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Features of the legislation of Azerbaijan Republic about protection of the monuments of history and a culture

Abstract: In article problems of definition of structure of historical and cultural heritage of the Azerbaijan Republic are considered. The author on the basis of research of scientific and standard sources states features of the legislation on protection of historical and cultural heritage, gives classification of monuments, formulates a conclusion about need of studying of legal aspects of protection of monuments of culture for education institutions.

Keywords: historical and cultural heritage; culture monuments; cultural values; CIS; legal protection.

The problem of the legal protection of the cultural heritage of the Republic of Azerbaijan virtually not disclosed in the juridical science. Publications on this theme are not much. Therefore, we consider it necessary to provide additional arguments in favor of the need for scientific research of concepts and composition of the cultural heritage since the monuments of history and culture are the national wealth of the Azerbaijani people. According to article 77 of the Constitution of Azerbaijan Republic, a protection of historical and cultural monuments is the responsibility of each citizen. The State guarantees a protection of historical and cultural monuments, provides establishing, operation and development of structures for the scientific study and propaganda, creating conditions for rational use of the monuments.

Currently, in Azerbaijan Republic are acted the laws of “On Culture” (1998) [10], “On the Protection of Monuments of History and Culture” (1998) [6], “On Museums” (2000) [12], “On Library librarianship” (1998), “On the basis Urban

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development” (2003), “On Architectural activity” (1998), “On the National archive Fund” (1999) [7], “On the Legal protection of expressions of Azerbaijani folklore” (2003), “Preservation and development of the Azerbaijani carpet art” [9] (2004).

In addition, Azerbaijan Republic ratified the following Conventions of the UNESCO: “On the Protection of Cultural Property in the Event of Armed Conflict” (2000), “On the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property” (1999), “On the Protection of the World Cultural and Natural Heritage” (1993), “On the Protection of intangible Cultural Heritage” (2007), the European Cultural Convention (1997) [2].

In Azerbaijan Republic, to the historical and cultural monuments are belonged the archaeological and architectural sites, ethnographic, numismatic, epigraphic, anthropological materials related to historical events and figures, buildings, memorials and items related to the religious beliefs of the people, values. Currently, in Azerbaijan, 6308 historical and cultural monuments, samples of decorative art are under the protection [3].

Monuments can be movable (mobile, as specified in the Law) and motionless (stationary). The concept of movable and immovable monuments is correlated with definitions of movable and immovable property with view of specificity of kinds of cultural values that generally accepted in the civil law. The inextricable links between the historic immovability and movable cultural values can be illustrated by the archaeological heritage. As long as an archaeological item is in the burial mound, it is considered an integral part of the monument. In result of archaeological excavation as soon as a subject is removed, it goes into the category movable and its fate is determined by scientific body.

In the most cases, immovable monuments being the archeological and architectural monuments are stored in locations of finding and creation. The main specific features of the legal regime of real estate is that its alienation and establishing a property rights occur in a specific order, which requires compliance with mandatory written notarized form and registration in the body excluding real estate. Thereby, it is provided the transparency of real property rights [8].

Immovable monuments are considered buildings, its ensembles and complexes are fully preserved in its original form so are in ruins or fragmentary condition, and also are parts of the later objects. A territory of an immovable monument is a plot of land directly occupied by this monument which associated to it historically and functionally. It is subject to the protection and use together with the monument as a single land and property complex.

Movable monuments are preserved in the museums, archives, collections and exhibitions. Movable cultural properties are subjects of antiques.

In accordance with article 7 of the Law “On the Protection of Monuments of History and Culture” by the degree of cultural significance the monuments are divided into 1) the monuments of the world significance, 2) the monuments of the state significance, and 3) the monuments of the local significance. However, the legislation of Azerbaijan Republic does not contain the criteria in accordance of which the monuments belong to this or another category of cultural significance; but it is indicated that in accordance with international norms a division of the monuments by category of significance is implemented and approved by relevant executive authority on an advice of the National Academy of Sciences of Azerbaijan.

