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**THE CRIMINAL LAW PROTECTION
OF THE CULTURAL HERITAGE OBJECTS**

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The relevance of the research topic. In connection with the existing provisions of the international acts ratified by the Russian Federation in 2013, the Criminal Code of the Russian Federation was amended to incorporate the efforts to protect the cultural heritage objects by criminal law - new statutes, Articles 243(1) - 243(3) of the Criminal Code have been enacted and the disposition of the norm set forth in Art. 243 CC RF has been revised. These newly introduced statutory changes to the body of criminal law require scientific study and careful consideration. Prior to these changes, the terminology with respect to the field of safeguarding cultural heritage of the country used in the Criminal Code of the Russian Federation was excessively convoluted and muddled. To this day, it has been supplemented by a number of new terms set forth in Federal Law No. 73-FZ of 25.06.2002 on the "Objects of Cultural Heritage (Monuments of History and Culture) of the Peoples of the Russian Federation." However, the absence of universal legal terminology in the legislation leads to controversial legislative decisions, which causes the exigency for unification of the current system of concepts that apply to criminal law. When formulating new substantive elements of crimes, the legislators used inconsistent techniques of legal construction of the terms.

Official statistics show a clear imbalance between the number of registered crimes and convictions under Art. 243-243(3) of the Criminal Code of the Russian Federation. Of the registered crimes, only about 10% come to court. This, in particular, may indicate insufficient development of criminal liability issues under these articles, or defects in legislative techniques that impede law enforcement. Changes made to the criminal law in 2013 and 2014 did not change the statistics of judicial practice. From this we can conclude that these amendments did not meet the requirements of practice. When constructing new compositions, the legislator used the techniques of legal techniques, which caused various assessments in the literature.

All this testifies to the need for a comprehensive theoretical analysis of the statutory norms with regard to the mechanism of criminal law protection of the objects of cultural heritage, as well as development of the appropriate, scientifically sound recommendations for the improvement of a number of provisions of the Criminal Code of the Russian Federation for its effective practical application.

The state of scientific development of the research topic. To this moment, the issue of criminal law protection of the objects of cultural heritage in the Russian Federation is one of the least developed themes of study. In the context of

the recent enactments of the revised criminal statutes of the Criminal Code of the Russian Federation governing the sphere of cultural heritage, the main body of developments on the topic is related to the legislative provisions of past years and is dedicated to the criminal law protection of cultural assets of value.

In the Soviet period, this topic was researched and developed by legal scholars such as M.M. Boguslavsky, M.V. Vasilyeva, I.Yu. Dyachenko, RA Sabitov, A.P. Sergeev and other researches.

The more recent works related to the period of the previous version of Art. 243 CC RF were prepared by E. Alexandrov, I.B. Afonin, O.V. Davletshina, Ya.S. Kalininskaya, E.V. Medvedev, T.R. Sabitov, A.V. Sumachev, A.S. Cherepashkin AS and others.

The problems of protection of cultural heritage in the period after the introduction of amendments to the Criminal Code of the Russian Federation in 2013 have been studied in the works of I.O. Anisimova, V.V. Baburina, N.M. Bogolyubova, E.I. Georgian, Yu.V. Nikolaeva, A.V. Sumatchev. However, these works do not examine in detail the new version of Art. 243 CC RF and the substantive elements of the offenses provided for in Art. 243(1) – 243(3) CC RF. The candidate's dissertation of O.M. Martyshva was the only academic work dedicated to the issues of criminal liability for destruction and damage of objects of cultural heritage and cultural assets, in which work the author delineated concepts characterizing the categories of cultural heritage, put forward theoretical provisions about the subject matter of crimes against objects of cultural heritage, considered the problems in applications of Art. 243 CC RF, studied the substantive elements of offences under Art. 243-243(3) CC RF, and distinguished substantive elements in similar crimes.

It is required to examine the changes introduced into the Criminal Code as the international legal basis for the protection of the cultural heritage objects as well as the system of new concepts associated with the cultural heritage, introduced in the Criminal Code.

The object and subject matter of the study. *The object* of the study is the public policy considerations arising in connection with the safeguarding cultural heritage objects by the criminal law.

The subject matter of the study can be identified by the following:

- the statutory norms of the current criminal legislation providing for responsibility for criminal acts against cultural heritage;

- the international law, civil law, administrative law, and norms of other branches of law that serve the public interest in the field of protection of cultural heritage objects;

- scientific works (articles, monographs, dissertations, abstracts of dissertations), which deal with the protection of cultural heritage and cultural values;

- statistical data and judicial criminal-law practice with regard to the cases involving crimes committed against the cultural heritage.

The aim and objectives of the study. The *aim* of the dissertation paper is to develop scientifically substantiated recommendations for the improvement of the criminal-law statutory norms and practices on the basis of a comprehensive analysis of the issues of criminal law protection of cultural heritage objects on the grounds of public policy requirements for criminalization of the conduct interfering with the protection of objects of cultural heritage, the most significant and debatable issues of criminal liability with respect to the objects of cultural heritage.

