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Abstract

The research covers the development of the legislation of the Ukrainian SSR cultural heritage protection problems. The rapid development of sectoral legislation in the second half of the twentieth century was driven by the need of preservation of cultural heritage sites, damaged during the Second World War, or affected by the improper use by various institutions and organizations.

The purpose of the article is to analyze the specifics of legal regulation of cultural heritage protection in the Ukrainian SSR in the second half of the 1950s – the end of the 1980s.

Scientific novelty. The analysis of the legislative acts of the Verkhovna Rada of the USSR and the Council of Ministers of the USSR, as well as by-laws of the Ministry of Culture of the USSR revealed the specifics of the legal regulation of cultural heritage protection in the Ukrainian SSR in the second half of the 1950s – late 1980s, which consisted of application of separate national legal terminology. The main directions of legal regulation of cultural heritage protection during the period under review are singled out.

Conclusions. Soviet legislation on the protection of cultural heritage, as any sectoral legislation, was unified, and the republican special-purpose laws duplicated Union norms. The legislation of the Ukrainian SSR of the 1950s – 1980s concerning the cultural heritage protection was developed in accordance with the Union legislation, as well as the decrees and orders of the USSR Government. At the same time, both federal and republican legislation had basic international rules, including the provisions of the 1972 Convention concerning the Protection of World Cultural and Natural Heritage, signed by the Soviet Union. The special aspect of the the Ukrainian SSR legislation was the consideration of some national traditions, including terminological ones. This could be noticed in the name of the Law of the Ukrainian SSR from July 13, 1978 «On the Protection and Use of Monuments of History and Culture», in which instead of the term «памятник» (monument) in the Russian language and the law, the term «monument» was introduced more wide term «памятка» (site). In general, due to the consistent policy on conservation and extensive legislation, we have been able to preserve the destruction of monuments that remind the thousand-year history and culture of Ukraine.

Keywords: law, legislation, regulation, cultural heritage, system of state bodies.
The problem of the research. During the Second World War, Ukrainian lands were at the epicenter of military actions, resulting in the destruction of many cultural heritage sites. A large number of movable objects of cultural heritage were taken to the eastern regions of the Soviet Union during the evacuation. Much of the cultural heritage was plundered and taken out by the Nazis and their allies during the occupation. As a result, after the liberation of Ukraine, there was a necessity to restore the immovable objects, as well as to search and return those objects of cultural heritage that were exported outside the republic. Such activities required adequate legal support as well as legal regulation of the protection and preservation of cultural property in the new post-war conditions.

Analysis of recent research and publications. During the years of Ukraine independence, some issues of the development of the monument protection legislation of the Soviet period were analysed writings by V.I. Akulenko [1], O.V. Yepifanov [2], N.I. Kuderska [3], T.V. Kurylo [4], I.M. Myshchak [5, 6] and other scholars. At present, a detailed study of the legal regulation of the protection of the cultural heritage of the second half of the 1950s – the second half of the 1980s, which had its own specific features in the Ukrainian SSR is required.

The purpose of the article is to analyze the specifics of legal regulation of cultural heritage protection in the Ukrainian SSR in the second half of the 1950s – the end of the 1980s.

Main material. Changes that began in the USSR after the death of Stalin also affected the system of government. With the formation of the Ministry of Culture of the USSR in 1954, the authority to prepare regulations and coordinate activities in the field of cultural heritage was
transferred to its responsibility. There also was such reorganization in Ukraine, where the newly established Ministry of Culture of the Ukrainian SSR assumed the responsibility for the protection of cultural heritage, which previously was at the liability of the Committee on Culture and Education and the Committee on Arts under the Government of the Republic. Due to this, the problem of inter-ministerial coordination was resolved, and the rule-making process, including the legal support for the protection of cultural heritage was intensified.

