Part A of the draft law proposes specific measures for the preservation and protection of cultural heritage (chapter II) and for the protection and promotion of the Greek language, Greek song and orchestral music performance of songs in Greek language (chapter III). The consequent parts of the draft law focus on the arrangements to modernize trade policy and address service needs of the cultural resources management and development organization, and provision regarding the Ministry of Culture, authorizations and evaluation.

I am concerned that the law has not adopted a cultural rights' approach consistent with the international human rights law obligations contracted by Greece by signing the International Covenant on Economic, Social and Cultural Rights. Article 15 of the Covenant recognizes that:

“everyone has the right (a) to participate in cultural life; (b) to enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of moral and material interests arising from any scientific, literary or artistic production of which one is the author”.

The law must be in accordance with this article, as well as with the other Treaties to which Greece is a signatory and by which it is legally bound. In this regard, I would like to call to the attention of your Excellency's Government articles 2 and 27 of the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination, which prohibit discrimination on the basis of race, ethnic and national origin and language.

I am also concerned that by promoting Greek-language song, the draft law as it currently stands, would have an unnecessarily discriminatory effect on non-Greek speaking authors and artists and that the right of everyone to choose which parts of the culture to embrace will be unnecessarily and arbitrarily restricted.

Article 3a of the draft law defines Greek-language song and who is a Greek composer of instrumental music as follows: “A Greek-language song means a musical work composed of music and lyrics, with at least half of its duration occupied by text in Greek language. The concept of Greek-language song also includes orchestral music musical performance of a Greek song.”

Although the law uses the concept of cultural heritage, to a large extent, it is also concerned with cultural expressions, and with the right to express oneself through various language and means, including artistic, and with the right of all to access the expressions and creativity of others. Under article 15 of the ICESCR, States Parties have also undertaken to respect inter alia the freedom indispensable for creative activity. All persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. The law does not provide evidence that the Greek language is under threat and that discouraging artists from expressing themselves in languages other than Greek is necessary and legitimate.

Article 7 of the draft law establishes incentives for radio stations to increase the time dedicated to the transmission of Greek-language songs and orchestral music as defined in article 3.

Articles 8, 9, 10 and 11 of the draft law provides that all public areas of hotels and touristic complexes, shopping centres, casinos, public transports, as well as airports and ports waiting areas must play a minimum of 45% of Greek-language songs and orchestral music and establish an obligation to submit on a regular basis evidence of compliance to the Intellectual Property Organisation.

Article 12 of the draft law provides that “Greek audio-visual productions and motion pictures, which are financed in any way by the public sector within the meaning of par. a' of par. 1 of article 14 of Law 4270/2014 (A' 143), are required to incorporate Greek-language songs or orchestral musical performance of a Greek-language song in a minimum of seventy percent (70%) of its total musical investment production or the film.”

Furthermore, article 14 sets forth procedures for controlling and imposing administrative sanctions to those who violate the obligations of broadcasting Greek-language song or Greek orchestral musical performance. It also includes fines which could go up to 20,000 Euros, which goes well beyond the principle of proportionality.

States have the challenge of ensuring the full implementation of artistic freedoms and resort to limitations only when absolutely necessary (A/HRC/23/34, paras. 3 and 32). By setting high minimum percentages of Greek songs, the law imposes on people certain choices relating to their expression and to the diversity they may have access to as an audience. The draft law thus limits the free choice of song, generally the free access to cultural expressions. It obliges Greek and foreigners to listen to Greek music regardless of what they prefer and of the quality of the music.

Although it is the prerogative of States to adopt measures to protect their cultural heritage which could include quotas and fines, I would encourage the Government to consider if this is the right way forward and if indeed there is no other measure that is less intervening and protects the Greek cultural heritage at the same.

Creating incentives for more Greek music in public spaces may lead to longer lasting results than creating limitations to diversity in music. In other places in the world, requirements that a large percentage of a certain type of musical content be played lead to radio stations playing all that content during the night, thus 'freeing up time' for their music of choice during the day. As a result, the strict measure had the opposite effect. In other words, proportionality is very important in this matter, and requiring 45% Greek music of all music played in public spaces seems excessive to achieve the aim of the draft law.

Participation: The participation of everyone in the recognition, access and management of their cultural heritage is central to the cultural right to enjoy heritage. In this connection, I would like to draw your Excellency's Government's attention to the reports of successive Special Rapporteurs in the field of cultural rights relating to the right of access to and enjoyment of cultural heritage (A/HRC/17/38) and to the protection of cultural heritage (A/HRC/31/59 and A/71/317).