This purpose is served by achieving the following objectives:

- formulation of the concept of "object of cultural heritage" on the basis of identifying its features, the relationship of the concept of "object of cultural heritage" with the concepts of "cultural heritage", "identified cultural heritage object", "archaeological heritage object", "archaeological object", "cultural layer", "cultural values" for the purpose of identifying and disclosing crimes against the cultural heritage;

- analysis of international legal acts regulating the protection of cultural heritage objects ratified by the Russian Federation for establishing international legal basis for amending national legislation and criminalizing conduct pursuant to Art. 243(1)1-243(3) CC RF and defining a mechanism for criminal law protection of the cultural heritage objects in the Russian Federation pursuant to Art. 243-243(3) CC RF;

- study of the criminal law characteristics of material elements of offenses with regard to the protection of cultural heritage objects;

- development of scientifically grounded recommendations on the changes to be introduced in the existing statutory norms of the criminal legislation that

regulate the protection of cultural heritage and on the improvement of their practical application;

Methodology and methods of research. As a methodological basis of the dissertation research, the general scientific and other scientific methods of perception and understanding are used, including: analysis, synthesis, formal legal method, comparative legal method, questionnaire surveys, method of legal statistics, etc.

The legal normative basis of the research consists of: the Constitution of the Russian Federation, the Criminal Code of the Russian Federation, the Civil Code of the Russian Federation, the Code of Administrative Offenses of the Russian Federation, the special legislation of the Russian Federation aimed at protecting the cultural heritage (Federal Law No. 73-FZ of 25.06.2002 "On objects of cultural heritage (monuments of history and culture) of the peoples of the Russian Federation," the "Fundamental legislation of the Russian Federation on culture, " the Decree of 09.10.1992 No. 3612-1, Federal Law No. 54-FZ of 26.05.1996 "On the Museum Fund of the Russian Federation and Museums in the Russian Federation," the Law of the Russian Federation No. 4804-1 of 15.04.1993 "On Export and Import of Cultural Property", etc.), by-laws, international law (the Convention on the Protection of the World Cultural and Natural Heritage, the European Convention on the Protection of the Archaeological Heritage, the European Convention on the Protection of the Architectural Heritage of Europe, etc.), the criminal legislation of foreign countries (the Criminal Codes of Spain, Belgium, and France.)

The theoretical base of the research consists of the works of nationally recognized and foreign scholars examining various issues of criminal law, administrative law, constitutional law, civil law, as well as philosophy and cultural studies.

The empirical basis of the study includes:

- statistics of the Russian Ministry of Internal Affairs – a cumulative criminal reporting information of the "Combined Report on Crime" for the periods 2010-2017, providing data on the number of registered and investigated criminal cases, as well as the number of indictments and judgments on crimes classified under Art. 243-243(3) of the Criminal Code of the Russian Federation;

- statistical data of the Judicial Department of the Supreme Court of the Russian Federation for 2010-2017 on the number of convictions in cases involving the crimes classified under Art. 243-243(3) CC RF, according to which: from 2010 to 2017, pursuant to Art. 243 CC RF, thirty-five (35) convictions were adjudicated, whereas for the period the new revisions of Art. 243 CC RF have been in effect since 2014 – thirteen (13) convictions; for the period from 2013 to 2017 under Art.243(2) CC RF – twenty one (21) convictions were pronounced, under Art. 243(1) and 243(3) CC RF – zero (“0”) convictions;

- 26 judgments of criminal prosecutions under Art. 243, 243(2) CC RF (comprising 37% of the total number of sentences) of the lower courts, appeals departments, and appeals courts in the jurisdictions of the Arkhangelsk, Vologda, Volgograd, Vladimir, Kaliningrad, Kostroma regions, as well as Krasnodar, Perm, Primorsky Kray, Pskov, Rostov regions, the Republic of Crimea, the Republic Tatarstan, Samara, Sakhalin, Tambov regions for the period of 2010-2017;

- 25 convictions in cases involving crimes under Art. 164 CC RF of the lower courts in the jurisdictions of the Altai Territory, the Vologda, Vladimir, Irkutsk regions, the Karachay-Cherkess Republic, the Krasnoyarsk Territory, as well as the Moscow, Nizhny Novgorod, Novosibirsk, Omsk, Rostov, Ryazan regions, the Republic of Bashkortostan, the Republic of Dagestan, the Republic of Tatarstan, Saratov, Smolensk regions for the period 2014-2017;

- 44 judicial decisions of the court proceedings pursuant to Part 1 of Art. 7.14.1 of the Code of Administrative Offenses of the Russian Federation, for the period 2015-2017 in the jurisdictions of the Belgorod, Vladimir, Kaliningrad, Kaluga regions, Krasnodar, Krasnoyarsk Territories, Nizhny Novgorod regions, the Perm Territory, the Republic of Bashkortostan, Tambov and Tomsk regions;

- judicial decisions of the Plenum of the Supreme Court of the Russian Federation: No. 29 of 27.12.2002 "On judicial practice in cases of theft, robbery and armed robbery"; from 26.01.2010 No. 1 "On the application by courts of the civil legislation regulating relations for obligations as a result of causing harm to the life or health of a citizen"; from 18.10.2012 № 21 "On the application by courts of the legislation on liability for violations in the field of environmental protection and natural resources management"; from 30.11.2017 No. 48 "On judicial practice with regard to cases of fraud, misappropriation, and embezzlement"; from November 30, 2017 No. 49 "On specific issues of the application of legislation on compensation for damage caused to the environment";

- review of judicial practice in the cases related to unauthorized construction (approved by the Presidium of the Supreme Court of the Russian Federation on March 19, 2014);

- results of surveys conducted by questioning and interviewing of 33 judges, prosecutors and investigators (Moscow, Moscow region), 14 lawyers, and 55 scientists.