On October 17, 1955 the Ministry of Culture of the USSR issued Order No. 1708 «On Measures of Strengthening the Management and Control over the Accounting and Protection of historical, archeological monuments and arts» [7, p. 145]. According to this Order, all forms of accounting and passports of monuments that were previously in force (except for museums and special vaults) were abolished in the territory of the Ukrainian SSR, and instead new forms of accounting and passports of history, archeology and arts approved by the USSR Ministry of Culture were introduced. Consequently, a single form of record keeping and passports was introduced in all the Soviet Union countries. In addition, the Order of the Ministry of Culture of the USSR from October 17, 1955 approved the standard forms of «security-lease agreements», «security obligations», the acts of technical inspection of monuments, «Open letters» for conducting archaeological excavations and others. These documents enabled the monitors to carry out systematic work on the maintenance, protection and preservation of cultural objects.

The active rulemaking process concerning the legal framework for the accounting and registration of cultural heritage objects allowed us to begin practical work on the accounting of monuments. In this regard, in accordance with the Decree of the Council of Ministers of the USSR from October 29, 1962 «On the regulation of the process of accounting, registration and protection of historical and architectural monuments of the USSR» created a special commission, which established a list of USSR architectural monuments. The Ministry of Culture of the USSR has also begun to actively work on identifying cultural heritage monuments that have not yet been included in the lists of sites. According to the Ministry of Culture's decree from December 19, 1962, the work was carried out by the employees of republican and regional history and local history museums. They were responsible for studying the immovable cultural monuments and preparing directories and reference materials about them; carrying out scientific certification of objects; identifying undiscovered cultural monuments, to carrying out their scientific description and informing the regional departments of culture and the Ministry of Culture of the USSR; promoting landmarks to the public; checking the status of protection and preservation of monuments, etc. [7, p. 412–413]. In fact, the museum staff had to provide all kinds of assistance to regional cultural administrations and to cooperate with community activists in protecting cultural heritage.

Based on the above decisions, a List of architectural monuments of the USSR was established and should be taken under state protection. The list include 864 landmarks, grouped by territory (Kyiv and oblasts) and arranged alphabetically by city. This List was approved by the Resolution of the Council of Ministers of the USSR from August 24, 1963 «On the regulation of accounting and protection of architectural monuments in the Ukrainian SSR» [8]. By this Decree, the executive committees of the local councils, together with the State Committee for construction of the Republic, undertook to ensure the preservation of monuments in accordance with the Regulation on the Protection of Cultural Monuments in the Territory of the Ukrainian SSR from December 30, 1948 [9].

The resolution of the USSR Council of Ministers from August 24, 1963 «On the regulation of the process of accounting and protection of architectural monuments in the Ukrainian SSR» also contained a number of provisions under which the State Committee for construction was entitled «to continue work on further identification of structures that have no special scientific, historical and artistic value, or that lost it as a result of destruction and remodeling, and submit proposals to the Council of Ministers of the USSR to exclude them from the list of protected monuments» [8]. Due to this rule, many prior actions of institutions and organizations have been legalized, and this have led to the destruction of many valuable cultural
sites. At the same time V.I. Akulenko drew attention to the fact that at the beginning of the 1960s a large number of objects were removed by the governmental decisions as those with no significant value from the lists of monuments of architecture of the Ukrainian SSR, including the castle of the XVII century in the village Biły Kamin in L'viv region, Klovsky palace and some buildings of the Vyubitsky monastery in Kiev, wooden monuments, in particular the Cossack church in Sednev in Chernihiv region, the Church of the Holy Spirit in 1502 with valuable frescoes of the XVII century in the village Potelych in L'viv region and others. [1, p. 186]. The relevant decisions gave rise to the uncontrolled destruction and rebuilding of these sites.

The resolution of the Council of Ministers of the USSR from August 24, 1963 recorded the consequences of anti-religious campaigns during the Khrușčev period, which resulted in the deprivation of religious buildings of religious communities. For example, the executive committees of the regional and Kyiv councils were obliged to use «religious buildings, which not used as prayer houses and other objects that are not considered as architectural monuments, mainly for the needs of socio-cultural and common institutions» [8]. The fact that these structures had considerable cultural value is proved by the norm of the Decree according to which the State Committee for construction of the USSR and the Ministry of Culture of the Republic should inspect and record in documents, photograph or sketch «outstanding ancient monumental paintings, sculptures, carvings, individual architectural monuments and their fragments that have been excluded from the list of architectural sites ... and to decide on the preservation of especially valuable works in museums and special storages» [8].

