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CURRENT PROBLEMS OF FORMING ACCOUNT OF OWNERLESS HELD OBJECTS OF CULTURAL HERITAGE

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Abstract

The article is devoted to the analysis of procedures for recognizing ownerless objects of cultural heritage (hereinafter referred to as "OCH") that do not have an owner or whose owner is unknown, or that the owner has refused ownership. The author analyzes the procedure for recording non-private monuments abroad, formulates approaches of national legislations to determining the role of local authorities in the accounting procedure for such objects. As part of a comparative analysis, the norms of Russian municipal and civil legislation are examined that describe the model for taking into account and registering rights to ownerless OCH. The study examined the current practice of Russian courts of general jurisdiction and arbitration courts in cases of invalidating the inaction of municipalities, expressed in the failure to carry out actions for registering ownerless OCH. The author has identified the most controversial issues that arise in the implementation of evidence in such cases. Based on the analysis, proposals are made to amend and supplement the current civil law. The work also touched on foreign and Russian models of financing measures for the preservation, restoration, conservation, reconstruction of cultural heritage objects. The author concludes that the possibility of registering ownerless monuments on the register cannot be associated with a lack of funds at the local level. Proposals are being made to consolidate state, regional and local budgets for operational support of these activities in the Russian Federation.

Keywords: Judicial decision, local authorities, object of cultural heritage, owner, ownerless property, state registration of rights.

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Corresponding Author: M. S. Trofimov
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1. Introduction

The issues of detailed consolidation in the legislation of the rules for the identification, accounting, financing, and holding of OCH become more relevant every year. The rapid development of territories, urban development, military conflicts, industrial phenomena, active climate processes create unfavorable conditions for objects of cultural and historical value, develop networks of criminal communities.

The military and cultural tragedy in the Middle East has shown how fragile international law can be in relation to cultural and historical values. Researchers describe how a large number of artifacts get into antique markets where they are sold to tourists. The Internet has expanded the capabilities of this illegal market. In fact, antiquaries sell stolen antiquities from IS-controlled areas, not only through traditional channels, but also through a deep network, are distributed to the United States, China and Europe (Lamb, 2014).

Currently, a whole system of international legal norms has been formed in the field of the protection of historical and cultural monuments. Its main principles are enshrined in the following acts:

- Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, May 14, 1954 (Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, 1954);
- Paris Convention for the Protection of the World Cultural and Natural Heritage, November 16, 1972 (Paris Convention for the Protection of the World Cultural and Natural Heritage, 1972).

The list of acts of an international level, of course, is not limited to these conventions, it is quite impressive. Today, there are more than 30 of them on the UNESCO website (United Nations Educational, Scientific and Cultural Organization website, 1945). The volume of acts of an international level, a huge number of countries that have joined these acts, testify to the importance of the protection of historical and cultural objects.

Political feuds, armed conflicts, the global development of industry, the need for the development of territories entailed an unreasonably negligent attitude to monuments. Today, states that consider themselves highly developed should, once again, rethink their urban planning and industrial policies in accordance with the aforementioned international law (Lixinski, 2019). It is alarming that the average participant is not a criminal, but an ordinary citizen trying to take the opportunity to increase his income (Campbell, 2013).

Without diminishing the importance of international legal norms, it should be noted that international principles for the protection of historical and cultural objects will work only if the provisions of national legislations correctly and comprehensively formulate step-by-step, routine, but important actions of public authorities to identify, register and further distribution of responsibilities for the maintenance of historical and cultural monuments. The illegal trade in antiquities consists of a diverse population of participants, which creates the appearance of complexity; however, using the network paradigm, a simple basic structure is identified based on specific geographical, economic, political and cultural rules. This article uses a wide range of source material to build diagrams of interaction from the

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source to the market using the criminal network approach. Interchangeable members are connected through single interactions to form loosely based networks. These flexible network structures explain the variability observed in trade, and also provide the basis for ongoing debate about the role of organized crime, terrorism, and the Internet in antiquity trade. Finally, a networked understanding of the organization of trade allows us to anticipate, although not necessarily predict, trade in antiquities and makes it possible to develop new strategies to combat trade.