The scientific novelty of the study is determined by the fact that this is one of the first monographic works dedicated to the criminal law protection of the objects of cultural heritage after the significant change in the body of law of the Criminal Code of the Russian Federation (articles 243-243(3) CC RF) was introduced in 2013 concerning the protection of cultural heritage objects in the light of the provisions of international legal acts, the Constitution of the Russian Federation, the Criminal Code of the Russian Federation, and other normative legal acts of the Russian Federation in accordance with public policy consideration and the corresponding positions of the sociohumanitarian sciences.

In addition, the results of the conducted research include:

- on the basis of the identified characteristics of the object of cultural heritage, its definition has been formulated and a classification of such objects is given achieving clarity in the definitions of crimes under Art. 243-243(3) CC RF;

- the scope of crimes included in the mechanism of criminal law protection of cultural heritage objects was determined and the degree of completeness of their protection was assessed;

- it proposed a new approach to the definition of the direct object of crimes that are committed with regard to the objects of cultural heritage, which has both theoretical and practical significance, since it allows to distinguish offenses with similar material elements from one another;

- proposals have been made as to the improvement of criminal legislation (Articles 243, 243(3) CC RF) to promote uniformity of law enforcement in the field of criminal law protection of objects of cultural heritage;

- recommendations on the application of criminal legislation in judicial and investigative practice have been developed.

As the **Dissertation presentation**, the following scientific statements, conclusions and recommendations are being submitted:

1. The core concept underlying the definition of and object of cultural heritage is the concept of *cultural heritage*, which is a collection of material and non-material objects of anthropogenic nature, created in the past and possessing both cultural and historical value. For the purposes of criminal law, the *object of cultural heritage* should be defined as a complex anthropogenic object of immovable property of cultural significance, which is entered in the Unified State Register of Cultural Heritage Objects of the Russian Federation and which is owned by the state, municipal government or a private owner.

2. The object of cultural heritage, as a specific expression of the general meaning of cultural heritage, has the following characteristics: its materiality, immovable nature, cultural value, anthropogenicity, conformity to the age accession criterion, a legally designated status of the object of cultural heritage.

For the purposes of criminal-law, the following features have legal significance:

- *the immovable nature* of the object of cultural heritage (and associated with it movable objects and archaeological objects until the moment of their inclusion into the Museum Fund of the Russian Federation) - this feature is the theoretical basis for distinguishing objects of crime specified in Art. 243 CC RF ("objects of cultural heritage" and "cultural values"), as well as for clarification on the differences of substantive elements of criminal conduct under Art. 243 CC RF and other substantive elements of similar laws with respect to protecting cultural heritage (Articles 164, 190, 226(1), 243, 243(2), 243(3) of the Criminal Code of the Russian Federation);

- *the anthropogenic character* of the object of cultural heritage - the theoretical basis for delineation of the subject matter of crimes, classified under Art. 243 and Art. 262 CC RF and thus for separating the objects of the crime against public morality and environmental crimes;

- *the cultural value* of the cultural heritage objects - a) is of fundamental importance as the basis for assigning the object to the status of an object of cultural heritage; b) quantitatively, it is the basis for classifying objects of cultural heritage according to the level of their cultural value for the differentiation of criminal penalties depending on the type of the object (Part 1 and Part 2 of Art. 243 CC RF);

- *the formal designation of the status* in the Unified State Register of Cultural Heritage Objects of the Russian Federation - is a practical basis for the

recognition by law-enforcement agencies of specific objects of crime for the proper qualification of conduct under Art. 243- 243(3) CC RF;

- *the nature of property law and the form of ownership* of the object of cultural heritage - the feature is taken into account when determining the subject of the crime under Art. 243(1) CC RF (an owner, a legal owner of the cultural heritage object.)

3. Criminal liability under Art. 243(1) CC RF is only applicable in the circumstances if the object is destroyed or damaged "on a large scale," which can be assessed or calculated on the basis of the cost of restoration work. For effective and uniformed enforcement, the clarifications of the highest court authority are required with respect to the procedure for calculating damages caused to the object of cultural heritage. This can be achieved by one of the following methods or a combination thereof: 1) by average market value of restoration works and materials used at the time the crime was committed; 2) by means of an expert assessment of the diminution value of the market price of the object or monument; 3) by means of an expert comparing assessment of the expenses actually incurred in restoring the monument and the fair market value of such works at the time of the commission of the crime.

4. Based on the literal interpretation of the current version of the statutory norm containing in Art. 243 CC RF, it can be concluded that to constitute a crime, the act can be committed either with intent or by negligence. Such a language creates an ambiguity, a defect of the legal construction, and as a consequence of equivocal interpretation, it leads to an unreasonable increase in the punishment for a general wrongdoer who has damaged a historical and cultural monument by negligence (in case of a negligent owner or other legal owner of the cultural heritage object), as opposed to the punishment of a willful conduct of an offender responsible under Art. 243(1) CC RF. This conclusion serves as a foundation for the proposal to limit the elements of the crime to the willful, intentional conduct and make it the determinative element of the crime under Art. 243 CC RF.

