

*Ihor Chernyak*

## THE LEGAL BASIS FOR PRESERVATION OF GARDEN AND PARK ART OBJECTS

*Lviv Polytechnic National University  
12, S. Bandery str., Lviv, 79013, Ukraine, cherniak.ihor@gmail.com*

*Received: December 05, 2016/ Revised: December 21, 2016 / Accepted: March 9, 2017*

© Chernyak I., 2016

**Abstract.** The given research consists in the analysis of legal regulations efficiency concerning issues of garden and park art sites with reference to nature protection laws as compared to national and international monuments protection norms.

**Key words:** garden and park arts, cultural heritage, natural reserve fund.

### 1. Introduction

Ukraine's cultural heritage is an integral part of world cultural values and part of the humanity's priceless and irreplaceable achievements, in general. Its losses, due to degeneration and ruining, lead to the degradation of the world's heritage.

The European integration principles are not limited to economic, organizational, legal or security issues. The full understanding of the role and the need for cultural and natural values preservation, as well as the material and spiritual heritage is indicative of evaluation of adaptation possibilities in the European community.

It is pertinent to note that today cultural and natural heritage sites suffer from a lack of proper support both from the state and local authorities, and not only from insufficient financing. The failure to realize their current roles and the future ones among a vast Ukrainian urban and rural population makes their protection and preservation impossible. The decision to put in dissonant color plastic windows instead of authentic wooden ones on the architectural monument façade, to construct a new multi-storey block building in the place of a historical villa or new residential buildings with faceless façades instead of a town historical skyline, results from a lack of self-identification with this building, city or country rather than from a lack of finances.

At the same time, however, preservation and the enhancement of cultural and natural values are declared to be one of the priorities for the national cultural policy. In accordance with international treaties, ratified by the Ukrainian Parliament, preservation of cultural and natural heritage is an international legal obligation of our state before the international community. The fulfilment of these obligations is not simple, though a necessary process for the incipience of a European nation.

The legal regulation for garden and park art sites (monuments) preservation and protection issues at the national level is directed by a significant number of legal acts. These are the Laws of Ukraine "On the Natural Environment Protection" (1991), "On the Natural Reserve Fund" (1992), "On the Herbal Environment" (1999), "On the All-state Program for the National Ecological Network Forming for 2000–2015" (2000), "On the Cultural Heritage Protection" (2000), "On the Ecological Network of Ukraine" (2004).

These laws contain serious contradictions of the legal organization of issues concerning creation, management and preservation of garden and park art sites. The Law of Ukraine "On the Cultural Heritage Protection" defines the Cabinet of Ministers of Ukraine together with the authorities of the cultural heritage sector, namely, the Ministry of Culture, regional and district state administrations, executive bodies of villages and towns as bodies responsible for state management of cultural issues. Other laws redirect garden and park art

sites under the responsibility of the central executive body in the area of environment protection management (Ministry of Ecology and Natural Resources of Ukraine), special units and ministerial bodies in regions, as well as special administrations at natural reserve funds objects. This kind of dualism in garden and park arts sites management leads to a situation where historical parks and alleys, created by outstanding figures and playing a significant role in historic landscapes of Ukrainian cities are not enlisted in the architectural monuments register and, as a result, are not protected by law.

## **2. Basic Theory**

The doctrinal principles of international law regarding cultural values protection during military actions trace their beginnings in Europe back to the 16 – 17 centuries. The first international law norms concerning regulations of cultural values area are found in particular articles of the Peace of Westphalia treaties (1648), 2nd Hague Convention with respect to the Laws and Customs of War on Land (1899), 9<sup>th</sup> Hague Convention as of 1907 etc.

However, until the second half of the 20<sup>th</sup> century, protection of cultural heritage in the international law was never reviewed as a separate issue. Only after World War II the United Nations Educational Scientific and Cultural Organization (UNESCO) started to carry out an active and purposeful activity on coordination and regulation of the international cooperation in this area. The foundation for this activity was built by UN General Assembly resolutions, which were confirmed by the Nurnberg military tribunals sentence regarding the recognition of cultural heritage crimes as crimes against humanity.

The legal base sources for protection of cultural heritage sites are, first of all, multilateral universal agreements accepted under UN protection. These are as follows: General Assembly resolutions, UNESCO conventions and recommendations, acts of intergovernmental and diplomatic conferences, documents of NGOs and conferences (in particular ICOMOS and ICCROM). The legal base of monuments protection on the European level is developed well enough thanks to the Council of Europe and the European Union together with their bodies containing a significant number of norms regarding the cultural heritage of European peoples.

The foundation of contemporary international law in the realm of monuments protection is the Convention on Protection of World Cultural and Natural Heritage of 1972, which combined two documents prepared by the International Council on Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN). The Convention contains a significant number of new regulations that were not inherent in other international law institutions at that period. Thus, a single complex approach towards management, preservation and protection of cultural and natural heritage sites was formed.

