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Forming of conceptual framework in the field of legal regulation of cultural heritage protection

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Abstract

The subject of this study is conceptual and categorical apparatus of categories in the field of legal regulation of cultural heritage protection. The purpose of this paper is a conceptual study of categorical apparatus in the area of legal regulation of cultural heritage, in particular, identifying the regulatory meaning of "cultural heritage", "protection" and "conservation" of cultural heritage in order to fix it further in legislation.

The author characterizes the features of the present stage of the legal regulation of protection of cultural heritage in Ukraine. He tries to identify current trends in the transition from the ideology of cultural heritage protection to the ideology of its preservation, and, accordingly, deploy a number of conceptual developments in this area.

The author concludes that the protection can be understood in a broad sense as a set of legal measures aimed at prevention, prevention of crime and their violation – to be protected.

At this stage of development, protection of cultural heritage can be identified trend to shift from the ideology of cultural heritage protection to the ideology of its preservation, and, accordingly, deploy a number of conceptual development in this area. This is because the concept of "cultural heritage" is much

broader than "protection", it means a prudent, balanced management of historic resources, their use in the sociocultural processes of modern society. That is, the protection becomes an integral part of a complex multi-layered process of preservation of the inheritance.

Organizing concepts in the field of cultural heritage will contribute to more effective application of legal rules governing the various aspects of cultural heritage, which, in turn, will have a positive influence on the activities of public and private agencies, institutions and organizations concerned with the protection and conservation of cultural heritage.

Keywords

Legal regulation, cultural heritage, national cultural property, protection, maintenance, cultural space, conceptual framework.

Introduction

With scientific and technological development of a mankind not only the rate of development of natural wealth significantly accelerated, but also the rate of destruction of cultural heritage.

If we turn to the analysis of the professional literature (V.I. Akulenko¹, I.V. Tulyantseva, N.O. Valueva², M.E.

Kuleshova³) and the applicable law, it should be noted that they, unfortunately,

organization and realization of custom activity: Materials of international scientifically-practical conference ["Uovershenstvovanie porjadka registratsii kul'turnykh tsennostei, kotorye peremeshchayutsya cherez tamozhennuyu granitsu Ukrainy", Aktual'nye problemy pravovoi regulyatsii organizatsii i osushchestvleniya tamozhennoi deyatelnosti: Materialy mezhdunarodnoi nauchno-prakticheskoi konferentsii], Dnepropetrovsk, pp. 113-114.

- 1 Shemuchenko, Yu. S., Akulenko, V. I. (1997), "Legal protection of cultural values", *Ukraine in international law relations. Book 2* ["Pravovaya okhrana kul'turnykh tsennostei", *Ukraina v mezhdunarodno-pravovykh otnosheniyakh. Kn. 2*], Kiev, pp. 21-22.
- 2 Tulyantseva, I. V., Valueva, N. O. (2009), "Improvement of order of registration of cultural values which move through the custom border of Ukraine", *Issues of the day of the legal regulation of*

- 3 Kuleshova, M. E. (1994), "The conceptual framework "natural cultural heritage": the meaning and basic concepts", *Unique territories in the cultural and natural heritage of regions. Collection of scientific works* ["Ponyatiino-terminologicheskaya sistema "prirodnoe kul'turnoe nasledie": sodержanie i osnovnye ponyatiya", *Unikal'nye territorii v kul'turnom i prirodnom nasledii regionov. Sbornik nauchnykh trudov*], Moscow, p. 41.

lack of unity in understanding and application of a number of concepts that are fundamental to the protection and use of historical and cultural objects (heritage) and characterize the appropriate security of these objects from the state.

Complicates the situation also the fact that the notion of "cultural heritage" has no common understanding in regulatory acts, in the scientific literature and in departmental documents. This situation gives rise to ambiguity in interpretation in regulatory acts enforcement that has been repeatedly emphasized in the scientific literature.

It does not contribute to the unification of legislation and related legal practice in this area. Moreover, it creates certain collisions when deciding on the attribution of a particular object to the historical cultural heritage, and hence the appliance by the state appropriate measures for its protection, conservation and use. I.e., as can be concluded from the above, one of the problems of the current legal groundwork for the state cultural function implementation regarding the protection and use of cultural heritage and historical and cultural sites is a formation of conceptual categorical apparatus in the field of legal regulation of cultural heritage protection.

The aim of the article is to study the conceptual categorical apparatus in

the field of legal regulation of cultural heritage, in particular, identifying the normative meaning of the "cultural heritage", "protection" and "conservation" of cultural heritage with a view to further legislative consolidation.

Legislation on the Protection of Cultural Heritage

One of the first international instruments addressing the concept of "cultural heritage", which was adopted only in 1972, is the Convention "On Protection of the World Cultural and Natural Heritage". This is the first international instrument which intitules the concept "cultural heritage", as a key one, and uses it in the text together with the concept "cultural legacy"⁴.

4 "Convention "On the protection of World cultural and natural heritage" by November, 16, 1972. Come into force 17.12.1975. Ratified Decree of Presidium of SS of the USSR from 09.03.1988 N 8595-XI", *Collection of running agreements, agreements and conventions, concluded with the foreign states* ["Konventsiiya "Ob okhrane Vsemirnogo kul'turnogo i prirodnoogo naslediya" ot 16 noyabrya 1972 g. Vstupila v silu 17.12.1975. Ratifitsirovana Ukazom Prezidiuma VS SSSR ot 09.03.1988 N 8595-XI", *Sbornik deistvuyushchikh dogovorov, soglashenii i konventsii, zaklyuchennykh s inostrannymi gosudarstvami*], Moscow, 1991, Issue XLV, p. 482.

Kuleshova M.E. considers cultural heritage as an "informational potential which is reflected in phenomena, events, material objects and important for the humanity for its development, as well as preserved for transmission to future generations"⁵.

Cultural heritage

The Ukrainian legislation interprets the concept "cultural heritage" quite broadly. The Law of Ukraine "On Protection of Cultural Heritage" (hereinafter – the Law "On Cultural Heritage")⁶ under the cultural heritage implied the totality of cultural heritage inherited by mankind from previous generations, and as an object of cultural heritage considered a place of prominence, construction

(creation), complex (ensemble), their parts, associated moving objects, as well as the territory or water objects (objects of underwater cultural and archaeological heritage), other natural, natural-anthropogenic or man-made objects, regardless of the safe state, which have brought to our time the value of archaeological, aesthetic, ethnological, historical, architectural, artistic or scientific point of view and kept their authenticity.

Art. 1 of the Law of Ukraine "On Protection of Archaeological Heritage" on March 18, 2004 (hereinafter – the Law "On the archaeological heritage")⁷ includes in the concept of archaeological heritage of Ukraine not only immovable object of cultural heritage, i.e. the set of archaeological monuments under state protection and related areas, but also mobile cultural values (archaeological objects), which are derived from the objects of archaeological heritage.

According to E.N. Mastenitsa cultural heritage consists of those aspects of the past that people protect, cultivate,

5 Kuleshova, M. E. (1994), "The conceptual framework "natural cultural heritage": the meaning and basic concepts", *Unique territories in the cultural and natural heritage of regions. Collection of scientific works* ["Ponyatiino-terminologicheskay a sistema "prirodnoe kul'turnoe nasledie": sodержanie i osnovnye ponyatiya", *Unikal'nye territorii v kul'turnom i prirodnom nasledii regionov. Sbornik nauchnykh trudov*], Moscow, p. 41.

6 "Law of Ukraine "On protection of cultural heritage" on June, 8, 2000 (released by 01.04.2011)" ["Zakon Ukrainy "Ob okhrane kul'turnogo naslediya" ot 8 iyunya 2000 g. (deistvuyushchaya redaktsiya ot 01.04.2011)"], *Vedomosti Verkhovnoi Rady Ukrainy*, 2000, No. 39, Art. 333.

7 "Law of Ukraine "On the protection of archaeological heritage" on 18.03.2004 (released by 05.02.2011)" ["Zakon Ukrainy "Ob okhrane arkheologicheskogo naslediya" ot 18.03.2004 (deistvuyushchaya redaktsiya ot 05.02.2011)"], *Vedomosti Verkhovnoi Rady Ukrainy*, 2004, No. 26, Art. 361.

learn and transmit to future generations⁸. These achievements are embodied in a tangible form, such as, for instance, buildings, and in intangible form (for instance, in various kinds of performing art). Cultural heritage is recognized by the fact that its values, acquired in the past, are to be valuable in the future. Since this value and its anticipation change in length of time, that is what allows us to consider the cultural heritage as a "subject of dynamic change"⁹.

The concept of national cultural legacy in accordance with the Law of Ukraine "On Culture" was first considered as a set of unique cultural values, objects of cultural heritage, which are of exceptional historical significance for the formation of cultural space¹⁰.

8 Mastenitsa, E. N. (2008), "The cultural heritage in the modern world: conceptualization of term and problems", *Worldwide policy and ideological paradigms of century: collection of articles* ["Kul'turnoe nasledie v sovremennom mire: kontseptualizatsiya ponyatiya i problematiki", *Mirovaya politika i ideinye paradigmy epokhi: sb. statei*], St. Petersburg, pp. 252-262.

9 Lisitskii, A. V. (2004), *The cultural heritage as a resource of steady development: dissertation* [*Kul'turnoe nasledie kak resurs ustoichivogo razvitiya: dissertatsiya*], Moscow, p. 17.

10 "Law of Ukraine "On the culture" from December, 14, 2010" ["Zakon Ukrainy "O kul'ture" ot 14 dekabrya 2010 g."],

The cultural space is cognized as an area, in which in accordance with the laws the cultural activities are carried out and cultural, information and permissive citizens' needs are satisfied, covering, in particular, radio and television, periodicals and book publishing products, market of cultural goods, as well as cultural artistic environment.

The latter definition allows to include the intangible cultural heritage in the scope of protection of cultural heritage, which is understood as customs, forms of signification and expressions, knowledge, skills, handed down from generation to generation, and constantly recreated by communities and groups under the influence of their experience, environment, interaction with nature, history and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.

The analysis of the regulatory definition of cultural heritage shows that further improvement of legislation in this area involves the unification of the concepts of cultural heritage through the amendments to the Law on Cultural Heritage, the Law on Archaeological Cultural Heritage and to the number of

Ofitsiinii visnik Ukraini, 2011, No. 2, Art. 13.

other laws and regulations in the definition of the term "cultural heritage" within the meaning defined in the Law "On Culture".

Security, protection and conservation of cultural heritage

It is also necessary to clarify the definitions "security", "protection" and "conservation" in relation to cultural heritage, as, for example, the Constitution of Ukraine¹¹ states on the protection of cultural heritage by lawful means and duties of man and citizen not to harm cultural heritage, and concerning the cultural property it is indicated on the state's duty to preserve. In addition, the Article 66 of the Constitution defines the responsibilities of a citizen not to harm the cultural heritage, and relatively cultural values such obligation are not established.

Such terminological discrepancy complicates understanding of the nature of legal relations, which are the subject of legal administrative regulation of cultural heritage. It should be taken into account that in the Ukrainian legislation cultural attractions are divided into

11 "Constitution of Ukraine, accepted on 28.06.1996" ["Konstitutsiya Ukrainy, prinyataya v 28.06.1996"], *Svideniya Verkhovnoi Rady Ukrainy (VVRU)*, 1996, No. 30, Art. 141.

mobile and immobile, that determines a different approach to their protection regime.

The Law on Cultural Heritage under the protection of cultural heritage implies the system of legal, organizational, financial, technical, urban planning, information and other activities on the integration (identification, scientific study, classification, state registration), destruction or damage prevention, protection, preservation, maintenance, appropriate use, conservation, restoration, repair, rehabilitation, adaptation and museumification of cultural heritage objects¹².

The protection of the archaeological heritage in the Law "On the archaeological heritage" refers to a set of measures implemented in accordance with the legislation of Ukraine by the state, its agencies, enterprises, institutions, departments and organizations, as well as by citizens, – oriented to integration (identification, scientific study, classification, mapping, state registration), protection, preservation, proper maintenance, appropriate use, pres-

12 "Law of Ukraine "On protection of cultural heritage" on June, 8, 2000 (released by 01.04.2011)" ["Zakon Ukrainy "Ob okhrane kul'turnogo naslediya" ot 8 iyunya 2000 g. (deistvuyushchaya redaktsiya ot 01.04.2011)"], *Vedomosti Verkhovnoi Rady Ukrainy*, 2000, No. 39, Art. 333.

ervation, restoration, rehabilitation and museumification of objects of archaeological heritage, as well as dissemination of knowledge about the archaeological heritage¹³.

The fifth part of the Article 54 of the Basic Law states that the cultural heritage is protected by law, and in the sixth – that the state ensures the preservation of historical sites and other objects that make up the cultural value, make arrangements for the return of people's cultural property in Ukraine being outside its territory¹⁴. Another article of the Basic Law constitutes the duty of everyone not to harm the nature and cultural heritage, to compensate the losses inflicted upon them (Art. 66).

A considerable part of the archaeological heritage is pointed out in the Law "On archaeological heritage" and as noted above needs special protection from destruction and other factors.

13 "Law of Ukraine "On the protection of archaeological heritage" on 18.03.2004 (released by 05.02.2011)" ["Zakon Ukrainy "Ob okhrane arkheologicheskogo naslediya" ot 18.03.2004 (deistvuyushchaya redaktsiya ot 05.02.2011)"], *Vedomosti Verkhovnoi Rady Ukrainy*, 2004, No. 26, Art. 361.

14 "Constitution of Ukraine, accepted on 28.06.1996" ["Konstitutsiya Ukrainy, prinyataya v 28.06.1996"], *Svideniya Verkhovnoi Rady Ukrainy (VVRU)*, 1996, No. 30, Art. 141.

Along with the concept of "security of cultural heritage" the legislation uses the term "protection of cultural heritage". Thus, the Ordinance of the Cabinet of Ministers of Ukraine on 23 April 2008 "On approval of a plan of priority measures on the development of relations with Ukrainians living outside Ukraine" points to the need to preserve, protect and promote the cultural heritage of Ukrainians in the world civilization space¹⁵.

The question of the relationship of concepts "security" and "protection" in relation to cultural heritage has been controversial in legal science for sufficiently long period of time. At the same time it is impossible to leave it unattended in the study of security, protection

15 "Order of the Cabinet of Ministers of Ukraine on April, 23, 2008 "On adopting of plan of primary measures in relation to the development of links with Ukrainians, which live outside Ukraine, on a maintenance, protection and popularization of Ukrainian cultural heritage in outer civilization space in 2008–2009" ["Rasporyazhenie Kabineta Ministrov Ukrainy ot 23 aprelya 2008 g. "Ob utverzhdenii plana pervoocherednykh mer odnositel'no razvitiya svyazei s ukraintsami, kotorye prozhivayut za predelami Ukrainy, po sokhraneniyu, zashchite i populyarizatsii kul'turnogo naslediya ukrainstva v mirovom tsivilizatsionnom prostranstve na 2008-2009 gody"], available at: www.zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=668-2008-%F0&c=1#Card

and conservation of cultural heritage, because its answer is a basis for proper application of forms, methods of protection or security measures.

Such scholars as L.D. Voevodin, N.S. Malein¹⁶, G.N. Stoyakin¹⁷, B.Yu. Tikhonova¹⁸ etc. has paid attention to the issues of protection and security of rights both in the general theory and in different areas of law. Indeed, there are different opinions about the content of the concept of "protection of rights" in jurisprudence. Thus, N.S. Malein writes: "Legal protection – is a system of legal rules aimed at preventing crime and prevention of its consequences"¹⁹, and later notes that "the protection of rights – a broader concept

that includes all the legal rules regarding certain benefits..."²⁰. According to G.N. Stoyakin legal protection includes three components: the publication of rules establishing the rights and obligations that determine how they are implemented, protected and enforced; activities of the subjects to implement and protect their subjective rights and preventive activities of the state and public organizations, as well as efforts to implement legal sanctions²¹ that, in our opinion, meets the concept of the "security" of rights.

According to our reckoning, despite the similarity of interrelation of the concepts "protection" and "security", their content and scope do not match, they must be delimited and used to refer to different legal phenomena.

Controversies regarding the definition of "protection of rights" have always existed. V.A. Oigenzikht writes: "Namely the notion of protection is contradictory. It is erected to protect the population and

16 Malein, N. S. (1981), *Civil law and rights of citizen in the USSR [Grazhdanskii zakon i prava lichnosti v SSSR]*, Moscow, 203 p.

17 Stoyakin, G. N. (1973), "The concept of protection of civil rights", *Problems of civil liability and protection of civil rights* ["Ponyatie zashchity grazhdanskikh prav", *Problemy grazhdansko-pravovoi otvetstvennosti i zashchity grazhdanskikh prav*], Sverdlovsk, pp. 30-35.

18 Tikhonova, B. Yu. (1972), *Subject rights for soviet citizens, their protection and defence: Author's thesis [Sub'ektivnye prava sovetskikh grazhdan, ikh okhrana i zashchita: avtoreferat dissertatsii]*, Moscow, 22 p.

19 Malein, N. S. (1981), *Civil law and rights of citizen in the USSR [Grazhdanskii zakon i prava lichnosti v SSSR]*, Moscow, p. 192.

20 Malein, N. S. (1985), *Human rights protection in soviet legislation [Okhrana prav lichnosti sovetskim zakonodatel'stvom]*, Moscow, pp. 18-19.

21 Stoyakin, G. N. (1973), "The concept of protection of civil rights", *Problems of civil liability and protection of civil rights* ["Ponyatie zashchity grazhdanskikh prav", *Problemy grazhdansko-pravovoi otvetstvennosti i zashchity grazhdanskikh prav*], Sverdlovsk, p. 34.

responsibility or only to protection, then to the use of sanctions, then to the entire regulation of rights, which include the protection"²². We tend to believe the authors who hold the last position (Malein N.S., Oigenzikht V.A., Tikhonova B.Yu. et al). Thus, B.Yu. Tikhonova considers that the rights to security is a collection of various interconnected measures undertaken by public authorities and public associations, which are aimed at the prevention of human rights violations or obstacles elimination, and the protection of rights – it is a forced against a binding person legitimate way to renew human rights whether by the authorized person or by the competent authorities²³.

In support to this position the Law on archaeological heritage states that in order to protect the traditional nature of the environment of individual attractions, their complexes (ensembles),

22 Oigenzikht, V. A. (1989), "Forms of providing of interests of subjects of civil law relations", *Realization and protection of civil and labour rights* ["Formy obespecheniya interesov sub"ektov grazhdanskikh pravootnoshenii", *Osushchestvlenie i zashchita grazhdanskikh i trudovykh prav*], Krasnodar, p. 20.

23 Tikhonova, B. Yu. (1972), *Subject rights for soviet citizens, their protection and defence: Author's thesis* [*Sub'ektivnye prava sovetskikh grazhdan, ikh okhrana i zashchita: avtoreferat dissertatsii*], Moscow, pp. 11-15.

historical and cultural reserves, historical and cultural protected areas around them should be established the attractions protection zones such as conservative zones, development control zones, protected landscape zones, zones of archaeological cultural security.

The prevailing law of Ukraine governing the protection of certain objects, such as protection of cultural heritage, in the structure of regulation in a separate section considers the protection of rights in a particular area. For instance, the Law of Ukraine "On Cultural Heritage" provides the Section "Protecting the traditional character of the environment and objects of cultural heritage". Consequently, the regulations governing the protection of certain objects contain the norms that set the rules of behavior of subjects with respect to the protected object, as well as procedures for the protection of these objects of unlawful conduct and endeavor. At the same time laws governing the protection of cultural heritage in its content are more focused on the regulation of persons of inherence operating procedures in order to prevent violations of the rights guaranteed, maximum elimination of opportunities of such violation or order of violated rights resumption by fixing the respective rights, powers of these subjects and public authorities, NGOs, etc.

From the above the conclusion might to be logical that the legal protection of cultural heritage is a set of measures, ways and means determined by legal provisions for the protection of cultural heritage objects from encroachment. Hence, any legal protection of cultural heritage is carried out by establishing the law binding measures of proper and necessary conduct of persons in relation to the protected cultural heritage sites, as well as effects occurring at a deviation from the statutory standard of conduct. Depending on what type of object is an object of cultural heritage legal protection, legal norms define the appropriate tools, measures and methods for achieving the stated objective. Herefrom, the notions of legal protection and the protection of rights are not identical concepts: legal protection of cultural heritage – an abstract, lawmaking and law enforcement activities carried out by means of the law and within the rule of law, protection of rights in the field of cultural heritage – an activity on the rights and freedoms, prevention from endeavor.

The analysis of the above viewpoints, as well as current legislation, shows that security is a broader concept in its content, which may in some cases include protection. We agree with

the fact that the semantic meaning of the word "security" – is to protect from abuse, at the same time security can be done in two ways: 1) the establishment of measures of appropriate and mandatory conduct, determining means, methods, enforcement efforts to comply with these measures; 2) protection of infringed rights, their recovery in the case of non-compliance with the rules of conduct.

Thus, the security can be understood in a broad sense as a set of legal measures aimed at prevention, precaution of wrongdoing, and in case of their violation – at the protection.

Rights of citizens in the cultural sphere (cultural rights) are the components of general human rights. Cultural rights are entrenched in international documents, the Constitution and laws of Ukraine. According to Art . 3 of the Constitution human rights and freedoms and their guarantees determine the content and direction of the state; approving and ensuring human rights and freedoms is the main duty of the state. Consequently, since the rights in the field of culture are a part of general rights and freedoms, the state's obligation to ensure cultural rights is its constitutional duty.

There is a controversial question of the relationship between the concepts of "security" and "conservation", used

in the Ukrainian legislation on cultural heritage.

According to Art . 3 of the Law "On Culture", the basis of the state policy in the sphere of culture consists of the protection and conservation of cultural heritage as a foundation of national culture, concern for the development of culture.

In recommendations of the UNESCO²⁴ the access to cultural values directly associated with their conservation. The Convention²⁵ emphasizes that every State

24 "Recommendations on 19.11.1968 of the 15th session of UNESCO on the maintenance of cultural values which are at danger as a result of leadthrough of social or private works" ["Rekomendatsii ot 19.11.1968 15-oi sessii YuNESKO o sokhranenii kul'turnykh tsennostei, kotorym ugrozhaet opasnost' v rezul'tate provedeniya obshchestvennykh ili chastnykh rabot"], available at: www.zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995_723