5. The substantive elements of the crime formulated in Art. 243 CC RF are material elements, since the terms "destruction" and "damage" within the framework of this statute characterize both an act of public endangerment and an act of endangerment consequence to the general public. The state of mind element constituting intent includes the offender's knowledge of the object of crime, the awareness of the results of the acts as to the specific features of the object of crime characterized as an object of cultural heritage.

6. As a matter of law, in the Russian Federation, the objects that are encompassed in the Unified State Register of Cultural Heritage Objects of the Russian Federation have been the only objects that are covered by the criminal law

protection, which fact substantially limits the government's jurisdiction preventing its power of criminal prosecution of individuals who committed crimes against foreign historical and cultural monuments including those of international significance. To overcome the legislative gap, it is proposed to include the objects of cultural heritage inscribed on the World Heritage List that are located outside the territory of the Russian Federation in the subject matter of the crime under Part 2 of Art. 243 CC RF.

7. The language describing the criminal liability under art. 243(3) CC RF contradicts the principle of uniformity in the construction of norms of law. In order to establish the unified language in legal construction of definitions in the Criminal Code of the Russian Federation in the field of cultural heritage protection, it is proposed to identify movable objects of special cultural value as "cultural values" and therefore introduce an appropriate clarification in the statute Art. 243(3) CC RF.

8. The following rules for identifying the criminal liability in respect to the cultural heritage objects are formulated:

- the state construction inspection is an integral part of the legal scheme to preserve monuments of cultural heritage, which emphasizes the importance of compliance with the requirements of building regulations. Accordingly, the violations of the requirements in question entails the criminal responsibility under Art. 243(1) CC RF;

- committers of the crime as provided in Art. 243(1) CC RF are: a) the owners and other legal owners of the cultural heritage objects and b) other persons involved in the conservation of cultural heritage sites enlisted in Federal Law No. 73-FZ of 25.06.2002 "On Cultural Heritage Objects (Monuments history and culture) of the peoples of the Russian Federation." For example, those individuals may include government officials, persons directly carrying out the conservation work, and persons supervising the execution of works;

- A crime under Art. 243(2) CC RF can be committed either intentionally or by negligence. In all cases, the individual committing the act must form a culpable state of mind to be aware of the attended circumstance of the existence of a cultural layer on the territory of the excavation. This fact is an important criterion for establishing the criminal nature of the acts in question, since it is essentially the only significant fact distinguishing the criminal offender from an individual who accidentally finds and seizes cultural asset from the place of occurrence. In the event that an individual was not aware of the existence of a cultural layer, the act must be qualified according to the rules of the factual mistake and therefore is not a subject to the criminal liability under the statute;

- the damage to the cultural layer - is a violation of its integrity, leading to a loss of the ability to obtain certain data contained in its composition. According to the statute, Art. 243(2) CC RF, the moment the crime is completed is the moment when the offender's act causes damage to the cultural layer without the need to specify the extent of such damage;

- for the definition of criminal liability under Part 2 of Art. 243(2) CC RF it does not matter whether or not there is a historical connection of the archaeological object with the object of cultural heritage from the territory of which it was seized;

- the moment of the completion of the crime under Art. 243(3) CC RF is the moment when the individual evades the transfer of the discovered cultural property to the state, which may be indicated by the expiration of the term set by the law for the transfer procedure, as well as by other factors indicative of the individual's intention to evade the transfer of items to the state, in particular, by entering into transactions on their alienation.

9. Proposals on editing the statutory language in the articles of the Criminal Code of the Russian Federation.

Article 243 of the Criminal Code of the Russian Federation should be amended as follows:

Article 243 CC RF: Destruction or damage to objects of cultural heritage (monuments of history and culture) of the peoples of the Russian Federation included in the unified state register of cultural heritage sites (monuments of history and culture) of the peoples of the Russian Federation, identified cultural heritage sites, natural complexes, taken under the protection of the state, or cultural property

1. *Intentionally* destroying or damaging objects of cultural heritage (monuments of history and culture) of the peoples of the Russian Federation included in the unified state register of cultural heritage sites (monuments of history and culture) of the peoples of the Russian Federation, identified cultural heritage sites, natural complexes, objects under protection state, or cultural values - shall be punished ...
2. The acts provided for in Part One of this article committed with respect to particularly valuable objects of the cultural heritage of the peoples of the Russian Federation, *objects of cultural heritage* included in the World Heritage List, historical and cultural reserves or reserve museums or with respect to archaeological heritage sites included in a single State register of objects of cultural heritage (monuments of history and culture) of the peoples of the Russian Federation, or identified objects of archaeological heritage -

shall be punished ... "

Article 243(3) of the Criminal Code of the Russian Federation should be worded as follows:

Article 243(3) CC RF: Evasion of the performer of earthworks, construction, land reclamation, economic or other works or archaeological field works carried out on the basis of permit (special permit) from the mandatory transfer to the state of items found to be of special cultural value found during such works, or cultural values on a large scale

1. Evasion of the executor of earthworks, construction, reclamation, management or other works or archaeological field works, works carried out on the basis of a permit (special permit), from the mandatory transfer to the state in accordance with the legislation of the Russian Federation of *cultural valuable assets* found in the performance of such works on a large scale - shall be punished ... "

Part 2 of the article should be left unchanged.

Theoretical and practical significance of the research.