This approach, however, does not find an understanding, support and promotion in the national monument and nature protection area. To a great extent, this happens due to a lack of interdisciplinary communication and legal collisions in the systems of management, financing, research and monitoring of garden and park art sites.

### **The aim of the article:**

The aim of this research consists in the analysis of legal regulation effectiveness of issues of garden and park art sites preservation in comparison with the existing national and international legal norms.

## **2. Results and Discussion**

Garden and park art sites in Ukraine are regulated by law as elements of national ecologic network and the natural reserve fund as cultural heritage sites and scientific sites of national heritage. Therefore, tasks and methods of identification, registration, functioning and methods of protection differ.

The existing laws provide different approaches towards definition of identification criteria, identification of protection regimes, protection and use of garden and art sites. In one case, the natural reserve fund of Ukrainian sites is defined as “the areas of land and water, natural complexes and objects possessing special natural, scientific, esthetic, recreational and other values, picked out to protect the landscapes versatility, the genetic fund of animal and plant worlds, to support the general ecological balance and provide the background monitoring of natural environment”. [1] In another case, cultural heritage sites are defined as “... natural, natural anthropogenic or man-created sites disregarding their state of preservation, which have brought to our

times values from architectural, aesthetic, historical, architectural, art, scientific or artistic points of view and have preserved their authenticity". [2] Basing on these approaches, quite different objects with the same title are identified.

The differences deepen the task of legal regulation, as well. In the first case, "protection and effective use of natural reserve fund of Ukraine, recreation of its natural complexes and objects" is emphasized, in the second case, it is "the cultural heritage protection in order to preserve and use it ... in the social life, protection of the traditional character of the environment for the good of current and future generations".

The profile tasks and norms define the order of status granting, tasks and regimes of garden and park art sites use and their protection in different ways. The general order of sites inclusion in the natural and reserve fund is not defined by law, however, the task, the character, the functioning and the regime of the areas are defined by regulations developed in accordance with this law.

The Ministry of Nature affirmed by its Order No. 245 [3] the Guidelines as of 2005 on projects of organization and protection of the natural and biosphere reserves areas, natural complexes and objects of national natural and regional landscape parks. The project development procedures consist of six main stages. For national natural parks these are as follows:

- Data collecting;
- Definition of priorities and problems;
- Definition of park development strategy for a decade period;
- Five-year measures plan development;
- Preparation of the introductory part and the President of Ukraine decree on establishment of a park

and an approved order of Ministry of Nature, defining park regulations; reasoning of nature use within the borders of a park and reasoning for the acceptable ecological educational and scientific load on its natural complexes.

The law of Ukraine "On the Natural Reserve Fund of Ukraine" defines that monuments of garden and park art shall be the most prominent and valuable samples of park construction in order to protect and use them with aesthetic, educational, scientific, protection and recreational aims. Depending on their ecological and scientific value they can be of all-state or local weight.

Any kind of activity which is not related to their tasks and jeopardizes their protection shall be forbidden on the territory of garden and park art heritage sites. The excursions and mass recreation of residents shall be provided there, the plants shall be protected and looked after, including sanitary cutting, reconstruction and care for the identical trees and bushes planting instead of the withered ones, measures are used to prevent self-seeding, to preserve the compositions of trees, bushes, flowers and lawns. Zoning in accordance with the demands concerning botanic gardens shall be acceptable.

Maintenance and reconstruction of the monuments-parks of garden and park art are carried out according to the projects developed by specialized scientific and project institutions and are approved by bodies managing these parks upon confirmation of the following bodies:

Central executive authority in the area of natural environment protection (Ministry of Ecology and Natural Resources) concerning the monuments-parks of garden and park art of all-state status;

Central executive power body for natural environment protection in regions concerning monuments-parks of garden and park art of local status.

Owners and consumers of land plots, water and other natural objects which are declared to be monuments-parks of garden and park art, shall be obliged to provide protection and preservation regime.

Monuments-parks of garden and park art as cultural heritage sites should be registered by inclusion in the National Register of Immovable Monuments of Ukraine under the categories of national and local status of monument. The order of category definition of a particular monument is approved by the Cabinet of Ministers resolution No. 1760 as of 27.12.2001 [4] which provides registry documents for each site proposed for inclusion in the Register. The documents consist of a registration card or passport, a brief historical note, an act of technical state and a current condition photo register. These registry documents are prepared by the authorized bodies of cultural heritage protection of the region, district state administrations, village and town councils. Along with the inclusion of the cultural heritage site in the Register, the legal status of the monument is acquired along with all its integral elements.

Monument protection regulations precisely define the criteria of directing a monument of garden and park art to the national or local protection categories. To receive a national status sites need to be of particular historical or cultural value, conform with the authenticity criterium, as well as to one of the following criteria:

- Had a significant influence on the development of culture, architecture, urban development and arts of the country;
- Have a direct link to the historical events, beliefs, life and activity of the famous personalities;
- Represent an artisan's masterpiece, became a stage creation of outstanding architects or other artisans;
- Were the creation of a vanished civilization or an artistic style.