2. Problem Statement

The peculiarity of the regulation of rights to objects of cultural heritage (hereinafter - OCH) abroad is formulated by two modes. Conventionally, they can be called as follows:

1) Declarative, in which the subject of public law is obliged to unconditionally put the identified cultural heritage object on record by the authorities or public structures and take regulated measures to preserve such an object.

2) Automatic, in which there are no rules governing the adoption of OCH on the balance of municipalities. In this case, the principle is generally enshrined in national legislation that all monuments that do not have an owner, a priori, are the property of public entities. There is no special procedure for recognizing the right of a state or local community to such facilities.

Thus, on the basis of the Law of October 8, 1997 No. 352 "Regulations on Cultural Property" (Disposiciones sobre bienes culturales, 1997) and the Legislative Decree of October 29, 1999 No. 490 "A single text of the provisions of the legislation on cultural property and environmental values environment "(Texto unificado de disposiciones legales sobre valores culturales y valores ambientales, 1999) and other national acts, regions, provinces, communes, and other local public law formations are required to submit to the Italian Ministry of Cultural Property and Culture a package of documents describing the new (or unaccounted for) objects of historical or artistic value. The Ministry incurs financial costs for the assessment of such facilities and their inclusion in the list of OCH. If such an obligation has not been fulfilled by public entities, then further actions to assess and record the facility are carried out at the expense of the territorial entity. This procedure also applies to legal entities in whose territory OCH is found. In addition to the objects of cultural and historical heritage proper, the Ministry and the regions have the right to declare other objects of special importance (real estate, documents, books, images, etc. All these objects are put on the balance of the respective territories (Gaidaenko, 2005).

The law of Poland provides for similar rules. According to the Law of Poland of July 23, 2003 "On the Protection of Monuments and Guardianship of Monuments" (W sprawie ochrony zabytków i opieki nad zabytkami, 2003) and other national acts, the protection of monuments is the responsibility of the Minister of Culture. The Ministry of Culture includes specialized Departments, as well as an advisory body (Council of Ministers in the field of protection of monuments and guardianship of monuments). At the local level, voivodship restorers have been established, and with them voivodship councils for the protection of monuments. The specified bodies provide accounting, statement on the balance of public entities, control the observance of the legislation by the owners of OCH. Monuments not owned by private individuals are on the balance sheet of territorial self-government bodies or institutions created by the state or municipality. All work on the preservation, conservation, renovation and restoration of such

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facilities is financed from the budget. Currently, there are many state programs in Poland that allow sharing financial responsibility between municipalities and the state even with respect to monuments that are not nationally registered but local registered (Treschetenkova 2005).

The question arises how the registration of objects of cultural or historical value on the territory of the Russian Federation is carried out if these objects are not owned by private individuals, or the owner refuses such an object. Fundamentally important is the study of the question - who bears the financial burden of maintaining such facilities.

3. Research Questions

In the study of accounting issues for ownerless OCH included in the federal, regional and local registers, it is necessary to study a whole range of legal acts.

These relations are directly regulated by the Federal Law of June 25, 2002 No. 73-FL "On Objects of Cultural Heritage (Monuments of History and Culture) of the Peoples of the Russian Federation" (Federal Law of Russian Federation, 2002).

The issues of authority of municipalities, including in relation to OCH, are regulated by the legislation on local self-government: FL-131 dated 10/06/2003 (Federal Law of Russian Federation, 2003).

Civil legislation is devoted, inter alia, to the acquisition of property rights to ownerless OCH (FL-51 of 11/30/1994), and the procedure for state registration of OCH related to real estate is enshrined in a special law on state registration of real estate (Federal Law of Russian Federation, 2015). The procedure for the municipality to record ownerless things is reflected in a special Order of the Ministry of Economic Development of Russia dated 10.12.2015 N 931 "On establishing the Procedure for registering ownerless immovable things" (Order of the Ministry of Economic Development of Russia, 2015).

The issues of financing measures for the conservation, popularization and state protection of OCH are also regulated by state and municipal programs.