The theoretical significance of the research is the development of a scientifically based system of categories of cultural heritage and the notion of "an object of cultural heritage"; the definition of the concept of the direct object of crimes provided for in Art. 243-243(3) CC RF based on the features of the cultural heritage object identified by the author; the definition of the mechanism of criminal law protection of cultural heritage object; the analysis of the substantive elements of the crimes under Art.243-243(3) CC RF, of the rules of classification and legal interpretation; the identification of inconsistencies in legal terminology, and the development of proposals for improving the law.

The main conclusions and proposals contained in this dissertation work can be used in the course of subsequent studies of the criminal law protection of the objects of cultural heritage and related topics.

The practical significance of the dissertation can be identified as practical considerations or a practical guide for:

- 1) for law enforcement officials – with regard to the rules for the classification of crimes against objects of cultural heritage;
- 2) for legislators – with respect to the proposals for improving the statutory language of Art. 243 and 243(3) of the Criminal Code.

In addition, the materials of the dissertation research can be used in the preparation of relevant decisions of the Plenum of the Supreme Court of the

Russian Federation, in teaching criminal law of the Russian Federation, in conducting special courses within the framework of master's educational programs in the field of legal studies and other related branches of public education.

The validity and reliability of the research results are determined by the methodology of the work, the legal, normative and empirical bases, the theoretical basis, the complex nature of the methods used and the methods of scientific analysis of criminal law problems that meet the goals and objectives set forward, and the generalization of the materials of judicial practice, which in their totality have made it possible to ensure consistency of the initial scientific statements, intrinsic logic of the work, academic reasoning, discussion, conclusions and proposals. In addition, the necessary completeness, objectivity of the study, correctness of the author's interpretations have been achieved through the use of foreign legislation and international law on the issues of prevention of harm to the objects of cultural heritage.

Approbation of research results. The dissertation was prepared and discussed at the Department of Criminal Law and Criminalistics of the National Research University the "Higher School of Economics", where it was discussed and reviewed. The main statements of the dissertation work were used during the pedagogical practice and the seminars on criminal law; the statements were reported at the national and international conferences and other academic events such as the joint XVIth International Scientific and Practical Conference and the IXth International Scientific and Practical Conference "Kutafin Readings," the "National Development Strategy and the Problems of Russian Law Science" (Moscow, O. Kutafin University (MSUA), 2015), the XIIIth International Scientific and Practical Conference "Criminal Law: a Development Strategy for the 21st Century" (Moscow, O. Kutafin University (MSWU), 2016), the International Scientific Seminar "Russian Law and Globalization » (University of Helsinki, 2016), the XXIIth international scientific and practical conference on the topic of «Economics and Jurisprudence: theory and practice » (St. Petersburg, 2017).

Six scientific articles have been prepared and published on the topic of the dissertation, three of which are in the leading peer-reviewed scientific journals included by the Higher Attestation Commission of the Ministry of Education and Science of the Russian Federation in the list of publications designated to publishing the main scientific results of dissertation research papers intended for receiving the credentials of a candidate of doctoral science degree.

The structure of the dissertation is determined by the object, subject, aims and objectives of the study, it consists of an introduction, two chapters, containing seven paragraphs, conclusions, a list of references and attachments.

ABSTRACT

The **Introduction** substantiates the relevance of the topic of this dissertation in current society, highlights the state and degree of its scientific elaboration. It designates the object, the subject matter, the aims and objectives of the research paper, its theoretical framework, its normative and empirical basis. The Introduction sets forth the methodology and methods of the dissertation research, the characteristics of the scientific novelty of the results, their validity and reliability. It formulates the problem statements for the presentation, outlines its structure, the theoretical and practical purpose, provides the data on testing results of the dissertation research, and presents the dissertation in accordance with the passport of the scientific specialty.

Chapter I **“Objects of cultural heritage: the concept, characteristics, classification, and a social factor in the cultural heritage protection”** identifies the subject matter of the offenses against objects of cultural heritage (monuments of history and culture.) The chapter also substantiates the social significance of the cultural heritage protection, supported by international and legislative responsibilities assumed by the government of the Russian Federation. The Chapter consists of three sections.

Section 1 *“The concept of objects of cultural heritage”* considers the system of cultural heritage and outlines the scope of subject matter in criminal offenses against objects of cultural heritage.

Further, the section conducts a brief analysis regarding the scientific approaches to define the concept of cultural heritage, which is essential for understanding the definition of an object of cultural heritage; it presents certain characteristics of cultural heritage which are meaningful to the context of criminal law. It also introduces the author’s own definition for the concept of cultural heritage, as well as the author’s own approach to the understanding of its structure where the term of cultural heritage includes both immaterial and material objects.

Then, the section examines the concepts of objects of cultural heritage, associated movable objects, objects of archaeological heritage, elements and structures of an archaeological nature, historical and cultural reserves and museums, discovered objects of archaeological heritage, museum objects. The author presents a diagram illustrating the system of objects of cultural heritage and concludes about the existing comprehensive coverage of this system by the criminal law statutes in the territory of the Russian Federation.

The section considers the problem of absence of legal protection for the monuments of history and culture located beyond the borders of the Russian Federation, for the monuments which have been destroyed or damaged by either citizens of the Russian Federation. or noncitizens permanently residing in the Russian Federation. In order to fill in the void in the legislation, it is proposed that the body of Art.243 of the Criminal Code of the R.F. should include the objects of cultural heritage that are recorded in the List of the World Cultural Heritage, which would require a new amendment of Art. 243 of the Criminal Code.

