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IMPROVEMENT OF LEGISLATION ON ZONES OF PROTECTION OF CULTURAL HERITAGE OBJECTS

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Abstract

The article is devoted to the analysis of the relationship between the concepts of Russian protection legislation “security zone” and “protection zone” of the cultural heritage object and the category of “buffer zone” used in international law. The provisions of the 1972 World Heritage Convention and the mechanisms laid down in the current Guide to the implementation of the Convention are examined. Based on prevailing jurisprudence, gaps in the national legislation are identified that allow economic activities on the territory of monuments with violation of zones with special conditions for the use of territories. It is established that the norms of national and international legislation do not coincide in terminology, and therefore cannot guarantee real and effective procedures for the preservation of cultural heritage objects. The work uses judicial practice in cases of recognition of illegal actions of business entities on the territory of cultural heritage sites, and reveals the lack of a unified position among Russian judicial authorities regarding the mandatory compliance with the Guide to the implementation of the Convention. The bills aimed at filling the gaps in the protection legislation of Russia were examined and it was revealed that in modern conditions a more flexible approach is needed to determine prohibitions and restrictions when conducting economic activities on the territory of cultural heritage sites to ensure the rights of land owners, balance investment and tourist attractiveness of the regions, efficiency in carrying out security and repair work.

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Keywords: Buffer zone, cultural Heritage Site, protection zone, security zone, World Heritage Convention

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1. Introduction

In the era of urbanization of space and the rapid development of cities, fierce military conflicts that do not reckon with the historical and cultural memory of generations, the potential of cultural heritage increases significantly. Despite the understanding of the necessity and importance of saving such a heritage for future generations, there is a need for its effective use for the sustainable development of territories, the implementation of long-term urban, industrial and innovative projects (Trofimova, 2019).

Today, such a thing as "investment attractiveness of a cultural heritage object" no longer seems illogical. Back in 2011, Gustavo Araosa, President of the International Council for the Preservation of Monuments and Landmarks, called for "a paradigm shift in relation to cultural heritage due to a change in the role of heritage in society and its growing recognition, significance and value" (Gustavo, 2011, p. 55).

According to the researchers, "obtaining the status of a World Heritage property may violate the relationship between the promotion of the property and its conservation: uncontrolled tourist flows can damage the security of the property if there is no monitoring and control system for them" (Filatova et al., 2019, p. 2)

It is especially important to maintain a balance of these interests within the territory of the object of cultural heritage included in the World Heritage List. The existence of such a status creates additional obligations with regard to the impact on the territory of the object of cultural heritage compared with the monuments included in the national registries of states that have joined the Paris Convention for the Protection of the World Cultural and Natural Heritage, 1972. The role of UNESCO in the formation of international legislation and recommendations for the preservation of the object of cultural heritage is central. Nevertheless, researchers, especially in recent years, during the period of the most powerful military conflicts, have actively noted that despite the public recognition of international legislation on the protection of cultural heritage, the implementation of their protective obligations in the field remains in question (Bleibleh, & Awad, 2020). Authors around the world are trying to answer the question of the extent to which the approach to the terminology and methods of protecting the World Heritage provides or, conversely, undermines the sustainability of these objects in specific regions, taking into account the national situation and legislation (Caust, & Vecco, 2017). We examine the issue by the example of the ratio of the norms of the Convention and the Russian protection legislation, provided that acts of different legal terminology are used.

2. Problem Statement

Today, standards of international and national legislations regarding the permitted regimes for the use of the object of cultural heritage territories should be harmonized. Institutions that regulate the legal regime of the territory of the object of cultural heritage should be imperative (to ensure the safety of the object of cultural heritage) and, at the same time, flexible (to provide the opportunity to carry out economic activities in the interests of the territory, provided that the object of cultural heritage is preserved).

It is impossible to refrain from any activity within the established protection zones, if only because it paralyzes the life of the region. So, only in the territory of Veliky Novgorod there are about 500

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monuments, and a whole complex of historical monuments of Novgorod and its environs is included in the list of World Heritage Sites "medieval architectural heritage of the city of Veliky Novgorod".