The above decisions and «deviations of the current legislation from previous legal positions», noted by V.I. Akulenko, in practice led to such significant losses of cultural monuments, as in 30s. Valuable architectural monuments were demolished: «the Refectory Church (13th c.) in Kiev, Trinity Cathedral (18th c.) in Hlukhiv, and the bell tower of the Pyatnytska Church (13th c.) in Chernihiv, etc.» [1, p. 187]. Thus, the Resolution of the USSR Council of Ministers from August 24, 1963 «On the regulation of the process of accounting and protection of architectural monuments in the Ukrainian SSR» and other decisions of the authorities, although containing important rules for the protection of monuments, were vague and legalized the status quo of already destroyed and damaged cultural heritage sites, or even led to many new destruction, especially of religious buildings.

Almost simultaneously, on October 10, 1963, the Order of the Minister of Culture of the USSR approved the Instruction on the Procedure for Registration and Certification of the Historical, Archeological Monuments, and Art in the Ukrainian SSR [7, p. 186–189]. The instruction was primarily intended to provide practical assistance to the security guards. In particular, it contained a detailed list of objects that had to be certified by one of the categories of monuments: history, archeology, arts. A separate section of the instruction contained the description of the passport of the object, which consisted of seven main parts: the name of the monument; the location of the monument; description of the monument; bibliographic information; preservation of the monument; guarding the monument; schematic plans for the site where the monument is located, security zones and measurements. Some sections included explanations regarding their completion, drafting a defective act or engaging specialists in case of its absence, which can determine the technical condition of the object and the estimated cost of repair; conservation and other types of works, etc. [7, p. 188–189].

The Instruction and other documents of the Ministry of Culture promoted the unification of accounting documents and created a clear system of consistent activity of regional cultural departments in the registration and certification of cultural objects.

According to the results of the USSR Ministry of Culture and the Academy of Sciences of the USSR accounting, a List of historical, archeological monuments and art of the republican significance was established, and approved by the USSR Council of Ministers from July 21, 1965 No. 711 [10]. The List included 115 monuments of art, 117 monuments of history and 142 monuments of archeology. All the sites were grouped by territory (regions and Kyiv).

In addition to the approval of the List of historical, archeological monuments and art of
the republican significance, the Decree of the USSR Council of Ministers from July 21, 1965 contained a number of instructions to enhance the conservation activities. The approved List was not considered to be final, but provided for its permanent updating, adding new objects that met the required criteria. To this end, the USSR Council of Ministers instructed the Republican Ministry of Culture and the Academy of Sciences, and the regional executive committees, to continue studying the historical, archeological monuments and art and, if necessary, submit proposals to the Government of the Republic concerning the amendments to the list of memorials [10]. Traditionally, the Resolution of the Council of Ministers of the USSR from July 21, 1965, had a nota bene that local councils should be protected and preserved in accordance with the Regulations on the Protection of Cultural Monuments in the Ukrainian SSR from December 30, 1948 [9].

The analyzed legal acts summarize the legislative-making activities of the of the Ukrainian SSR authorities in ensuring the accounting, protection, restoration and preservation of objects of cultural heritage. Due to the reconstruction of destroyed and damaged during the war buildings that had historical and cultural value, as well as the protection of those objects that were included in the lists of monuments of union and republican importance, it was possible to ensure the general preservation of cultural heritage. At the same time, the common practice of site protection agencies contributed to the identification of a number of problems that need to be solved at the state level by the adoption of relevant regulations.