Section 2 “*The characteristics and classification of the objects of cultural heritage*” is dedicated to a comprehensive examination of the characteristics of objects of cultural heritage, separating the term from related categories, included in the system of cultural heritage, it also focuses on the classification designated for the purposes of legal protection of the objects.

As a result of the analysis, the following characteristics of the object of cultural heritage are identified: materiality, immovable property, a cultural value, an anthropogenic element, an age-based criterion, and a legally determined status of an object of cultural heritage.

The characteristic of materiality has a meaning of legal significance in the context of criminal law for determination whether an object falls within the scope of categories in the system of cultural heritage that are subject to legal protection. At the present moment, there are no legal norms in the criminal law that provide for direct protection of immaterial cultural heritage.

The immovable property characteristic of the objects of cultural heritage is a determinative factor in distinguishing subject matters of different types of criminal offences against material cultural heritage. A conclusion is made as to the conditional nature of the real property element in the objects of cultural heritage: the conclusion is made based on the inclusion into the latter any related movable objects, as well as any movable property of archaeological nature as part of the object of archaeological heritage, in the territory of which they have been found prior to the moment of establishing their status of museum objects.

Further, the section conducts an analysis of correlation between the limits of criminal-law protection for the movable objects included in the object of cultural heritage and the separate movable objects in terms of comparing sanctions pursuant to Art.243 with sanctions pursuant to Part 2 of Art.164; a conclusion is made regarding the unsubstantiated disproportion of criminal responsibility for the above-mentioned offences.

The characteristic of a cultural value of the object is illustrated from two perspectives: first, from the viewpoint of value of the object for determining whether or not it belongs to the objects of cultural heritage, and accordingly for determining the exact mechanism of its legal protection by criminal law; second, from the viewpoint of the level of its cultural value whether or not it falls into one of the categories of the objects of cultural heritage (federal, regional, or municipal,) and whether it is assigned to a special status or is included in the World Heritage List, which circumstance may change the severity of the punishment for criminal acts.

The characteristic of an anthropogenic element is regarded as an important element in separating the subject matters of criminal offences under Art.243 and Art. 262 CC RF and therefore in separating the objects of crime against public morality and ecological crimes.

The age-based criterion is meaningful in a decision making procedure when a relevant government authority assigns a special status to an object of cultural heritage.

All the above-mentioned characteristics are integrated into a characteristic of formal designation for the status of the object of cultural heritage or of the discovered object of cultural heritage. From the moment of the formal designation of an object, the mechanism of criminal-law protection of monuments of history and culture become immediately effective.

The paper also examines classifications of the objects of cultural heritage according to the following factors: the statutory (according to a quantitative criterion,) according to the level of authenticity of the conveyed historical information, according to the accumulated historical information captured in the monument, according to the group designation, according to the arrangement of the heritage in the territory, and according to the factors of arrangement of the objects of cultural heritage in historical environment.

When classified for the purposes of criminal law, the following types of classification of the objects of cultural heritage can be identified:

- by composition: there are objects containing and not containing movable objects, which circumstance provides different mechanisms of protection;
- by the level of cultural significance: there are significant objects and particularly significant (an especially valuable object of cultural heritage of peoples of the Russian Federation, an object of cultural heritage of

peoples of the Russian Federation included in the World Heritage List, historic and cultural reserve, museum reserve, an object of archaeological heritage,) these factors are determinative in terms of the severity of criminal liability for the offenses against the monument;

- by the type of ownership: there are objects owned by federal, municipal, or private owner, which fact can be established for the purposes of identification of individuals responsible for violating rules of preservation and usage with respect to the objects of cultural heritage.

The section concludes that in the cases of damage or destruction of an object that have been classified as an object of cultural heritage, the enforcement of criminal responsibility proves to be inexpedient: such criminal responsibility will clearly contradict to the principle of economy of criminal repression.

Section 3 “*The principles of international law in the legal protection of the cultural heritage objects in the Russian Federation*” is designated for the research on the subject of international law related to the protection of material cultural heritage in the Russian Federation.

The analysis conducted in the section are focused on the aspect of implementing the term “object of cultural heritage” from the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage, as well as the aspect of its correlation to the term “monument of history and culture.” Despite possible ramifications of interchangeable usage of terms, for the original meaning of the term monument, the term object of cultural heritage at the present time can be used to substitute the term monument of history and culture, as the former is a legal term that signifies a particular expression describing cultural heritage in general, with its added characteristics of legal terminology.

The section compares the classification of the cultural heritage objects, introduced in the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage and the classification approved by the national legislation. The federal legislation has adopted the Convention’s approach to classify the objects of cultural heritage by types and developed a more comprehensive classification.

The analysis of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention) made it possible to clarify the distinction between the movable and immovable property of cultural heritage, as well as helps to identify the scope of the substance of criminal acts, determining the mechanics of the criminal law protection of the objects of cultural heritage: in

addition to Art. 243-243(3) CC RF, it also is governed by Art.356 CC RF. However, although the subject matter of a crime under Art. 356 CC RF, among other things, includes the national property, which can also include cultural heritage, the object of the above-noted substantive elements of the crime cannot be considered analogous to the object of substantive elements of the offenses that are being discussed in this dissertation research paper.