In order to build an effective model of registration, registration of rights to ownerless OCH, it is necessary to create a well-functioning information system that allows you to track all stages of registration of rights to such objects and optimize the labor costs and financial burden of local governments.

4. Purpose of the Study

The purpose of the research is to study the legal relationship regarding the recognition as ownerless of OCH, which do not have an owner or whose owner is unknown, or the ownership of which the owner refused.

It is important to study the legal status of local governments, their rights and obligations regarding the procedure for recognizing ownerless OCH. It is necessary to examine the current practice of courts of general jurisdiction and arbitration courts in the following cases:

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Corresponding Author: M. S. Trofimov
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- on the recognition of unlawful omissions of municipalities, expressed in the failure to carry out actions for registration of ownerless OCH;
- on the recognition of the inaction of the administrations of municipalities as unlawful, expressed in the failure to carry out actions to register the right of ownership to OCH and on compulsion to apply to the body that carries out the state registration of the right to real estate.

5. Research Methods

Theoretical questions arising in the analysis of the content of the "ownerless things" category have been studied in sufficient detail (Argunov, 2006; Blinkov, 2003; Useykin, 2007; Polyakov, 2007; Andreeva & Bogdanov, 2016; Kostelyanets, 2016). However, there are no special studies devoted to the analysis of the problems of acquiring municipal property rights to objects of cultural heritage.

The procedural features of the consideration of cases on recognition of objects of cultural heritage as ownerless have not been investigated either. Modern researchers study only the general issues of implementing the rules of special production when recognizing the right to ownerless property in accordance with civil procedural legislation (Akkuratov, 2005; Nikolaev & Efimov, 2009).

An analysis of the issue should begin with the provisions of Federal Law No. 73-FZ of June 25, 2002 "On Objects of Cultural Heritage (Monuments of History and Culture) of the Peoples of the Russian Federation", according to which the responsibility for the preservation and restoration of cultural and historical monuments is assigned to owners (users) objects.

In order to register an object of historical or cultural value, it must be stated that it does not have an owner or the owner is unknown, or if the owner has refused ownership. The category of such things, in accordance with Article 225 of the Civil Code of the Russian Federation, is referred to as "ownerless".

Ownerless immovable things are taken into account by the body that carries out the state registration of the right to immovable property, at the request of the municipality in whose territory they are located. After a year from the date of registration of the thing, the local administration may apply to the court with a request to recognize the municipal property right to this thing.

The accounting rules are regulated by Order of the Ministry of Economic Development of Russia dated 10.12.2015 N 931 "On the Establishment of the Procedure for Registration of Ownerless Immovable Things" (Order of the Ministry of Economic Development of Russia, 2015), which contains the forms of documents submitted by municipalities when registering ownerless things, and also indicates the list of competent authorities and the timing of the decision on adoption registration of an immovable property by the registration authority.

The procedure for recognizing a movable thong as ownerless and for recognizing the ownership of an ownerless immovable thing is governed by civil procedure law (Chapter 33 of the Code of Civil Procedure of the Russian Federation). It contains requirements for the content of the application for recognizing the thing as ownerless, the specifics of preparing the case for trial and the specifics of considering the application for recognizing the thing as ownerless, the procedural features of the implementation of the court decision on cases of this category.

None of these regulatory acts reflects the features of these procedures in relation to objects of cultural heritage.

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Often, municipalities are drawn into complex and protracted lawsuits with prosecutors trying to insist on registering rights for ownerless OCH. The most common arguments of local authorities when they refuse to take measures to recognize property as ownerless are:

- the absence in Russian civil legislation of a direct reference to the obligation of the municipality to register the rights to the specified property;
- lack of funds for subsequent activities to preserve the OCH.

The prosecution authorities traditionally regard such refusals as illegal inaction on the part of local authorities.

In judicial practice, municipalities refer to the fact that the courts themselves do not have a single position on the volume of responsibility of local governments in recognizing property as ownerless.

