

Prospects for the Systematization of Legislation on the Protection of Cultural Heritage Objects Through Codification

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Abstract—The article examines the features of legislation on the protection of cultural heritage objects at the stage of its reform in the XXI century. The author demonstrates the advantages and disadvantages of codification of this area of legislation, building on the existing first experience. Analysis of foreign legislation on the protection of cultural heritage objects (monuments of history and culture), the Code of Culture of the Republic of Belarus, and the practice of its application in 2017-2020 made it possible to formulate some proposals for clarifying the legal status of immovable monuments and movable cultural values, expanding the competence of state control and supervision bodies in the field of the protection and use of cultural heritage objects, which can be taken into account by the Russian legislator. It is proved that the codification of legislation on culture made it possible to streamline numerous regulatory legal acts in the field of cultural (historical and cultural) heritage and museum, library, and town-planning activities aimed at the preservation and use of cultural heritage objects. The author upholds the idea that the adoption of the Code of Culture of the Republic of Belarus creates the preconditions for the formation of a fundamentally new approach to state protection, registration, and use of ancient monuments and art pieces in modern life. Analyzing the main conceptual provisions of the Code of Culture of the Republic of Belarus, the author substantiated the need to include new norms from the legislation regulating architectural and town-planning activities. The purpose of the article is to familiarize the legal community with the first experience of codification of legislation on culture and the practice of its application. The conclusions and recommendations formulated based on the results of the study can be taken into account in the course of reforming the Russian legislation on the protection of cultural heritage objects, especially in terms of the protection of archaeological heritage which has long been in need of regulation. Considering that the judicial practice on disputes related to cultural values is only being formed, therefore, the proposed conclusions and recommendations may be useful to the judicial and law enforcement agencies.

Keywords—*objects of cultural heritage, legislation codification, culture, cultural values, legal protection of monuments, improvement of legislation*

I. INTRODUCTION

The field of cultural (historical and cultural) heritage is a phenomenon of civilization that is unique for its value. While the technocratic processes of modern society develop rapidly, the problem of anthropogenic and technogenic destruction of historical and cultural elements of the heritage of mankind is becoming more acute. Historical and cultural (cultural) heritage at the turn of the centuries and millennia is acquiring more and more political power and importance as a reliable guarantor of the preservation of a people's identity and originality which is the most valuable competitive advantage in the context of globalization. At the same time, the enacted legal acts are far from perfect, do not agree with each other, and newly developed bills do not correspond with international legal agreements and current laws, and do not contribute to the solution of legal problems of cultural heritage protection. Therefore, a doctrinal new solution is required in the systematization of normative legal acts aimed at ensuring the protection of cultural (historical and cultural) heritage, taking into account new knowledge and gained practical experience. The uniqueness of the object of protection (historical and cultural monuments) requires the creation of a legislation system that is universal in essence.

II. PROBLEM STATEMENT

In legal science, the problem of systematization of legislation on the protection of cultural heritage objects through its codification has not actually been studied (the exceptions are the works of A.V. Goloviznin [1], O.A. Bystrova [2], S.V. Kuzina [3], A.N. Panfilov [4], who addressed the problem of codification of legislative acts on culture) due to the novelty of this rule-making instrument in the sphere. This means that the Code of Culture was adopted only in one country – the Republic of Belarus [5] (entered into force on February 3, 2017), and the experience of this country – a Union State with Russia – we suggest for discussion in this article.

In order to form conclusions and recommendations for improving the Russian legislation on the protection of cultural heritage objects, we relied on the works of M.A. Redchits [6], M.S. Trofimova [7], I.A. Khalikov [8] and used our own research work [9].

The subject of legal regulation of the Code of Culture of the Republic of Belarus (the Code of Culture) is public relations for the preservation of cultural and spiritual heritage; for establishing organizational and legal guarantees for the creation, preservation, protection, use, dissemination, and return of cultural values. The Code of Culture provides for the creation, on the basis of the existing legal institutions, of a single mechanism for regulating relations in the field of culture, and the simultaneous elimination of the existing shortcomings of legal regulation in this field, ensures the reduction of legal acts on culture and their streamlining. The Code of Culture regulates a wide range of public relations associated with the preservation and use of cultural values, the protection of historical, cultural, and archaeological heritage, regulates library and museum affairs, national art crafts, cinematography, the organization and conduct of cultural events, art collectives' activities, the aesthetic education of citizens. Accordingly, with the adoption of the Code of Culture, 8 laws and about 20 regulations were terminated. The main provisions of these regulatory legal acts are included in this Code of Culture. As a result, the directly applicable norms of the Code of Culture regulate the respective social relations without their specification in other acts.