Article 5 of the draft law establishes a Council of Intangible Heritage composed of 19 members, including representatives from various Ministries, 9 reputable scientists or professionals who may or may not be working for the Government, and 2 representatives of civil society organisations accredited by the Secretariat of the Convention for the Protection of the Intangible Cultural Heritage, to advise the Ministry of Culture on issues related to intangible heritage, including elements on the National list and preservation plans.

Article 6 establishes a national Committee for the promotion and protection of intangible cultural heritage composed of 9 members, all coming from different Ministries, to recommend measures of inter-sectoral or inter-ministerial cooperation for the promotion and preservation of the intangible cultural heritage.

Article 13 establishes an electronic database of Greek-language songs, orchestral musical performance of Greek-language song and orchestral music by Greek authors.

Neither the envisaged Council on intangible heritage, nor the national Committee for the Safeguarding of the intangible cultural heritage, nor the articles on the envisaged electronic database provide information about the broader participation of everyone in those mechanisms. The Committee for the promotion and protection of intangible cultural heritage is only composed of representatives from the Government. Out of the 19 members of the Council of Intangible Heritage, only 2 members come from civil society organisations that are recognised by the Secretariat of the Convention on Intangible heritage and the process and criteria for the selection of the 9 scientists or professionals is not specified. This is a top-down approach that does not seek the participation of all persons concerned with this heritage, nor does it make use of the diversity of the cultural sector in Greece, which includes the directors of various museums already considered by the draft law, but also the independent artists, artisans and the society, as represented by the non-governmental organisations.

As stated my reports, the right to participate in cultural life implies that individuals and communities have access to and enjoy cultural heritages that are meaningful to them, and that their freedom to continuously (re)create cultural heritage and transmit it to future generations should be protected. Access to and enjoyment of cultural heritage include "contributing to the identification, interpretation and

development of cultural heritage, as well as to the design and implementation of preservation/safeguard policies and programmes”.

Articles 2 and 13 mention the creation of an electronic database of Greek songs and compositions, but do not provide information about who contributes to the content of the database and who is involved in the decisions about how it will evolve. Human rights standards in the field of heritage require that concerned communities and relevant individuals should be consulted and invited to actively participate in the whole process of identification, selection, classification, interpretation, preservation/safeguard, stewardship and development of cultural heritage (A/HRC/17/38, recommendation c). I am concerned that the lack of such participation in the elaboration, management, and development of the database could lead to a state defined understanding of what the Greek cultural heritage is, rather than an inclusive understanding of the various parts of the diverse and evolving society in Greece. One possible approach to address this issue would be to create local lists where local communities will have greater power to participate, define and develop their cultural heritage.

Based on the above, I would recommend that your Excellency’s Government reviews and reconsiders the draft law on Measures for the Preservation and promotion of the intangible cultural heritage, the protection and strengthening of the Greek-language song and orchestral music delivery of Greek-language song and the protection and dissemination of the Greek language, in the context of the preservation and promotion of the intangible cultural heritage, to ensure its compliance with the State’s international human rights obligations to respect and protect cultural diversity, to ensure the right of everyone to artistic expression and creativity, to take part in cultural life, and to participate in the identification, interpretation and development of cultural heritage.

In doing so, I would recommend to consider focusing its efforts on improving the conditions for the diffusion of Greek songs, including abroad, as well as on improving the working conditions of singers, musicians and composers, rather than on imposing Greek song in public spaces, and to foster discussions on how to promote Greek singing while also protecting cultural diversity. In this context, I would like to encourage your Excellency’s Government to consider:

- explicitly mentioning cultural rights in the draft law, and especially the fundamental right to participate in the recognition and protection of cultural heritage;
- whether and to what extent there is a serious reason to emphasize the Greek-language song in Greece;
- integrating within the law a broad understanding and explanation of who is a Greek creator and what is a Greek-language song;
- ensuring that the heritage list be reviewed by concerned communities at regular intervals;
- including in the selection of the experts for the Council of Intangible Heritage, guidance to ensure the involvement of at least 50% women and a percentage of representatives from young people, people from

different backgrounds, migrants, and other important sections of the population;

- lowering substantially the percentages of Greek-language songs in public spaces and avoiding sanctions.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned situation.
2. Please indicate how the law will contribute to the full realisation of everyone's cultural rights, including the rights to participate in cultural life, to artistic freedom and creativity, and to contribute to the identification, development, and preservation of heritage?
3. Kindly provide information about the means Greece intends to adopt to ensure adequate balance between the protection of the Greek-language song and the cultural rights of all those persons in Greece.
4. Please indicate how the draft law is consistent with Greece's international obligations to respect cultural diversity, including the internal diversity of cultural expressions?

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights