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Russian Rules of Restoration. Obligatory or Recommendatory Document?

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ABSTRACT. The article analyzes the legal status of the regulations for restoration of the Russian objects of cultural heritage. The question at issue is whether such regulations are a binding or an advisory document.

Keywords: objects of a cultural heritage; history and culture objects; protection of objects of a cultural heritage; restoration norms and rules; The Ministry of Culture of the Russian Federation.

INTRODUCTION. The culture grows out of civilization activity. Some results of cultural activity are important for further development. They (historical and cultural heritage) should be kept. According to the Constitution of the Russian Federation, Article 44, preservation of historical and cultural heritage is a duty of every citizen.

The major legal act regulating relations in the field of protection of monuments is the Federal Law on Objects of the Cultural Heritage (Historical and Cultural Monuments) of the Peoples of the Russian Federation [1]. According to Article 45.4 of the Federal Law, work on preservation of an object of cultural heritage shall comply with the restoration standards and regulations approved by the federal body of protection of cultural heritage. Construction Standards and Regulations are applied to work on preservation of an object of cultural heritage only in the cases compliant with the goal of preservation of the object of cultural heritage.

So, the federal legislation has established:

First, a standard of a necessity to approve the restoration regulations.

Second, a standard of the priority of the monument protection legislation over the town-planning legislation and the technical regulation legislation.

The town-planning Code of the Russian Federation, Article 36.4 explicitly specifies that the town-planning regulations do not cover the land parcels lying within the areas of objects of cultural heritage. The decision on their maintenance, parameters of restoration, preservation, reconstruction, redecoration and adaptation are made in the order established by the legislation of the Russian Federation on protection of objects of cultural heritage [2].

According to the Federal Law on Technical Regulation, Article 1.1, the law regulates the relations arising out of development, adoption, application and execution of obligatory requirements to the products or processes of designing (including research), manufacture, construction, installation, adjustment, operation, storage, transportation, sale and recycling connected with them [3]. The law specified does not mention preservation of objects of the cultural heritage (preservation, restoration or adaptation to the needs of today). Mentioning of construction cannot have broad interpretation and include the issues of restoration as the Federal Law on Objects of the Cultural Heritage (Historical and Cultural Monuments) of the Peoples of the Russian Federation, Article 35.2 bans construction works, fatigue duties etc. in the area of the monument [1].

According to the Federal Law on Objects of the Cultural Heritage (Historical and Cultural Monuments) of the Peoples of the Russian Federation, Article 9, the federal bodies of state power in the field of preservation, operation, popularization and state protection of objects of the cultural heritage are authorized to establish the general principles of maintenance and preservation of objects of the cultural heritage, construction, redecoration and other works in the areas of objects

of the cultural heritage and in the areas of their protection; provide research and methodology in the field of preservation and operation of objects of the cultural heritage; establish the fundamentals of research and methodological maintenance in the field of state protection and popularization of objects of the cultural heritage etc.

To meet the requirement of the federal legislation, the Government of the Russian Federation has been authorized as the federal body of protection of monuments. In compliance with the Provision on this Ministry, the latter is authorized to establish universally binding standards on protection of historical and cultural monuments [4]. In particular, Article 5.2.22 explicitly specifies that the Ministry of Culture of the Russian Federation independently issues restoration standards and regulations on the basis and in pursuance of the Constitution of the Russian Federation, federal constitutional laws, federal laws, acts issued by the President of the Russian Federation and the Government of the Russian Federation.

It follows from the above that restoration standards and regulations are:

First, normative legal acts of a universally binding nature.

Second, approved / published by the Ministry of Culture of the Russian Federation.

In 1994, the Ministry of Culture of the Russian Federation attempted to approve restoration standards and regulations as universally binding [5]. However, they only functioned for 10 years and were cancelled in 2004 [6]. At present, the Ministry of Culture of the Russian Federation has circularized a recommendation to apply a set of restoration rules referred to as the Recommendations on Research, Exploration, Design and Production Work Aimed at Preservation of Objects of the Cultural Heritage (Historical and Cultural Monuments) of the Peoples of the Russian Federation. Set of Restoration Rules-2007 (Russian: SRP-2007) Version 4 [7]. However, the Ministry of Culture always specifies in its letters that SRP-2007 is only recommended to be applied, i.e. it is recommendatory, but not universally binding. The recommendatory nature of SRP-2007 is also proved by the fact that it has not been approved by a regulatory legal act (an Order of the Ministry of Culture of the Russian Federation), but recommended with a circular letter that cannot introduce any rules of general effect.

It is common rule that public authorities and local governments have no right to make citizens or organizations meet standards and regulations that only have a recommendatory nature. Neither legal nor physical persons can be financially or administratively sanctioned for incompliance with the standards of a recommendatory nature.

The above shows that the Ministry of Culture of the Russian Federation has not fully carried out its mandate on development of a single obligatory policy in the field of preservation of historical and cultural monuments, regarding issuance of obligatory restoration standards and regulations [8]. If the standards and regulations for restoration constituted a document of advisory nature, it wouldn't be necessary to expressly authorize the Minister of Culture to accept such regulations.

Pursuant to the Regulations for Preparation of Regulatory Legal Acts of the Federal Executive Bodies as approved by the Government of the Russian Federation, the acts of binding (regulatory legal) effect shall refer to not only the decrees, orders and regulations issued by the federal state governmental bodies, but also to the rules, directives and provisions issued by the same bodies. Therefore, the document entitled "Standards and Regulations for Restoration" is a regulatory document that doesn't even require to be approved by any separate order or decree. Any letters of the ministries cannot be regulatory (binding) acts.

The foregoing points to the fact that the Ministry of Culture has to register the standards and regulations for restoration with the Ministry of Justice of the Russian Federation and to publish them officially. It will make it possible to use the said standards and regulations as a binding document.

The necessity for the restoration regulations to be registered as a regulatory legal act is dictated by the fact that the restoration procedure shall be regulated in many respects. For example, there shall be a clear description of the list of scientific and design documentation, the procedure for its preparation and approval, the arrangement of the working order and the procedure for selection of restoration techniques and materials. All these matters shall be applied by all restorers in the territory of the Russian Federation on a consistent and binding basis. That's the problem that can be resolved by virtue of the restoration regulations, being a binding document.

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**Российские правила реставрации.
Обязательный или рекомендательный документ?**

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Аннотация. В статье автор анализирует правовой статус правил реставрации объектов культурного наследия в России. Спорным является вопрос, являются ли эти правила обязательным или рекомендательным документом.

Ключевые слова: объекты культурного наследия; памятники истории и культуры; охрана объектов культурного наследия; реставрационные нормы и правила; Министерство культуры Российской Федерации.