Therefore, Russian legislation differentially refers to the issues of determining the territories within the protection zones of the objects of cultural heritage, taking into account the need for its development and implementation of acceptable forms of activity. If the security zone is not installed, the mechanism of the protective zone is used. But in order for Russian standards to work in practice, their coherence with the provisions of the Convention, 1972 is also necessary. And Russian courts more and more often in court decisions point to the lack of mechanisms for implementing the provisions of the Convention in national legislation.

3. Research Questions

The intersection of international, national and public interests in cultural heritage and the gap between international human rights instruments and national documents on international cultural heritage in recent years has been repeatedly mentioned by both domestic and foreign studies (Tünsmeyer, 2020). The norms of supranational conventions are priority in relation to the legislation of individual states that have signed them. But if international law does not contain a mechanism and recommendations for its application in national law - most likely, neither international law nor national legislation will work.

Consider this thesis on the example of such a concept of international law as the “buffer zone” and the institutions of the “protective zone” and “security zone” in the Russian legislation on the protection of the objects of cultural heritage.

In the Russian legal field, the institution of zones of protection of the object of cultural heritage is applied. Such a zone, on the basis of Art. 34 of the Federal Law of 25.06.2002 N 73-FL “On objects of cultural heritage (historical and cultural monuments) of the people of the Russian Federation” (hereinafter referred to as the Law on objects of cultural heritage) includes the following types of territories: security zone of the objects of cultural heritage, zone of regulation of development and economic activity and the zone protected natural landscape. In these territories with different characteristics, economic activity is limited, construction is prohibited (or limited), with the exception of measures aimed at preserving and regenerating the historical, town-planning or natural environment of the object. The procedure for developing a project of zones of protection of a cultural heritage object is established by a Decree of the Government of the Russian Federation. According to the Ministry of Culture of the Russian Federation, only in 2018, 144 413 objects were included in the unified state register of the objects of cultural heritage of the people of Russia (Report of the Ministry of Culture of the Russian Federation “Culture in Russia 2012-2019”, 2019).

It would seem that the design of the protection zone is a well-balanced mechanism to ensure the safety of the objects of cultural heritage. However, according to the data posted on the website of the Ministry of Culture of the Russian Federation, currently no more than 15% of the objects of cultural heritage has developed protection zones. And in practice, when developing a project, especially private owners will have to face a serious problem. Projects of protection zones are developed for a rather long time, on average from 3 months, depending on the region and the contractor, and the cost of such a project can reach several hundred thousand rubles.

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The fundamental difference between the protection zone and security zone is in the fact that the protection zone mode starts working automatically after registration of the object of cultural heritage, and the restrictions in the protection zone are much stricter than in the protection zone. According to Art. 34.1. The Law on the object of cultural heritage within the protective zone prohibits any kind of activity, without any reservations, except measures to maintain in good condition water supply, power lines, communications, gas pipelines, heating mains, etc. The institute of a protective zone exists until a security zone has been developed for the object of cultural heritage.

Other laws use different models of security zoning and protection of an object of cultural heritage. For example, American researchers describe easements for the preservation of cultural heritage owned by private environmental organizations - land trusts. With minimal public scrutiny, land trusts decide which lands to defend indefinitely and what the rules for their use should be. State governments generally refuse to protect such a legacy, and conservation measures are funded by private companies and landowners (Owley, 2015). And projects for the management of an object of cultural heritage in China, contrary to European practice, are carried out by local authorities, which emphasize profit and socio-economic growth of cities, rather than preserving the built-up heritage (Li et al., 2020).

The concept of a buffer zone in Russian legislation is generally absent, however, in the National Standard that defines the requirements for protection zone projects of a World Heritage property (by the way, which does not apply to regulatory enactments), a buffer zone is understood as “the territory outside the World Heritage Property located around it borders, contributing to the protection, preservation and management, maintaining the authenticity and integrity of the universal value of the World Heritage Property”.