III. RESEARCH METHODS

In order to understand the content of the concepts used in regulatory legal acts and international agreements, the author, using the method of comparative law, referred to the changing doctrine of the international legal protection of cultural heritage (it is presented in the works of M. Bouchenaki [10], D.I. Vidineev [11], A. Eriksen [12], S.P. Layne [13], K. Cameron, and M. Rossler [14], V.O. Neshataeva [15], J. Pendlebury, and T. Townshend [16], M. Suárez-Mansilla [17], A. Chechi [18]), analyzed the legislation of the Russian Federation [19] and the Republic of Belarus [5], the practice of its application in the field of culture and cultural heritage.

IV. FINDINGS

The Code of Culture offers the following definitions (Article 1): historical and cultural heritage is a set of distinctive results and evidence of the historical and spiritual development of the people of Belarus, embodied in historical and cultural values; historical and cultural values are the most distinctive physical items and non-material manifestations of human creativity, which have outstanding spiritual, aesthetic, and documentary merit and are taken under state protection; cultural values are physical items and non-material manifestations of human artistic experience which are created (transformed) by a person or closely related to their activities, and have historical, artistic, scientific or other significance.

The concept of "cultural activity" has been introduced for the first time and defined as the creation, restoration (revival), preservation, protection, study, use, dissemination, and (or) popularization of cultural values, the provision of cultural benefits, the aesthetic education of citizens, the organization of cultural recreation (free time) of the population.

Important provisions relate to the movement of cultural values, the new regulation of which is carried out in connection with the establishment of the EAEU from January 1, 2015. Thus, under the Council of Ministers of the Republic of Belarus, a Commission for the identification, return, joint use, and introduction, into scientific and cultural use, of cultural values that are located outside the Republic of Belarus has been formed. This commission is a permanent deliberative body and ensures the interaction between state bodies, public associations, and other legal entities, and citizens for preservation and enhancing the historical, cultural, and archaeological heritage.

Classification of cultural (historical and cultural) values. All objects of historical and cultural heritage under state registration are referred to as historical and cultural values of the Republic of Belarus, which are material or non-material. Material historical and cultural values are classified into monuments of 7 types: urban-planning monuments; archeological monuments; architectural monuments; documentary monuments; monuments of art; historical monuments; reserved places.

Non-material historical and cultural values include customs, traditions, rituals, folklore (the unwritten literature of a people), language, its dialects, the content of heraldic and toponymic objects, works of folk art (folk arts and crafts), and other non-material manifestations of human creativity. Coats of arms of 48 historical cities, 10 calendar rites, etc. are recognized as non-material historical and cultural values.

Correlation of the norms of the Civil Code and the Code of Culture, the use of the conceptual framework of the legislation on culture (on the protection of historical and cultural heritage) in civil law. Of practical (law-making) use is the analysis of the relationship and mutual influence between the concepts used in two codified acts – the Civil Code of the Republic of Belarus (the Civil Code) and the Code of Culture.

The provisions of the Code of Culture must be referred to whenever a person plans to carry out entrepreneurial activities on the territory (in a protection zone) of a material historical and cultural value, for example, in the historical part of a city or in the area where an archeological monument is located. This is due to the fact that the content of many concepts used in the Civil Code ("historical and cultural value", "material historical and cultural value", "cultural value", "archaeological artifact") is revealed precisely in the Code of Culture.

In addition, knowledge of the norms of the Code of Culture as the main source of legal regulation of relations in the field of protection and use of historical and cultural values is necessary for the disclosure of the content of property rights [1], including the determination of the legal consequences of discovering a treasure, the regulation of the acquisition of ownership of archaeological artifacts; for the determination of the grounds for termination of property rights, including the regulation of the redemption of mismanaged cultural values; for the regulation of the order of the levy of execution on a pledged property in cases where the subject of the pledge is property related to historical and cultural values; for the implementation of the basic principles of civil legislation.

New laws in the regulation of property relations. While maintaining continuity with the previous legislation on the protection of historical and cultural heritage [20], the Code of

Culture, in Article 71, determines that cultural values may be owned by the Republic of Belarus, its administrative and territorial units, legal entities, and individuals, including individual entrepreneurs. But certain cultural values can be legally defined as objects that are only in the property of the state: for example, scientific objects included in the State Register of Scientific Objects that constitute national heritage; values of the State Fund of Precious Metals and Precious Stones of the Republic of Belarus.