The ratification by the Russian Federation of the European Convention on the Protection of the Archaeological Heritage of 1992 serves as the basis for amending the specialized national legislation regulating the safeguarding of objects of cultural heritage. These changes entailed the need for criminal sanctions for violation of prohibitions and requirements introduced in the provisions of the federal law relating to the sphere of culture. In this regard, an analysis of the articles of the European Convention allows identifying the international legal basis for the criminalization of acts punishable under Art. 243(2)-243(3) CC RF.

Chapter II **“The substantive characteristics of the criminal offenses against objects of cultural heritage”** is dedicated to the analysis of the substantive elements of the crimes as part of the mechanism for criminal-law protection of the objects of cultural heritage.

Section 1 *“The characteristics of the objects of crimes committed against the objects of cultural heritage”* specifically examines the objects of crimes under Art. 243-243(3) CC RF.

The public morality, as a substantive element of a criminal act, is examined both from the viewpoint of criminal liability and from the standpoint of philosophy. The author proposes the definition of the term public morality as an object of a crime: formulated as the aggregate of values and norms that regulates human behavior accumulating sensory and practical collective social experience inherited through generations.

This definition leads to a theoretical conclusion that the immediate object of the criminal offenses in question is directly connected to its subject matter – namely, the objects of cultural heritage, identified objects of cultural heritage, and cultural values. The commonality of cultural heritage and public morality can be expressed as follows: first, both categories are part of the culture of mankind; secondly, the cultural heritage, being a concentrated expression of human experience, fulfills the same function as public morality - the transfer of cultural capital through time; thirdly, morality, as well as cultural heritage, is a category of

axiological property, aimed at capturing, preserving, creating and disseminating a particular kind of values.

Therefore, the violation of laws protecting the cultural heritage is closely related to the violations of the public morality in two aspects – first, as a violation of the morality norms, intended to protect cultural heritage, and second, as a destruction of the foundation of public morality which forms its own values in terms of historical, cultural and other contexts.

Based on the approach as described above, an understanding of the new interpretation of the direct object for each type of offenses against objects of cultural heritage has been developed.

Section 2 “*The criminal-law characteristics of the substance of the criminal offenses under Article 243 of the Criminal Code of the R. F.*” provides the analysis of the objective standard, the subjective standard and the object as the substantive elements of the offense punishable under Art.243 of the Criminal Code.

The substance of the offense in question should be considered material, as the causing destruction and damage to monuments, certainly and predictably results in the negative change in the subject matter of the offense and includes both the conduct and the consequence.

The fact of destruction of an object of cultural heritage should constitute the cessation of physical existence of the object; whereas the fact of damage – the partial loss of value.

The conducted analysis of the subjective standard leads to conclude that the above described criminal offense requires committing the crime with the element of fault, criminal intent (act intentionally and recklessly); which leads to conclude that this crime cannot be committed by negligence. The mental component of the intent within the criminal act under Art.243 CC RF is that the perpetrator is aware of: a) the existence of the morality norms in the sphere of spiritual and cultural life; b) the cultural value of the subject matter of the crime; c) the actual content and social assessment of the committed act – namely, his/her actions to destroy or damage the cultural heritage object.

In order to eliminate inconsistencies in the legal interpretation of the language in Art.243 CC RF, it is proposed to amend the statute by appropriate legislation and make the intentional form of conduct a single necessary element required under Art.243 CC RF and it is proposed accordingly to revise the language of the Art.243 CC RF.

Section 3 “*The criminal law characteristics of the substantive elements of the crime under Art.243(1) of the Criminal Code of the R.F.*” presents the analysis of the objective standard, the subjective standard, and the object as the substantive elements of the criminal offense under Art.243(1) CC RF.

The section examines the possibility of limiting the subject matter of the crime to the protected object of cultural heritage – which possesses the specific features of the object of cultural heritage that provided grounds for including the latter into the Unified State Register of the Cultural Heritage Objects (Monuments of History and Culture) of the Peoples of the Russian Federation which are subject to the mandatory preservation. It is concluded that the subject matter of the crime under Art.243(1) of the Criminal Code constitutes an object of cultural heritage in its entirety, since a subject designated for preservation, as a singled out object, existing apart from the object of cultural heritage, cannot be considered as a subject matter of the crime from the criminal law perspective.

The quantitative criterion for determining the harm caused by a crime is criticized; the thesis on the need for clarification by the highest court on the procedure for calculating the damage caused by one of the following methods or their combination is expressed: 1) the average market value of restoration works and materials spent at the time of the crime; 2) expert assessment of the diminution value of the market price of the monument at the time of the crime; 3) expert evaluation of the comparison of actually incurred expenses for the restoration of the monument to the market value of such works at the time of the commission of the crime.

The subject of the offense under Art. 243(1) CC RF is very specific – it is an individual, who undertakes the legal responsibilities to follow regulations for protection and usage of the objects of cultural heritage (an owner, other legal owner, other individuals). In addition, as the subject of the crime, some other individuals should be considered, such as individuals with the rights to manage the property in furtherance of a trust instrument, legal representatives of minors- heirs of the estate, individuals conducting restoration work, individuals developing project documentation, and an agency providing security service on the site of the object of cultural heritage.