Taking into account the reports of the site protection agencies and relevant institutions on the preservation of the cultural heritage, that included the most problematic issues, on February 20, 1967, the USSR Council of Ministers adopted the Decree «On the state and measures to further improvement of the protection and preservation of archeological, historical monuments and arts in the Ukrainian SSR» [11], in which was indicated the lack of protection of archeology monuments - the remains of ancient cities - Scythian Neapolis in Simferopol, Panticapaeum in Kerch, Crimea, Olbia in the Parutynie village, Mykolaiv region, Belgorod in the Belgorod village, Kyiv region, Zvenyhorod in Lviv region, etc. In addition, the need for urgent conservation and preservation of such architectural monuments as the castle of the fourteenth and fifteenth centuries in Lutsk, XV century fortress in the Belgorod-Dnestrovsky Odessa region, a fortress of the 13th–18th centuries in Khotyn, Chernivtsi region, architectural complexes of the fourteenth and eighteenth centuries former monasteries in Novhorod-Siverskyi and Gustynya village, Chernihiv region, etc. [11]. The republic government paid attention to the improper work of individual regions and cities, as well as state authorities, research and restoration institutes and workshops.

It should be noted that the decision of the USSR Council of Ministers from February 20, 1967 differed from the typical governmental acts, both in the complexity of the issues covered, in the outlined measures and tasks to the relevant bodies and organizations concerning solving the main problems. First of all, the measures developed were designed for 1967–1970. In addition to specific mandates to remedy the deficiencies listed in the resolution, there were several key areas for improving monumental work: protection of all the monuments included into the lists of monuments of national and national importance; continuation of inspection and accounting of these objects, carrying out repair and restoration works of those objects that are at risk of destruction; creation the Chernihiv State Historical and Architectural Reserve, and approval the initiative of local authorities to create museums of folk architecture in Kyiv, Pereyaslav-Khmelnitsky, Lviv and Uzhhorod; prosecution of the responsible for the destruction or damage of monuments, artistic and historical values, etc. [11]. It is noteworthy that the restoration and repair of the monuments provided for the certain expenses provided by the reserve fund of the USSR Council of Ministers, and the relevant authorities had to report directly to the Government of the Republic on the performance of all these measures. As a result, over the three-year period, a number of cultural problems have been solved, and a number of new reserves and museums to which cultural heritage sites have been transported from various parts of Ukraine were established and provided with adequate conservation and protection conditions.
At the same time, the adoption of separate acts on the protection of cultural heritage was provided not only by the Government of Soviet Ukraine and the USSR Ministry of Culture, but also by other institutions to which dealt with such issues. For example, on August 5, 1968, the USSR State Committee for construction approved the List of Ancient Cities, Towns and Villages of the Ukrainian SSR, that required the agreement of planning and construction projects with the bodies of cultural monuments [7, p. 300–335]. The list was compiled regarding the regions, indicating the locality and its address, date of foundation or first mention of the site, and a list of the main ancient structures. The criterion for including the settlements in the List was the presence of preserved ancient complexes of monuments of different categories: architecture, history, archeology, park art, etc. Due to this List and the subsequent coordination of the planning works and the type of building, the view of Ukrainian ancient settlements has been preserved to some extent.

The peculiarity of the development of the legislation on the sites protection of the second half of the twentieth century, especially in the 1960s – 1970s, was the activation of the Republic's participation in the activities of international organizations, in particular the UN and UNESCO. Consequently, the Convention on the Protection of Cultural Property (the Convention on the Protection of Cultural Property in the Event of the Armed Conflict, 1954, the Convention for the Protection of the World Cultural and Natural Heritage, 1972, etc.) adopted in the organizations were taken into account in the USSR and the Ukrainian SSR and influenced the development of special laws: the Law of the USSR on October 29, 1976 «On the Protection and Use of historical and cultural monuments» [12] and developed on its basis Ukrainian SSR Law from July 13, 1978 «On Protection and use of historical and cultural monuments» [13]. In particular, the Preamble to the Republican Law stated that «the USSR historical and cultural monuments are an integral part of the world cultural heritage, they prove the huge contribution of the peoples of our country to the development of world civilization».

Although the USSR Law «On Protection and use of historical and cultural monuments» [13] was developed on the basis of the Union, it had the Ukrainian features, in the use of terminology. As it was stated before, as a result of long discussions of the sites protectors, the Soviet term «пам'ятник» (monument) was replaced by the term «пам'ятка» (site), in the name of the law. By types of monuments the sites were divided into: historical monuments, archeological monuments, ancient settlements and architectural monuments, arts and documentary monuments. It also included the division of sites by categories: those of Union, republican and local importance.