By the common accepted practice the monuments of the world importance are considered to be the objects that are included in the UNESCO World Cultural and Natural Heritage, which is formed by the UNESCO. There are two such monuments in Azerbaijan Republic: the fortress city of Baku with the Shirvanshahs Palace and Maiden Tower; Gobustan cultural landscape with the rock paintings. In addition, 10 sites have been offered by Azerbaijan Republic as the candidates for inclusion in the UNESCO World Cultural and Natural Heritage.

We are continuing the classification of the monuments.

Archeological monuments are those which are located under the ground the patterns of material culture connected with human activity, including the sites and dwelling of primitive man, ancient tombs, the systems of defense and strengthening, a place of pilgrimage, subjects of antiquities, monuments of religion, rock carvings and inscriptions on the stone surface, traces of ancient mines, tools, production kilns,

ancient roads, the remains of bridges, canals, reservoirs and underground drainage galleries, water pipes and sewers.

Architectural monuments are those which are well-preserved structures, architectural and construction buildings for different purposes, support facilities, engineering communications, monuments settlements (sites of ancient towns). To the architectural heritage are related the populated areas, the most of whose territory of which is occupied by the monuments and buildings of the architecture and historical and cultural craftsmanship, is divided into traditional neighborhoods, surrounded by fortress walls, with partly preserved network of streets and engineering communications, as well as gardens, parks, alleys, examples of art.

Newly created objects are also to be considered as architectural monuments due to its long-lived artistic, aesthetic, operational and functional, technical and constructive solutions; architectural buildings and structures of small architectural forms, monuments, obelisks, fountains, waterfalls, springs, pools, gazebos and other art objects, occupying a particular position on the territory.

Historical monuments are the values associated with history of society and the state, war and national liberation movement, scientific and technological development, the important historical events in the lives of people and also buildings, apartments, memorial sites, documents and objects related to the life of the state and military figures, Heroes of the Soviet Union, national heroes, outstanding scientists and artists.

Ethnographic monuments are considered to be the buildings and instruments of labor, items reflecting material, spiritual, ideological, artistic and economic life of the people.

Epigraphic monuments are ancient inscriptions made on the solid material - stone, metal, ceramics, etc.

Documentary monuments are the official acts of public authorities, ancient manuscripts and rare printed works, archives, including sound, photographic and cinematographic archives.

Monuments of art are those which have historical and aesthetic value of art, graphic designs, decorative and applied arts.

The Azerbaijani carpet as a result of intellectual activity is considered to be material and spiritual wealth of the people of Azerbaijan. As stated in the article 1 of the Law "On preservation and development of the Azerbaijani carpet art" from December 7, 2004 No. 799-IIG [9], the Azerbaijani carpet reflects the aesthetic outlook, artistic talent, originality and cultural identity of the people. The traditional skills of carpet weaving in Azerbaijan are concluded in the fact that the carpets are made manually. It is a family tradition, which passed on from generation to generation.

Adopted on May 17, 2012 by the Parliamentary Assembly of the States-members of the Commonwealth of Independent States a new edition of the model law No. 37-14 "On Cultural Heritage" introduces the concept of area of cultural heritage. For the Republic of Azerbaijan, territory of cultural heritage is considered to be an area of the monuments of history and culture, which is the land associated with them functionally, by architectural lay-out, engineering networks and initially defined boundaries of ownership. The territory of the monuments history and culture is their integral part, not subjecting to land fragmentation and alienation. It is prohibited construction of new facilities on territory of cultural heritage. The legal regime of economic activity within the boundaries of the land is also regulated by the law.

The norm corresponding to this provision is contained in the Land Code of Azerbaijan Republic. Thus, in accordance with article 29 of the Land Code to the lands of cultural and historical destination are belonged the areas of cultural and historical reserves, memorial parks, cemeteries, tombs, archaeological sites and rare geological formations. It is prohibited any activity on the lands of cultural and historical purpose, which contradicts to their intended purpose.

Consider the features of state records of the historical and cultural monuments. Immediately note that observance of the recording discipline is an essential element of public policy in sphere of protection and use of historical and cultural heritage.

In accordance with article 34 of the Law "On Culture" the record of the cultural values in Azerbaijan Republic is carried out in the State list of national cultural properties and the protection lists of cultural values of the territories. These lists contain information about the origin of cultural property to its owner, description of

the subject, cost and degree of protection. According to these data, an owner of the cultural values obtains a certificate.

Conducting the state list of national cultural property of the Republic of Azerbaijan represents a number consistently performed actions such as: state registration of property rights and other rights to cultural heritage, the record of quantitative and qualitative characteristics of the subjects of cultural heritage; conferment categories of values and value assessment of cultural heritage; systematization, storage, and update recording information, compiling the reports on the state of subjects of cultural heritage, ensuring with record data of the state bodies, public organizations, and other users.

These institutions are engaged with identification, registration and protection of cultural property in the public libraries, museums and archives, regardless of their subordination and forms of ownership. They are required to submit information to the appropriate executive authorities for inclusion in the lists of cultural values.

Assessment of value of cultural property, the degree of protection and the ability to export from the country are defined by the relevant executive power through expertise.

Procedure for registration of cultural property of the Republic of Azerbaijan in the State list of national cultural property and protection list of cultural property to the list is approved by the Resolution of the Cabinet of Ministers of August 12, 1999 No. 130 [11]. This procedure applies to all subjects, regardless of ownership, recognized by the cultural property as defined by the Law of Azerbaijan Republic “On culture”.

Initial registration of the cultural properties is carried out by the organizations to which are subordinated the cultural institutions. So, the State list of national cultural property of Azerbaijan Republic and protection list of cultural property contains information about the origin of the subject or object that is a cultural value, its owner, description, is given the cost and the degree of protection, under which the owner of the cultural value obtains a certificate. Under this, a price and the degree of protection of cultural property are set up through expertise by the Ministry of Culture and Tourism of Azerbaijan Republic.

These institutions are engaged with identification, registration and protection of cultural property in the public libraries, museums and archives, regardless of their subordination and forms of ownership. For the inclusion of any cultural property in the State list of national cultural property and protection list of cultural property above stated institutions are required to send a message to the Ministry of Culture and Tourism of Azerbaijan Republic. For the inclusion of any cultural property in the State list of national cultural property and protection list of cultural property above stated institutions are required to send a message to the Ministry of Culture and Tourism of Azerbaijan Republic.

As defined in the Law of Azerbaijan Republic “On culture” in the State list of national cultural property of the Republic of Azerbaijan is included rare cultural values of national and international importance.

Items that included at the State List of national cultural property removed from the civil circulation and it is prohibited their destroying, transportation to another location, copy, and restoring without permission of the Cabinet of Ministers.

In order to protect the most important cultural values the Ministry of Culture and Tourism of the Azerbaijan Republic compiles guarding list of cultural property defined areas (cities, districts). In accordance with the Law of Azerbaijan Republic “On culture” in these guarding lists of cultural values are included the samples of folk crafts, works of art and culture, as well as items that are stored in museums, libraries and archives.

For one month after registration an owner or user obtains a certificate on including of cultural property in the guarding list or permission for its free use. Without such certificate or appropriate permission it is not allowed any deals related to cultural property.

The issue of including an object to the cultural property is solved by the Cabinet of Ministers through acceptance of appropriate decision on the basis of representations of the Ministry of Culture and Tourism.

In accordance with the Law of the Azerbaijan Republic “On culture”, for two months after submission of the documents, the Ministry of Culture and Tourism of

Azerbaijan Republic has to review an issue on including an item at the State list of cultural values.

On cultural objects that entered in the State list of national cultural property of the Republic of Azerbaijan is extended a special degree of protection.

Protection of the national cultural values. In Azerbaijan, the State guarantees the protection of the national cultural values, arrange for the return of taken out from country the national cultural values. In this case, it is not paid any customs and other duties from the return national cultural values.

In accordance with article 35 of the Law “On Culture” protection of cultural property has a preliminary, conservational, restoration, and special degree ones. Consider them.

Preliminary degree of protection is applied to objects of the natural landscape, archaeological and architectural monuments, works of monumental art before establishment of the historical significance and value of these objects. It is prohibited the demolition, destruction, division of the cultural property, join them to the new buildings, transfer to other places and change their appearance without the consent of relevant executive authorities.

Conservational degree of protection is applied to the cultural properties which are subject to be fully withdrawn from use or limited use under the control of the executive authorities. This degree of protection is applied to manuscripts, rare archival documents and books, nature reserves and other cultural values. It is also referred to cultural values, completely out of use, and values, the use of which is limited by the territory of the State Historical and Cultural Reserve “Icherisheher”. In addition, this category of protection is applied to the manuscripts, rare archival documents and books, nature reserves, etc.

Restoration degree is applied to cultural values, in need of restoration work to return them to their primary cultural significance. Before applying of the restoration degree of protection it can be established conservational degree of protection in respect of an object. Protection on the restoration category is applied to cultural values that need restoration work in order to return them to the primary cultural

destination. It can be established conservational category of protection of an object before applying to restoration category.

Special degree of protection is applied to the objects of national cultural heritage included in the State list of the national cultural heritage of Azerbaijan.

Relations between the owners or users of cultural property which having the guarding degree and the relevant executive authorities are determined with the guarding treaties. Cultural values that have no guarding level are used freely. The degrees of protection of cultural values do not apply to works of the author during his lifetime and for thirty years after his death.

Protection of national cultural values is provided only after the registration of the property in the State List of the national culture of Azerbaijan and the guarding list of cultural values. Protection of cultural property is carried out in accordance with the category of protection (preliminary, conservational, restoration and special).

Before determination their historical significance and the cost to the objects of the natural landscape, archeology, architecture and monumental works of art are applied *preliminary protection category*.

Legislation of Azerbaijan prohibits: demolition of the monument, transfer a monument to another location, changing of appearance of the monument. Is not permitted to make copies and use them for tourism, advertising and excursions without the consent of an owner or user of the national cultural values. It is also prohibited to destroy, change an appearance, transfer of the immovable cultural properties, which are included in the State list of the property of the national culture of Azerbaijan Republic. In accordance with the procedure stipulated by the legislation (with the resolution of the Cabinet of Ministers), in special cases the monuments can be moved to another location.

Due to the risk of destruction in case of state emergency, theft or damage, with decision of the President of Azerbaijan Republic the movable monuments can be temporarily transferred to the safe areas.

Responsibility for violation of the legislation on the protection of historical and cultural monuments of Azerbaijan Republic. Persons who violate the

legislation of the Azerbaijan Republic on the protection of monuments bear criminal, administrative, disciplinary and civil liability.

Criminal liability is established in the following articles of the Criminal Code [1] (hereinafter - CC).

1. For violations of the norms of international humanitarian law during armed conflicts on the basis of an attack without military necessity on the objects which are not military target, clearly visible and distinguishable, including special protected of historical sites, art objects (article 116 of the Criminal Code).

Direct object is a set of social relations, ensuring a compliance of the norms of international humanitarian law. According to the construction of the objective side a composition of this crime is the formally material. The subjective side is an intentional form of guilt. Mandatory feature is a state of armed conflict.

2. For violation of the requirements for the use of expressions of folklore, if as a result of these acts is caused a considerable loss. The notion of “considerable loss” means the amount more than a thousand manats. Aggravating circumstances: the same act again, a group of persons by prior conspiracy or by an organized group (article 165-2 of the Criminal Code).

Direct object is the aggregate of social relations arising during the use of expressions of folklore. The objective aspect: the actions of violating the rule of use of expressions of folklore stipulated in law “On the Legal Protection of Expressions of Azerbaijani Folklore” dated May 16, 2003 as amended on May 17, 2011 [1]. The objective side of the crime is also characterized by the binding presence of a large amount of loss, the causal and effect link between the act and consequence.

The subjective side is the intentional form of guilt in the form of direct or indirect intent. Subject of crime is a common, i.e. sane individual who has reached the age of 16.

3. For the theft of items of the special value: the theft of items or documents having special historical, scientific, artistic or cultural value, regardless of the method of theft (Article 183.1 of the Criminal Code).