The State Construction Inspection is an inherent part involved in the preservation of a cultural object in cases where an object of cultural heritage requires interference with its structural characteristics. The importance of following instructions and adhering to construction regulations emphasizes the role

of the inspection. Violations of such regulations may also trigger the criminal liability under Art. 243(1) CC RF.

Section 4 *“The criminal-law characteristics of the substance of the criminal offenses under Articles 243(2) and 243(3) CC RF”* examines the objective standard, the subjective standard and the subject, an offender as the substantive elements of the crime punishable under Art.243(2) and 243(3) CC RF.

The search for items that constitutes a criminal act punishable under Art.243(2) CC RF occurs when the actions are directed at finding, uncovering the objects at the sites of their depository. The removal of such items implies their physical extraction from the places of their occurrence.

Damage to the cultural layer means tampering with the integrity of the layer which results in the loss of a possibility to obtain certain information encapsulated in the cultural layer. The moment of completing the crime constitutes the moment of damage to the cultural layer without specifying the extent of such damage.

The crime can be committed either with intent or by negligence. In all cases, to form the required state of mind, the individual committing the crime must be aware of the presence of the cultural layer at an archaeological site. This fact is an important criterion for establishing the criminal conduct, since it essentially the single element by which the offender can be distinguished from any other individual who accidentally found and removed a cultural valuable object from the site of its occurrence.

In the case when an individual was not aware of the cultural layer, his/her actions must be qualified according to the rules of factual mistake, therefore, such actions cannot be criminally charged.

For the purposes of a crime qualifying under Part 2 Art.243(2) CC RF, it does not matter whether or not the archaeological object has any connection to the object of cultural heritage from the territory of which that object has been removed.

The definition of the subject matter of the crime punishable under Art.243(3) CC is inconsistent and therefore contradicts to the principle of the uniformity in the legal construction of law. For the purposes of unification of the terms in the Criminal Code of the R.F. with respect to the cultural heritage protection, it is proposed that movable objects that have special cultural value should be defined as “cultural assets of value” and accordingly, the appropriate clarifications should be made to the language of Art.243(3) CC RF.

The criminal act is complete at the moment of the refusal by an individual to transfer the discovered cultural valuables to the government, which fact can be established either by the expiration of the period of time afforded by the law for the transfer procedure or by other factors that would evidence the individual's intent to avoid transferring the discovered objects to the government, in particular, by entering into transactions for alienation of the cultural assets.

The subjective standard of the substance of the crime can be characterized by specific intent; the individual must be aware of the fact of cultural significance of the objects against which the criminal act is being committed.

The **Conclusion** summarizes the results of the dissertation research, formulates the main conclusions and proposals directed towards the improvements to the criminal law legislation and its practical application.

Attachment 1 introduces a questionnaire for investigators and judges.

Attachment 2 presents the results of previously conducted surveys.

Attachment 3 describes results of analysis of court decisions on the cases involving crimes pursuant to Art.243 CC RF for the period from 2010 to 2017.

Attachment 4 describes results of analysis of court decisions on the cases involving crimes pursuant to Art.243(2) CC RF for the period from 2010 to 2017.

Attachment 5 describes results of analysis of convictions on the cases involving crimes pursuant to Art.164 CC RF for the period from 2010 to 2017.

Attachment 6 contains judgments entered for administrative violations qualified pursuant to Part 1 Art.7.14.1 of the Code of Administrative Offenses of the R.F. based on examination of court decisions in cases involving violations under Part 1 Art.7.14.1 of the Code of Administrative Offenses for the period from 2015 to 2017.

Attachment 7 presents statistical data from the Edition of the Unified Report on Crimes for the period of 2010-2017 regarding the crimes under Art.243 CC RF and for the period of 2010-2017 regarding the crimes under Art.243-243(3) CC RF.

Attachment 8 presents results of comparison evaluation of substances of the criminal offenses pursuant to Art.243 CC RF and Part 2 Art.243(2) CC RF.

Attachment 9 represents a graphic illustration of the system of cultural heritage.

The main provisions of the dissertation research were published in publications recommended by the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation

1. Redchits M. A. To the question of the international legal framework of criminal law protection of cultural heritage in the Russian Federation // International Criminal Law and International Justice. 2017. No. 2. P. 30-32.
2. Redchits M. A. Criminal law protection of objects of cultural heritage // Law. Journal of the Higher School of Economics. 2016. No. 3. P. 50-58.
3. Pogosova Z. M., Redchits M. A., Sidorov V. N. Compensation of moral damage caused by the commission of a crime // Zakon. 2014. No. 4. P. 165-176.

Other publications

1. Joint XVI International Scientific and Practical Conference and IX International Scientific and Practical Conference "Kutafin Readings" "Strategy of National Development and Tasks of Russian Jurisprudence" (Moscow, O. Kutafin University (MGLA), 2015). Report: "The subject of the crime under Art. 243 of the Criminal Code.
2. XIII International Scientific and Practical Conference "Criminal Law: Development Strategy in the XXI Century" (Moscow, O. E. Kutafin University (MSLA), 2016). Report: "Protection of objects with signs of objects of cultural heritage."
3. Collection of publications of the scientific journal "Globus" based on the materials of the XII international scientific-practical conference: Economics and jurisprudence: theory and practice "of St. Petersburg: a collection of articles. - S.-P .: Scientific journal "Globus", 2017. P. 37-42.