So, at first glance, indeed, it may seem when comparing the practice of courts of general jurisdiction and arbitration courts. As a rule, a conflict arises between the following legal positions. On the one hand, the courts conclude that filing an application for registration of OCH is a direct responsibility of the municipality. This thesis is justified by the fact that in addition to local governments in the legislation there is not a single other entity that can carry out these actions. And, accordingly, the submission of such applications is the responsibility of local authorities.

On the other hand, the norms of article 225 of the Civil Code of the Russian Federation are of a dispositive nature and contain an indication of the right, but not the obligation of local authorities to initiate a trial on the recognition of the right of municipal property to an ownerless thing. Indeed, in civil law there is no clear wording with the verb “must” or “obligated”.

Here is a striking example: in the appeal ruling of the judicial board for administrative cases of the Astrakhan regional court of October 28, 2015 in case No. 33a-3508/2015 it was established that the residents of houses on several streets have been consumers of water supply for a long time and pay for these services. The owner of the cold water supply networks at the indicated addresses has not been established. Street cold water networks are not on the balance sheet of the operating organization. The fact that water is supplied to the indicated addresses by the operating organization to the owners of residential buildings (including multi-apartment buildings) on the basis of relevant agreements does not indicate that cold water supply networks belong to these persons. According to the prosecutor, local authorities should ensure the proper operation of ownerless wastewater systems. The court concluded that the requirements of the prosecutor were satisfied, since unaccounted drainage systems cannot be transferred to the service of the operating organization, and therefore pose a threat to the life and health of people and the environment (Civil case No. 33a-3508/2015, 2015).

However, in a decision of the Federal Arbitration Court of the North-Western District of September 15, 2010 No. F07-9362 / 2010 in case No. A21-1250 / 2008, the court lawfully established that the actions of the municipality, which resulted in the refusal to register the disputed section of the heating main, do not contradict current legislation, since the applicant has not indicated the rule of law governing the obligation on local authorities to take appropriate action. From the materials of the case it follows that the prosecutor’s office demanded that local authorities be taken into account as an ownerless

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section of the heating main. The specified object did not have an owner, however, it adjoined the building acquired by a private person. Since the heating networks, through which the building was supplied with heat, were not included in the list of property purchased under the purchase and sale agreement, the prosecutor's office considered it possible to impose an obligation to service the ownerless plot of the heating main passing through the land adjacent to the building to the municipality. However, the court considered the actions of the local administration, which resulted in the refusal to register the disputed section of the heating main, not contradicting the current legislation, since the prosecutor did not indicate the norms of the Federal Law on Local Self-Government, which regulate the obligation on the municipalities to take appropriate actions (Civil case No. A21-1250 / 2008, 2008).

However, all the decisions studied relate to infrastructure facilities - hydraulic structures, sewage systems, waste disposal sites, etc. If in a dispute the applicant (most often the prosecution authorities) refers to the need for the Administration to be obligated to take appropriate actions, the courts are based on the content of the article 14 of the Federal Law of the Russian Federation “On General Principles of the Organization of Local Self-Government in the Russian Federation”, which regulates the issues of local importance of urban and rural settlements. And if the competence of the municipality is not covered by the issues of jurisdiction, the courts refuse to satisfy the requirements.

6. Findings

Thus, it can be stated that in matters of accounting for cultural heritage as ownerless opinions of courts of different systems agree. And the logic of the decisions made is as follows.

Legislation on local self-government, in particular, Art. 14 sec 1 p. 13 131-FL issues of the use, preservation and protection of monuments relates to the areas of municipal regulation.

Thus, the Russian legislation, as well as the national laws of other states, establishes the virtually peremptory duty of the municipal authorities to preserve ownerless OCH, providing only a special treatment for such objects.

So, in case No. 33-1101, on the complaint of the prosecutor of one of the districts of the Kirov region on the recognition of the inaction of the local administration as being unlawful as unowned real estate – the regional monument “Bogoroditskaya Church, Porez Village”, the court of first instance and appeal noted that the duties of the settlement administration include the preservation of historical and cultural monuments, if they are the property of the settlement. OCH “Bogoroditskaya Church, Porez Village” based on data from the federal registry is not the property of the Russian Federation or its subject - the Kirov region. It is also not established that the church is in municipal private property. Accordingly, the disputed OCH has all the signs of ownerless real estate and is subject to registration by the territorial administration of Rosreestr at the request of the municipality in whose territory it is located.