Aggravating circumstances: the same act a group of persons by prior conspiracy or by an organized group, committed repeatedly, which caused the destruction,

damage or destruction of objects or documents referred to in article 183.1 of the Criminal Code.

Direct object is relations in the field of property. The subject of the crime is the items, documents having special historical, scientific, artistic or cultural value.

The objective side of the crime is unlawful, selfishness, uncompensated seizure and transfer in their favor or benefit to other persons the items or documents having special historical, scientific, artistic or cultural value. A composition of a crime on construction is material. The crime is considered over from the time of actual seizure and transfer in their favor or benefit to other persons the items having a special value.

The subjective side is an intentional form of guilt in the form of direct intent. Mandatory feature of the subjective side is a self-serving purpose. Subject of crime is a sane individual who has reached the age of 16.

4. For the smuggling of cultural property, namely, movement across the customs border of the Azerbaijan Republic of items of cultural, historical or archaeological value, in respect of which established the relevant rules of movement across the customs border of Azerbaijan Republic (article 206.2 of the Criminal Code).

Aggravating circumstances: the same act more than once; a group of persons by prior agreement; an official using his official position; with the use of violence against the person, performing customs control; an organized group.

The object of the crime is public relations in the field of foreign economic activity.

The objective side is illegal movement across the customs border of Azerbaijan Republic items of cultural, historical or archaeological value in one of listed in the disposition of article 206.2 of the Criminal Code of ways: in addition to or in concealment from customs control, or with the fraudulent use of documents or means of customs identification, or is connected with non-declaration or false declaration.

The subjective side is characterized by intentional form of guilt in the form of direct intent [13]. Subject of crime is the total.

5. For failure to return to the territory of the Republic of Azerbaijan items of artistic, historical and archaeological heritage of the Republic of Azerbaijan and

foreign countries, taken out beyond, if the return is mandatory in accordance with the legislation of the Azerbaijan Republic (article 207 of the Criminal Code).

The object of the crime is public relations for the protection and use of historical and cultural monuments. The objective aspect is in action in the form of inaction. The person is aware that it is not fulfilling its obligation to return on time to the territory of the Republic of Azerbaijan taken out beyond objects of artistic, historical and archaeological heritage of the Republic of Azerbaijan and foreign countries and do not want to return them to the country.

Subject of crime is a person to whom is imposed with the relevant legal acts responsibility temporary export of the cultural values from Azerbaijan and return their in the country.

6. For willful destruction or damage of the monuments of history and culture that are protected by the state (article 246 of the Criminal Code).

This crime violates the relationship on the protection of cultural and historical heritage of Azerbaijan Republic. In according to the article 246 of the Criminal Code the subject of crime are the historical and cultural monuments that are protected by the state.

The objective side of the crime is to destroy or damage of the objects referred to in article 246 of the CC. Under destruction is understood the bringing of corresponding object in worthlessness, in such state under which it loses forever all its value and can not be used for other purposes. Damage is a significant change of the object or its parts, such as the removal of fragments. In case of damage the object can not be used for its intended purpose without recovery. Such damage must be visible and for non-specialists. In terms of the criminal law a monument of history or culture is not considered as damaged if on it is made inscriptions, drawings, painted parts, etc.

In accordance with article 246 of the Criminal Code, for qualification of the committed action does not matter a method of destruction or damage of monuments. It can be produced by chemical, mechanical, and other ways.

On the subjective side this crime is made with the direct intention: a guilty is aware that destroys or damages historical and cultural monuments that are protected

by the state, foresees the possibility of occurrence of its destruction or serious damage and wishes it. Careless commission of such acts excludes liability under this article of the Criminal Code.

The subject is any person reached 16 years of age.

In **conclusion**, we note that in the educational institutions of the Republic of Azerbaijan are not actually studied the legal aspects of the protection, use and restoration of the objects of historical and cultural heritage. A similar situation exists in other member states of the Commonwealth of Independent States.

Perhaps this is not quite right in terms of training of the future professionals for the protected monuments and law enforcement, local authorities.

Therefore, it is advisable to arrange in educational institutions teaching on various legal aspects of the protection, use and restoration of historical and cultural heritage [4].

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