The authenticity criterium means that the monument needs to preserve its shape and the material and technical structure and historic cultural layers to a significant extent.

The local value sites should conform with an authenticity criterium, as well as to one of the following:

- Had an influence on the development of culture, architecture, urban development of the location or region;
- Have a direct link to historical values, beliefs, life and activity of outstanding personalities in particular location or region;
- Are the creation of outstanding architects or artisans;
- Are a cultural heritage site of the national minority or a regional ethnic group.

The conformity of the garden and park art site to the criteria is evaluated by consultancy councils of cultural heritage protection areas of regional administrations along with scientific councils of institutions and organizations which act in the area of cultural heritage protection. The conclusion on the cultural heritage site to be enlisted into the Register is submitted within a 15-day period of evaluation and is sent to the Ministry of Culture on the day of signing. Upon reception of Ministry's conclusion, it is passed (with all the calculation documents) for evaluation to an expert commission created within the Ministry. The result of an expert commission is registered in the minutes which become a basis for enlisting a garden and park art object in the Register.

Thus, the issue of locating, registration and classification of value categories for garden and park art sites aiming to register them as monuments is more precise, substantiated, detailed and logic in the monument protection legislation. However, despite the existence of nature preservation norms, central or local executive authorities and local administrations responsible for cultural heritage protection have not detected or enlisted a single garden and park art site to the Register of national or local monuments.

The issue of comparison of legal mechanisms systems, providing registration, deterioration avoidance, protection preservation and maintenance of garden and park art sites in nature protection and monuments protection laws is becoming of importance in this context.

Sites of natural reserve fund are protected by signing of protection obligations whereas natural heritage sites are protected by protection agreements. The first ones are directed at keeping of the regime set, as well as of demands as to the use of area and preservation/protection of valuable natural complexes, the second ones regulate peculiarities of monument use regime, types and terms of conservation, repairs and other kinds of monument protection measures.

However, none of the documents or laws define precise protection site objects, which kinds of natural complexes or architectural elements are considered unique, valuable or background and by what means are reached authenticity, protection and development. The responsibility for violation is declarative, to a great extent, due to a lack of precise mechanisms for monitoring by the state and a lack of protection of natural components, as well as cultural heritage protection. In this context national nature protection laws are missing the detailed and precise laws of Ukraine, international conventions, charters and recommendations in the scope of cultural heritage protection, in particular the philosophy of identification and monitoring of historical gardens state, management, preservation, renovation and reconstruction of the mentioned in the Florence Charter (1981) [5] and European landscape convention sites (2000) [6].

### **3. Conclusion**

Historical gardens and parks should be recognized as objects of cultural heritage with the granting of respective status and protection. Preservation, protection and sustainable development of garden and park art sites are possible under the condition that the policy and principles of integrated urban development be shaped

as a central precondition for the European strategy for cultural heritage of humanity protection and sustainable development. The legal unification of approaches to definitions, registration, management and monitoring of the state and responsibility in the event of violation of monument protection demands concerning objects defined as “garden and park art site”, should be based on implementation of European and international documents in legislation of Ukraine.

## **References**

- [1] Law of Ukraine “On Natural Reserve Fund of Ukraine”, Verkhovna Rada of Ukraine Buletin, 1992, nr. 34, art. 502.
- [2] Law of Ukraine “On Cultural Heritage Protection”, Verkhovna Rada of Ukraine Buletin, 2000, nr. 39, art. 333.
- [3] On Affirmation of Regulations on Projects of Natural Reserve Fund of Ukraine Institutions Areas Organization, Order of Ministry of Natural Environment Protection of Ukraine as of 6.06.2005, nr. 245. <http://zakon4.rada.gov.ua/laws/show/z0829-05>
- [4] The order for monuments categories definition for enlisting of cultural heritage objects into the State Register of Immovable Monuments of Ukraine, Directive of Cabinet of Ministers as of 27.12.2001 nr. 1760 edited by Cabinet of Ministers Directive as of 14.09.2016 <http://zakon5.rada.gov.ua/laws/show/1760-2001>
- [5] The Florence Charter on Historic Gardens (Florence Charter, ICOMOS-IFLA, 1982)
- [6] European Landscape Convention. Ratified by a Law nr. 2831-IV (2831-15) as of 07.09.2005, Verkhovna Rada of Ukraine Buletin, 2005, nr 51, art. 547

*Ігор Черняк*

### **ПРАВОВІ ЗАСАДИ ЗБЕРЕЖЕННЯ ОБ’ЄКТІВ САДОВО-ПАРКОВОГО МИСТЕЦТВА В УКРАЇНІ**

***Анотація.** Проведено аналіз ефективності правового регулювання питань збереження об’єктів садово-паркового мистецтва природоохоронним законодавством порівняно з національними та міжнародними пам’яткоохоронними нормами.*

***Ключові слова:** садово-паркове мистецтво, культурна спадщина, природно-заповідний фонд.*