25 "UNESCO Convention on 14.11.1970 on measures, directed on prohibition and prevention of illegal import, outbound and transfer of property right on cultural values (ratified by the Decree of Presidium of Verkhovna Rada of UKRAINE 5396-XI on 10.02.1988)" ["Konventsiya ot 14.11.1970 YuNESKO o meropriyatiyakh, napravlennykh na zapreshchenie i predotvrashchenie nezakonnogo vvoza, vyvoza i peredachi prava sobstvennosti na kul'turnye tsennosti (ratifitsirovannaya Ukazom Prezidiuma Verkhovnoi Rady USSR № 5396-XI ot 10.02.1988 g.)"], available at: www.zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995_186

has the duty to protect property, consisting of cultural property within its territory against the dangers of theft, clandestine excavation and illicit export.

The analysis of foreign experience of cultural heritage regulatory support shows that the legislation in many countries clearly delimits the concepts "attractions security" and "attractions conservation". For instance, in Poland the "attractions security" is a subject of the activities of public authorities, and "conservation" – of the owners or users of attractions. Supreme supervision over the attractions security is a responsibility of the Minister of Culture and Provinces. In the UK operates a number of conservation laws on the state of legacy. Protection of fixed sites is the responsibility of the Ministry of Environment, that exercises its powers with the help of local authorities, establishes protective zone and lists of attractions with the status of national.

N.I. Minayeva, analyzing the legal aspects of the archaeological heritage, notes that in accordance with the Art . 19 of the Law of Ukraine "On Protection of Cultural Heritage" every attraction has property values, calculated in national currency of Ukraine²⁶.

26 Minaeva, N. I. (2005), "The modern legislative base in relation to the

The mentioned raises the question of the purpose of heritage conservation. Some authors recognize that heritage is an important economic asset, but emphasize that this explanation is too narrow²⁷ and cannot be considered as a primary objective of the preservation of cultural heritage.

Analysis of the current Ukrainian legislation shows that the concept "conservation" in relation to cultural heritage is used in the regulations governing the issues of budget financing of cultural construction. E.g., the Order and conditions for granting subventions from the state budget in 2011 to the Glukhov city budget for the repair and restoration of cultural heritage sites, approved

protection and research of archaeological heritage", *Archaeological researches in Ukraine of 2003-2004: Collection of science articles* ["Suchasna zakonodavcha baza shchodo okhoroni ta doslidzhennya arkhologichnoi spadshchini", *Arkhologichni doslidzhennya v Ukraïni 2003-2004 rr.: Zbirka nauk. prats'*], Kiev, No. 7, pp. 433-436.

27 Sidorenko, V. D., Puchkov, A. O., Sitkar'ova, O. V. (2010), *Modern problems of research, restoration and maintenance of cultural legacy: Collection of scientific works of study of arts, architecture and culturology* [Suchasni problemi doslidzhennya, restavratsii ta zberezhennya kul'turnoi spadshchini: Zb. nauk. pr. z mistetstvoznavstva, arkhitekturoznavstva i kul'turologii], Kiev, No. 7, 512 p.

by the Cabinet of Ministers of Ukraine on March 30, 2011 No. 333 provide that the subsidy provided for the conservation of historical attractions, architecture and urban development of the Glukhov city (hereinafter – attractions) and being channeled to work performance upon:

- science project documentation development for the restoration, conservation and repair of attractions;

- restoration, preservation and repair of the attractions (if the approved research project documentation available);

- liquidation of attractions accidental state (if scientific project documentation available, which is necessary to ensure the conduct of accident-prevention and urgent works)²⁸.