And in accordance with paragraph 104 of the 2019 Guide to the implementation of the Convention (hereinafter referred to as the Guide), the buffer zone is defined as “the territory surrounding the nominated facility that has additional legal and / or generally accepted restrictions on its use and development” (Operational Guidelines for the Implementation of the World Heritage Convention, 2019). Clause 172 of the Guidelines obliges states to inform the World Heritage Committee of their intentions to implement restoration or new construction work in the buffer zone of the object of cultural heritage as soon as possible before making economic decisions. The main task of the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage is to approve the possibility of implementing the construction under consideration by the project or recommending the need to revise the project documentation in order to prevent the threat to the monument.

4. Purpose of the Study

The purpose of the study is to compare the provisions of the Convention on the Protection of the World Cultural and Natural Heritage of 1972, the Guidelines for the Implementation of the Convention, 2013 and the provisions of Federal Law of June 25, 2002 No. 73-FL “On Objects of Cultural Heritage (Monuments of History and Culture) of the People of the Russian Federation” on the subject of establishing coherence of approaches in international and national legal practice to the determination of establishing the protective borders of the territory of the object of cultural heritage. For the study, the institutions used were the “buffer zone”, “protective zone” and “security zone”; their common goal was to ensure the safety of

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the objects of cultural heritage and the possibility of carrying out adequate economic activities within the territory of the objects of cultural heritage. It is necessary to study the prevailing judicial practice in cases of invalidating the actions of entities engaged in economic activity on the territory of monuments, and to identify the position of the Russian judicial authorities on the mandatory compliance with the Guide to the implementation of the Convention, 1972.

5. Research Methods

To draw conclusions about the need to unify Russian legislation with international law, both general and industry research methods were used. The research is based on the method of formal interpretation of law and its interpretation by various legal systems. In the analysis and comparison of national and international legislation, traditionally used comparative legal and formal legal research methods. During the generalization of judicial practice, sociological and statistical analysis models were used.

6. Findings

The identified problem is that Russian legislation does not have a clear mechanism for interaction with the World Heritage Center on the coordination of activities on the territory of the UNESCO monument. It is necessary to pay attention to the fact that the buffer zone is not identical to the protection zone and the security zone; the rules for establishing these zones are different and are laid down in international and national legislation. The procedure for nominating an object to the World Heritage List is subject to the requirements of the Convention, 1972; the projects of protection zones for cultural heritage objects are developed in accordance with Russian regulations. In fact, since Russia is a part of the Convention, such consent is necessary for it; however, Russian courts sometimes take a completely different position.

In particular, in the decisions of the courts, including the Supreme Court of the Russian Federation, one can find the following statements: "... the obligations of the member countries of the Convention are unconditional, and, being generally recognized norms of international law, are an integral part of the Russian legal system in accordance with Art. 15 of the Constitution of the Russian Federation. However, the Convention does not establish specific forms for the implementation of these obligations, and therefore they should be determined by Russian law" (Civil Case No. 2A-1825/2017, 2017). This position gives the courts the opportunity to conclude that the actions of developers disputed by the prosecutor's office or other public authorities who have received building permits on the territory of the object of cultural heritage cannot be declared unlawful due to the lack of a national mechanism for implementing the 1972 Convention Implementation Guidelines (Appeal ruling of the Supreme Court of the Russian Federation of May 23, 2018 No. 78-APG18-11, 2018). In the motivational part of the decisions, one can also find an indication that the Town Planning Code of the Russian Federation, among the mandatory documentation submitted for issuing a building permit, does not list documents on notifying the World Heritage Committee about the planned construction (Civil Case No. M-930/2017, 2017).

According to a number of authors (Ugulova, 2018), this position is controversial, since

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> the need for coordination is clearly defined both in the Convention and in the Guide and this international obligation must be respected, despite the absence of internal mechanisms for its implementation. Moreover, the creation of the Commission of the Russian Federation for UNESCO, together with the need to obtain the approval of the Ministry of Culture of Russia when carrying out relevant work, indicates the presence of general principles for a mechanism for obtaining approval by the UNESCO Committee (para. 8).