It is noticeable that the Law still left the competence to protect the monuments for several state bodies. Thus, according to Art. 7 of the Law specially authorized state bodies responsible for the protection of historical and cultural monuments in the Ukrainian SSR were: Ministry of Culture of the Ukrainian SSR, State Committee for Construction of the Cabinet of Ministers of the Ukrainian SSR, the Main Archival Administration of the Council of the Cabinet of Ministers of the Ukrainian SSR and their other local bodies as well as state bodies that exercise these functions within the competence of the the USSR and the Ukrainian SSR legislation [13].

Among the innovations of the Law, the first is the definition of the concept of «monuments of history and culture» and their attribution not only for immovable monuments, but also for movable ones [13], according to the Convention for the Protection of the World Cultural and natural heritage in 1972. According to Art. 22 of the Law, it the need to spend incomes from the use of historical and cultural monuments stored on the special accounts of the state bodies of conservation, strictly on the protection, restoration, conservation, repair of monument was clearly stated. Thus, the cultural heritage authorities received their own funds which they could spend on conservation work without waiting for a long time for budgetary allocations.

An important innovation of the Union law and the Law of the Ukrainian SSR «On Protection and use of historical and cultural monuments» [13] was the introduction of areas of sites protection. According to Art. 29 of the Republican Law, in order to protect historical monuments, archeological monuments, ancient settlements and architectural monuments, arts and documentary monuments, protection
zones, zones with building regulations and landscape protection zones were established. Such zones were created by the executive committees of regional and state (cities of republican subordination) councils upon submission of the relevant state bodies of sites protection. The establishment of the zones for history and culture protection was important for the preservation of historical settlements and landscape, since the areas for the preservation of history and culture were included in the projects of settlements planning, construction and reconstruction of and the all the land construction and other activities within the zones, as well as economic activities were forbidden without the permission of the relevant bodies of sites protection. In addition, if the traffic along the routes passing through the protected historical and cultural sites threatened to the monuments, the traffic may be restricted or prohibited by decision of the executive committee of the relevant local council according to the Law [13].

Also a new USSR law «On Protection and use of historical and cultural monuments» was the introduction of the categories of newly discovered objects of historical, scientific, artistic or other cultural value in the Article 31 [13]. If previously potential sites proposed to be included in the lists of monuments became subjects to state protection only after having been included in one of the lists, then with the Law on Protection and Use of Historical and Cultural Monuments, the newly discovered objects, which are of historical, scientific, artistic or other cultural value, have been already protected at the stage of resolving the issue of taking them on the state account as historical and cultural monuments. These and other amendments to the Act have significantly improved the ability to protect and preserve cultural heritage, as well as to enhance the influence of state conservation agencies.

On September 16, 1982, a resolution of the USSR Council of Ministers approved the Regulations on the Protection and Use of Historical and Cultural Monuments. The norms were spread across the entire Soviet Union, including the Ukrainian SSR. In particular, with a view to improving the protection and use of monuments, the management of accounting, conservation, use, restoration and promotion of monuments (except for documentary ones) has been concentrated in the Ministry of Culture [14]. As a result, the USSR Ministry of Culture and the Republican Ministries were given more authority and were able to fully control the entire process of protecting and preserving monuments. The situation remained in force until the collapse of the USSR and the adoption of relevant norms in independent Ukraine.