Studying the relation of the terms "security" and "conservation" in rela-

28 "The procedure and conditions for granting subventions in 2011 from the state budget to the city budget of the Glukhov city on repair-restoration works of sights of cultural legacy, ratified by the Decision of Cabinet Ukraine from March, 30.03.2011. No. 333" ["Poryadok i usloviya predostavleniya v 2011 godu subventsii iz gosudarstvennogo byudzheta gorodskomu byudzhetu m. Glukhova na provedenie remontno-restavratsionnykh rabot dostoprimechatel'nostei kul'turnogo naslediya, utverzhdenyi Postanovleniem Kabineta Ministrov Ukrainy ot 30 marta 2011g. No. 333"], *Ofitsial'nyi vestnik Ukrainy*, 2011, No. 24, Art. 56.

tion to landscape environment as an object of cultural heritage, the authors draw attention to the need for its "conservation through the development, the development through the conservation". They emphasize that the high level of aesthetic quality and authenticity of the historical environment conservation are the key features of investment attractiveness of St. Petersburg, a continuous increase in commercial value, growth and welfare of the inhabitants of a number of other indirect benefits. Moreover, a new strategy was rebuilt on the principles of a balanced and harmonious relationship between the demands of the public, economic activity and protection of the historic environment and is aimed at recognition of the common responsibility for the preservation of the heritage²⁹. They emphasize that Ukraine should make their own approach, its own heritage conservation strategy. Most realistic

is a performance of activities at the local level. The development of local policies and local development strategies are practical steps to improvement of life in Ukrainian cities.

In the study of the concepts of cultural heritage protection L. Pribega notes: "summarizing predecessors operating time, we can say that the substantial components of the term "security" is the integration (identification, study, research , scientific inventory, valuation, registration) of attractions; legislative and regulatory support of activities on the conservation of cultural heritage objects; the sphere of protection of monuments management and control over the content of attractions, providing protection to the historic environment by establishing protection zones, defining the limits of historical habitat in the system of historic towns and rural areas; the implementation of architectural and technical measures upon attractions (restoration, functional adaptation, areas organization, etc.); cultural heritage popularization, educational work on things and training in the field of protection of monuments. I.e., any actions designed to ensure the conservation of attractions, its authentic material structure indicative of the environment, proper maintenance, as well as system activities of the organi-

29 Kondel'-Perminova, N. (2008), "Maintenance of architectonically town-planning inheritance of Ukraine in the context of development of cities", *Modern problems of research, restoration and maintainance of cultural heritage. Collection of scientific works* ["Sokhranenie arkhitekturno gradostroitel'nogo nasledstva Ukrainy v kontekste razvitiya gorodov", *Suchasni problemi doslidzhennya, restavratsii ta zberezheniya kul'turnoi spadshchiny. Zbirnik nauk. prats'*], No. 5, pp. 94-111.

zations, agencies and the state, aimed at preserving the cultural heritage, precisely will be defined as a security"³⁰.

Conclusion

Describing the features of the current stage of the development of cultural heritage security, one can identify a trend of the transfer from the ideology of cultural heritage to the ideology of its conservation, and, consequently, the evolution of a number of conceptual developments in this area. This is due to the fact that the concept "cultural heritage conservation" is much broader than "security", it means a prudent, balanced management of historical resources, their use in processes of social and cultural life of modern society. That is, security becomes an integral part of a complex multi-layered process of inheritance saving.

Prioritization of conceptual apparatus in the field of cultural heritage will contribute to more effective application of legal rules governing various aspects of the cultural heritage, which in turn

will have a positive impact on the public and non-governmental bodies, institutions and organizations concerned with the protection and conservation of cultural heritage.

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Формирование понятийно-категориального аппарата в сфере правового регулирования охраны культурного наследия

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Аннотация

Характеризуются особенности современного этапа правового регулирования развития охраны культурного наследия в Украине. Выявляются современные тенденции перехода от идеологии охраны культурного наследия к идеологии его сохранения, и, соответственно, развертывания ряда понятийных разработок в этой сфере.

Ключевые слова

Правовое регулирование, культурное наследие, национальное культурное достояние, охрана, сохранение, культурное пространство, понятийно-категориальный аппарат.

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