It is worth noting the identified common problem: much European legislation (Spain, France, the Netherlands) also do not correspond to the provisions of the Convention in terms of the conceptual apparatus (Agisheva, 2016). Some international organizations have obvious problems, ambiguous concepts, a lack of theoretical foundations, and partially overlapping decisions on the classification of cultural heritage. This phenomenon shows that the science of the study of heritage did not pay attention to its own theoretical structure and could not build a common methodology, which led to confusion in the research, application and management of the object of cultural heritage itself (Hua, 2010).

How to resolve the described situation in Russian conditions. In 2018, the Ministry of Culture of Russia prepared a draft Federal Law, which proposes to supplement the Law on an object of cultural heritage with a new norm that provides specific rules on the mandatory assessment of project documentation when carrying out capital construction within an object of cultural heritage, which is on the UNESCO list. The key point of the project is the mandatory direction of documentation on the results of the assessment for approval through the federal security agencies of the Ministry of Culture of the Russian Federation to the UNESCO Committee. The start of any construction work will become possible only after the adoption by the UNESCO body of a positive opinion on the materials presented (Draft Federal Law 02/04 / 09-18 / 00084384, 2018).

Thus, the bill could eliminate the uncertainty in judicial practice, overcome, if not all, but many conflict situations with unauthorized work on the territory of the object of cultural heritage, and, ultimately, ensure the enforceability of the Convention in the Russian legal field.

The Ministry of Economic Development of the Russian Federation, however, gave a negative opinion on this project. And the main points still come down to the fact that neither international nor national legislation contains mechanisms for implementing the 1972 Convention. The Ministry of Economic Development did not agree with the proposed interpretation of the buffer zone, noting that decisions to establish and change the protection zones of an object of cultural heritage's included in the World Heritage List are made by the federal security authority on the basis of the draft protection zones of such objects, taking into account the opinion submitted by the regional protection authority. And the decision to terminate the protection zones is taken by the federal body for the protection of cultural heritage objects. And if such a zone is at the same time a buffer zone, this will be contrary to the provisions of the Convention, 1972.

Experts also criticized the introduction of an additional procedure for sending project documentation of a capital construction project to the UN World Heritage Committee, citing the fact that the specified authority of the Committee, in principle, is not provided for by the Convention. The Ministry of Economic Development and representatives of the regional authorities are convinced that such proposals will

significantly increase the terms for approval of project documentation, since the deadline for consideration of project documentation by the World Heritage Committee is not set. If the business entity refuses to carry out construction work, it will be necessary to amend the project documentation and repeat the process of its approval, which will entail the risk of incurring additional costs. Of course, in this part you should agree with the position of experts, since the author at the very beginning of the article the need for a more flexible approach to the legislative regulation of issues of protection of an object of cultural heritage was pointed out while taking into account ensuring the investment attractiveness of the territories.

7. Conclusion

By the example of the draft law set forth and the reaction of the expert community and public authorities to it, it is clearly seen that the national legislator does not take the risk of regulating the procedure for coordinating economic and other events with UNESCO within the boundaries of the cultural heritage site included in the World Heritage List. At the same time, there is no international level legislation, yes, and there can be no mechanism for implementing such rules at the level of national legislation.

According to the author of the work, a huge mass of legal problems and the powerlessness of national legislation is caused by the lack of a single interethnic approach to determining the boundaries, sizes, and quality contents of the territory of the object of cultural heritage protected by international and national legislation. By the example of the buffer zone, the protective zone and the protection zone, which do not coincide, it is clearly seen that a unified unified approach to determining the territory of the object of cultural heritage should be applied, subject to special protection and control by legislation at any level - international, national or regional. Only in this case, the national civil, urban, administrative and other legislation will be able to build real and, most importantly, enforceable legal mechanisms to ensure the preservation and protection of the object of cultural heritage.

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