



Analysis of Bill 5655 (urban development "reform")

in terms of principles which are related to cultural heritage

For over a year, the media and civil organizations have criticized the draft of the law raised by Olena Shuliak (5655) the leader of the "Servant of the People" party. The President emphasized that he did not sign this initiative as it was his own personal decision. In late 2023, the Cabinet of Ministers published a resolution that duplicates the ideas of earlier criticized bill. It was criticized by the European Parliament and the European Commission.

Georgiy Mohylnyi, an expert from the civic initiative "Holka", analyzed this draft of a law from the point of cultural heritage. Cultural heritage is an element of national security, and the state must take steps to preserve it. The comprehensive analysis is available at the link ([a 92-page document](#) in Ukrainian). The brief conclusions with references to sections are the following:

Conclusions

Law No. 2851-IX significantly weakens the protection of cultural heritage in comparison to the existing imperfect legislation.

The law contradicts Articles 1, 8, and 54 of the Constitution of Ukraine, conflicts with the ideas and principles of the Anti-Corruption Strategy for 2021-2025 regarding construction in historical areas. Also it relies on information about the requirements for the protection of cultural heritage in state registers and cadastres. Although the necessary information is currently unavailable on relevant resources, and the deadlines for its inclusion are

unpredictable (Section 2 - and further numbering of sections and points in the overall analysis of the bill).

The construction control system (including construction monitoring, urban planning control, state urban planning supervision) is focused solely on stopping unauthorized construction. It does not provide for the cessation of violations of the requirements of the cultural heritage protection laws, even if these violations are stipulated in the project documentation for construction. Even if the state registration giving the right to construct has occurred with corresponding violations (Section 7).

Firstly, this drawback will lead to the de facto legalization of all construction violating the requirements of cultural heritage. Understanding that the permit was obtained through corrupt schemes before the Law No. 2851-IX came into force. Secondly, such an approach makes it necessary to create an ideal permitting system that ensures the impossibility of obtaining rights to construction violating the requirements for the protection of cultural heritage.

However, Law No. 2851-IX, in comparison to current legislation, simplifies obtaining the right to construct with violating the requirements of cultural heritage. It is shifting responsibility for decision-making from government officials to designers and experts chosen by the construction client as well. Also, it is minimizing cases requiring approval from cultural heritage protection authorities (Section 5).

At the same time, the responsibility system of violations does not provide a sufficient level of punishment for designers and experts and it is unable to effectively function as a deterrent (Section 9).

The procedure for obtaining rights to carry out preparatory and construction works are facing the significant problems deepened by the shortcomings of Law No. 2851-IX . This includes the automation of decision-making and the use of information from electronic systems (Section 3) and in the procedure for providing urban planning conditions and restrictions on land development (Section 4).

Additional risks for the preservation of cultural heritage are also created by the new procedure of accepting already built objects into operation. This allows the acceptance into operation of objects significantly different from

those provided for by approved project documentation, and permanent building amnesty for self-built objects, which can be constructed based on a construction passport, and objects of the CC1 responsibility class for agricultural purposes (Section 8).

The impact of Law No. 2851-IX on certain issues of cultural heritage protection significantly differs.

The proposed changes to the procedure for approving project documentation for new construction and reconstruction on the territory of a World Cultural Heritage site and its buffer zone contradict Ukraine's international obligations to the UNESCO World Heritage Committee. Also, it simplifies significantly the possibility of construction that may have a negative impact on World Cultural Heritage sites (Section 5.2.2).

There is no doubt that deviations against the approved project documentation for such construction are considered significant violations of the approved project documentation for construction. The object is considered unauthorized construction because of the stated above deviations and also under general grounds for violating urban planning documentation and the rules of land use and development. That essentially nullifies the entire purpose of the approval procedure (Section 7.1). The provided procedure for commissioning easily allows putting into operation objects built with deviations according to the approved project documentation by heritage protection authorities (Section 8.1).

General requirements for the restoration of cultural heritage sites remain essentially unchanged. However:

There are significant drawbacks to the automatic determination of the monument's status, which, in the absence of manual checks during the state registration of rights to preparatory or construction works. The following may lead to automatic state registration of rights to works that harm the monument or may lead to its "legitimate" destruction based on the "confirmed by the state" right (Section 3.2).

The possibility of "default approval" of scientific and project documentation for restoration is provided. It creates risks of obtaining the right

to works that may lead to the loss of authenticity or the object of protection, and consequently, the loss of the monument's status in the future (Section 5.2.3).

Especially during preparatory works (Section 6), the overall simplification of permitting procedures and deficiencies in the construction control system significantly facilitates the possibility of "unintentional" destruction or damage to the monument for subsequent deprivation of its relevant status for demolition and further development of the released land plot.

It is vital to understand the mechanism for stopping work and canceling the right to conduct them if violations of the usage regimes of the monument are detected during restoration, as laid down in the scientific and project documentation and approved due to an error or intentional violation by heritage protection authorities is removed. (Section 7).

Deviations from the agreed scientific and project documentation for restoration in the vast majority of cases do not fall under the signs of significant violations of the approved project documentation for construction. The existence of the following makes the object an unauthorized construction, essentially nullifying the entire purpose of the approval procedure (Section 7.1). The provided procedure for commissioning easily allows putting into operation objects "restored" with deviations from the approved scientific and project documentation for restoration by heritage protection authorities (Section 8.1).

Critical negative changes are anticipated in the regulation of work on newly discovered cultural heritage sites. Law No. 2851-IX establishes that on such cultural heritage sites, not restoration but reconstruction and major repairs should be carried out. Conducting work based on regular construction project documentation, not scientific and project documentation for restoration, is likely to lead to the loss of the recently discovered cultural heritage site's authenticity and subject of protection, resulting in a denial of inclusion in the State Register of Immovable Monuments of Ukraine and deprivation of protective status (Section 5.2.3). Other simplifications in permitting and controlling procedures significantly exacerbate this problem.

The most critical negative changes are expected in the preservation of the traditional character of the environment and compliance with the use regimes of territories of cultural heritage sites, historical and cultural reserves, historical

and cultural reserve territories, protection zones, protected archaeological territories, historical areas of settlements.

Law No. 2851-IX provides maximum simplification of obtaining the right to carry out preparatory and construction works with violations of the specified usage regimes (Section 5). And, at the same time, does not lead to stopping of construction work with such violations in case the construction client has the relevant right and complies with the approved project documentation for construction (Section 7).

This creates risks of uncontrolled demolition of historical buildings (significant and ordinary historical buildings) and the existence of a significant number of new disharmonious structures.



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