As stated in paragraph 3 of Article 71 of the Code of Culture, when cultural objects of value are given the status of historical and cultural values (i.e., monuments), property rights to them are preserved.

The Code of Culture defines the rights and obligations of the owner of a material historical and cultural value (Articles 73-75), establishes restrictions on the rights of the owner. Thus, the owner (user) of a material historical and cultural value is prohibited from: destroying the monument; allowing harm to it, performing work on it without permission; transferring the value to the possession and (or) use of the Armed Forces, other military formations. The owner is obliged to sign a preservation order [1, 21]. In accordance with paragraphs 2 and 3 of Article 75 of the Code of Culture, the new owner of the monument (i.e. historical and cultural value) is obliged to sign a preservation order within thirty calendar days from the date of acquiring ownership of it. Failure to comply with this requirement is the ground for considering the transaction for the acquisition of ownership of the material historical and cultural value invalid.

Particular aspects of the application of civil law consequences of mismanagement of historical and cultural values. According to Article 241 of the Civil Code, when the owner of cultural values, classified, in accordance with the legislation, as especially valuable and protected by the state (emphasis added by us – I.M.), mismanages these values, which threatens to deprive them of their value, such values can be withdrawn from the owner by means of redemption by the state or sale at a public auction.

Based on the first experience of the implementation of this provision, we propose a new solution to this issue: when selling at a public auction, the amount, received from the sale, and after deducting the costs of holding the auction, as well as the costs of restoration work in relation to the immovable material historical and cultural value, must surely be returned to the owner. This is exactly what the Russian legislator has done (Part 2 of Article 240 of the Civil Code of the Russian Federation).

New in the civil law regulation of the consequences of discovering a treasure. In connection with the adoption of the Code of Culture, this institution of civil law has undergone certain changes as well. Now the Civil Code establishes the legal consequences of discovering:

- a treasure;
- a treasure, containing identified cultural values that have distinctive assets and meet one of the criteria for giving them the status of a historical and cultural value (i.e., a monument);
- ownerless antique, historical weapons and ammunition;

- archaeological artifacts that are a treasure.

In accordance with Article 234 of the Civil Code, in case of discovering a treasure, containing cultural values that have distinctive assets and meet one of the criteria for giving them the status of a monument (this case involves newly identified cultural values – I.M.), such material cultural values are subject to transfer to state ownership. At the same time, the owner of the land plot or of the other kind of property where the treasure was hidden, and the person who has discovered the treasure have the right to be together entitled to a reward, amounting to 50 percent of the cost of the treasure (emphasis added by us – I.M.), and the reward shall be divided between these persons in equal shares.

The Code of Culture offers *a new approach to regulating the procedure for acquiring ownership of archaeological artifacts*. Thus, a new norm has been introduced in the Civil Code – Article 234-2 “Acquisition of Ownership of Archaeological Artifacts”. According to the requirements of this Article, archaeological artifacts discovered during archaeological research or otherwise are subject to transfer to state ownership in the manner prescribed by the law.

The provisions of the theory of legal protection of historical and cultural heritage, implemented in the Code of Culture, are to help in solving this issue. We also used A.N. Panfilov’s research work on the status of an identified archaeological heritage object, the legality of the use of search equipment in this activity, which allowed the author to formulate interesting proposals for improving Russian legislation in this field [22].

Thus, according to Article 83 of the Code of Culture, one of the types of historical and cultural values are archaeological monuments – archaeological objects and archaeological artifacts. Archaeological artifacts are movable material objects that emerged as a result of human life and activities more than 120 years ago, have been preserved in the cultural layer or at the bottom of natural and artificial reservoirs, have historical, artistic, scientific, or other cultural significance, may meet the criteria to be given the status of a historical and cultural value and at the time of their discovery do not have an owner.

Archaeological objects include immovable material objects or their complexes together with archaeological artifacts and the cultural layer, that emerged as a result of human life and activities more than 120 years ago, have survived in the ground or at the bottom of natural and artificial reservoirs, have historical, artistic, scientific, or other cultural significance, and may meet the criteria to be given the status of an archaeological monument.

Thus, if such archaeological artifacts are found, then these material cultural values are subject to transfer to state ownership, and the owner of the land plot and the person who discovered the treasure have the right to be together entitled to a reward amounting to 50 percent of the cost of the treasure.