The court did not accept the arguments of the respondent administration that there were no finances in the local settlement to carry out measures to preserve OCH. And the defendant's arguments about the lack of guilt, in connection with the non-adoption of the law of the Kirov region on the procedure for financing activities aimed at preserving OCH, generally considered not relevant to the subject of proof. The appellate court agreed with the conclusion of the trial court (Civil Case No. 33-1101 / 2016, 2016).

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This solution raises another problem. As already mentioned, local administrations often, when filing objections to administrative claims of the prosecutor's office, refer to the lack of funds necessary to maintain OCH in good condition.

And again, you should turn to the legislation on OCH, which indicates the possibility of developing federal and regional programs for the conservation and protection of monuments. Financing of measures to ensure the proper condition of OCH is regulated by the laws of the constituent entities of the Russian Federation and regulatory legal acts of local authorities.

In many constituent entities of the Russian Federation, such programs have been adopted. In particular, Government Decree No. 289 of April 29, 2014 approved the state program "Preservation, Popularization and State Protection of Cultural Heritage Sites in the Nizhny Novgorod Region. By the resolution of the Administration of the city of Vladimir dated January 9, 2019 N 31, the municipal program "Preservation of cultural heritage objects (historical and cultural monuments) of regional significance, which are municipal property in the city of Vladimir" was approved. Thus, the possibility of registering ownerless OCH for accounting is not related to the lack of funds from local authorities. The issues of financing measures for the preservation of OCH represent a separate authority of local self-government, which is decided, inter alia, in consolidation with the federal government and regional authorities.

For comparison: in European countries, as a rule, there are comprehensive programs for financing measures to preserve OCH, which will include intersectoral programs and various sources of financing. For example, in Germany, funds can be allocated from the federal city development program (Städtebauförderung), agriculture, rural renewal and economic development programs (Landwirtschafts-, Dorferneuerungs- und Wirtschaftsförderungsprogramme), and national cultural conservation programs in Germany to maintain the monument. values ("Zur Erhaltung von Kulturdenkmälern von nationalaler Bedeutung", BKM Sonderprogramm"Zur Förderung von Baudenkmalen") (Maennig, 2011). In certain circumstances, European Union funds as well as private and public funds may be available.

7. Conclusion

Obviously, the method of acquiring the municipal property right to the object of cultural heritage, provided for in Article 225 of the Civil Code of the Russian Federation, is possible when there are no claims on the object or the property does not have an actual owner who does not have properly executed documents for the disputed property.

Russian civil law governing the registration of property as ownerless does not differ in the specificity of the requirements and creates a false impression of the existence of a discretionary right of local authorities to comply with the investigated procedures. At the same time, taken into account the difficult financial situation in most municipalities, the passivity of local authorities regarding the registration of rights to ownerless OCH is understandable.

To correct the existing situation is possible only by comprehensive measures.

First of all, it is necessary to clarify the provisions of paragraph 3. of Art. 225 of the Civil Code of the Russian Federation and include in them an indication of the obligation of local authorities to ensure registration of immovable objects of cultural heritage in them.

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It is necessary to provide for the administrative responsibility of officials guilty of non-compliance with such requirements by including a specific composition on registering OCH as ownerless and further recognition of municipal property rights in them in Art. 7.13. Code of Administrative Offenses of the Russian Federation.

At the same time, a mechanism should be developed for operational subsidizing of the municipality from the budget of the subject or the federal budget to carry out measures to preserve, restore, preserve, reconstruct OCH if there are no funds for such purposes in the budget of the municipality.

Favorable development of the territory, the creation of a comfortable social, economic climate and sustainable infrastructure are impossible without proper control over the safety of cultural heritage located on it. Denial of financial responsibility for such objects leads to a loss of investor interest, weakening tourist flows, and the loss of the most valuable identification signs of territories.

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