In general, as N. I. Kuderskaya pointed out, the legislation on the protection of the cultural heritage during the Soviet period was formed on the basis of ideological motives, which were set in the normative documents of the Communist Party; the value and means of preserving or using the historical and cultural monuments depended largely on their conformity to Soviet ideals, which led to the loss or destruction of some of them [3, p. 25]. At the same time, in the second half of the 1980s there was a decrease in party and state pressure on cultural heritage bodies, which made it possible to resettle the priority of the protection and restoration of Soviet monuments and to pay more attention to ancient monuments. Conspicuous in this context are the decisions of the leaders of the Ukrainian Society for the Protection of Historic and Cultural Monuments to allocate funds on various cultural sites. Thus, in January 1987, the leaders of the Ukrainian Society for the Protection of Historical and Cultural Monuments made a decision to allocate 50 thousand rubles for the repair and restoration works in Uzhhorod castle, in March of the same year – 200 thousand rubles for the design and restoration of historical and cultural monuments of Kamenets-Podilskyi historical and cultural reserve, Khmelnytsky region; 150 thousand rubles for the repair and restoration of historical and architectural monuments in Chernihiv; 100 thousand rubles for the repair and restoration of the monument of architecture – the former Mgar monastery in Poltava region; 100 thousand rubles for the repair and restoration of the monument of architecture – the former Armenian Cathedral with a bell tower in Lviv; 100 thousand rubles for the repair and restoration a church inVladimir-Volynsky, Volyn region; 35 thousand rubles for the repair and restoration Farosian Church and the bell tower of St. John Chrysostom Church in Yalta Crimean region and many others. [15, p.166–169]. All the funds were allocated due to the UTOPI
Republican leaders on the basis of the decision of the UTOPIC presidium. Due to these decisions, made at the request of indifferent citizens and activists of UTOPIC, we managed to save a large number of monuments, which at the end of the twentieth century were ruined.

A separate area of law-making activity was the establishment of responsibility for violation of legislation in the field of cultural heritage protection. Soviet Law provided for administrative, civil and criminal punishments for violations of the law on the sites protection. In particular, according to the Decree of the Presidium of the USSR Verkhovna Rada on December 15, 1961 «On further limitation of the fines imposed in administrative order» fines as a measure of administrative punishment ... for violation of the rules of the sites protection... are under the exclusive jurisdiction of the Ukrainian SSR [16]. Article 7 of the Code of Administrative Offenses of the Ukrainian SSR from December 7, 1984 [17] (still in force) was included in Art. 92 «Violation of the requirements of the legislation on the cultural heritage protection», which provided for the imposition of fines in case of the requirements.

At the same time, the Civil Code of the Ukrainian SSR from July 18, 1963 included Art. 136 «Consequences of homeless retention of property of historical, artistic and other value», according to which, on condition of mismanagement of property of historical, artistic or other value for the society, the state organizations whose task was to protect the property, were obliged to warn the owner about the termination of the property mismanagement. If the owner did not comply with such requirements, the court could have exempted the property as a state-owned at the request of the respective organizations. At the same time, if necessary, a claim for exemption of such property could be made without warning [18].

On the other hand, according to Art. 207 of the Ukrainian SSR Criminal Code (1960) for the deliberate destruction, of cultural monuments or natural objects under the state protection a person should have been imprisoned for a term up to three years or correctional work for a term up to one year, or a fine as a rate of up to three hundred rubles [19]. By the further changes from January 12, 1983, the period of correctional work was extended from one to two years [20], which fixed the final version of Art. 207 of the Criminal Code of the Ukrainian SSR.

Conclusions. Soviet legislation on the protection of cultural heritage, as any sectoral legislation, was unified, and the republican special-purpose laws duplicated Union norms. The legislation of the Ukrainian SSR of the 1950s – 1980s concerning the cultural heritage protection was developed in accordance with the Union legislation, as well as the decrees and orders of the USSR Government. At the same time, both federal and republican legislation had basic international rules, including the provisions of the 1972 Convention concerning the Protection of World Cultural and Natural Heritage, signed by the Soviet Union. The special aspect of the the Ukrainian SSR legislation was the consideration of some national traditions, including terminological ones. This could be noticed in the name of the Law of the Ukrainian SSR from July 13, 1978 «On the Protection and Use of Monuments of History and Culture», in which instead of the term «памятник» (monument) in the Russian language and the term «монумент» was introduced more wide term «памятка» (site). In general, due to the consistent policy on conservation and extensive legislation, we have been able to preserve the destruction of monuments that remind the thousand-year history and culture of Ukraine.

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