New laws of judicial protection of historical and cultural heritage. The Code of Culture provides new opportunities for judicial protection of objects of the historical and cultural heritage of Belarus, which are named in the legislation as historical and cultural values. Thus, for the first time, it provides the right and the possibility of appealing to a court of a decision not to classify a material object as an archaeological

object or an archaeological artifact (Clause 6 of Article 128 of the Code of Culture).

In order to make a decision on classifying material objects that were discovered by chance as archaeological objects or archaeological artifacts, regional (of the Minsk City) Commissions on Archaeological Objects and Archaeological Artifacts have been created and operate. It is this commission that will have to answer questions that are scientific in their content.

When considering a case, the court must assess the observance of the order (procedure) of consideration, by the archaeological commission, of materials on the promotion of the discovered cultural value for assigning it the status of a historical and cultural value, i.e. a monument of archeology. Therefore, taking into account the specifics of this category of cases, we believe that the evidence in the case is the conclusion of an expert or specialist, and more specifically – a person with special knowledge in the field of archeology.

In practice, the issues of jurisdiction of cases of this category, the determination of the form of applying to the court (we believe that, at present, this is a complaint) should be resolved on the basis of the general principles established respectively in Article 7, 37, Chapter 5 of the Civil Procedure Code and Article 7, 39, Chapter 5 of the Code of Commercial Procedure.

V. CONCLUSION

Thus, the culture sector unites activities aimed at preserving the historical and cultural heritage (historical and cultural values, cultural values, non-material manifestations of human creativity), developing library, museum, and archival affairs, supporting and developing performing arts, cinematography, and fine arts, developing traditional folk culture, strengthening international relations, increasing culture attractiveness for compatriots living abroad and representatives of other cultures. These relations began to be regulated by a new legislative act – the Code of Culture.

The codification of this field of public relations (culture, cultural activities, the protection of cultural heritage, the return of cultural values, etc.) is a natural result of the continuous development and improvement of the legislative framework, the result of an objective need to regulate a specific area of public relations. Due to its legal nature, the Code of Culture is able to fully and systematically represent the field of relations that are taking shape in the cultural sector today.

The first experience of codification in the culture sector shows that the inclusion of normative legal acts in a single legislative act allows: firstly, to provide a comprehensive systemic legal regulation of public relations in the field of historical and cultural heritage; secondly, to raise the legal regulation of public relations in this field to a fundamentally new level; thirdly, to create favorable legal conditions for attracting investments (conclusion of agreements on public-private partnership), developing institutions of patronage and donations; fourthly, to audit the legislation on culture in order to ensure the harmony of normative legal acts on culture among themselves and with other legislation.

The adoption of the Code of Culture based on constitutional and international legal norms makes it possible

to bring numerous, scattered and not always harmonized normative legal acts in the field of culture into a single system, eliminate conflicts, reduce the number of departmental acts and blanket norms, thus improving the legal mechanism of the protection of historical and cultural heritage and its objects. This experience can be borrowed by the Russian legislator in the course of improving the legislation on the protection, use, and popularization of cultural heritage objects.

The Code of Culture is a source of civil law in terms of: defining the content of the concepts “cultural heritage object”, “cultural heritage”, “historical and cultural value”, “cultural value”, “archaeological artifact”, used in the Civil Code; defining the basic principles of civil legislation; disclosing the content of the property rights, including determining the legal consequences of discovering a treasure and regulating issues of acquiring ownership of archaeological artifacts; determining the grounds for the termination of property rights, including the regulation of issues of redemption of mismanaged cultural values; regulating the order of foreclosure on a pledged property in cases where the subject of the pledge is property related to historical and cultural values.

Knowledge of the main provisions of the Code of Culture is necessary: in entrepreneurial activity, including when implementing deductions established by the law for entrepreneurial activities that have a direct impact on a cultural heritage object (a historical and cultural value) or its protection zones (for example, architectural and urban planning monuments); in law enforcement, including when bringing an action before the courts: on the recognition of a transaction, the subject of which is an object of cultural heritage (a historical and cultural value), as invalid; on compensation for harm caused to a monument of material culture; on the termination of activities that endanger the existence of an immovable cultural value; on the recognition of the ownership right to a cultural heritage object (a historical and cultural value), on the reclamation of a cultural heritage object (a historical and cultural value) from someone’s illegal possession, other statements of claim, subjects of dispute in which are historical and cultural values (monuments).

We hope that the Belarusian experience of codification of the legislation on culture will be useful and taken into account by the Russian legislature when carrying out reforms.

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