

# The impact of natural heritage protection on the principles of unfair competition on the example of the Russian Natural Reserve Shulgan-Tash

The verdict of the Arbitration Court of the Republic of Bashkortostan,  
Case No. A07-19495/19

The uniqueness and the obligation to protect cultural heritage objects exclude the possibility of competition among institutions established to protect them.

**Żaneta Gwardzińska**

University of Economics and Human Sciences in Warsaw

zanetagwardzinska@gmail.com

ORCID: 0000-0003-2055-7466

<https://doi.org/10.26881/gsp.2021.2.21>

## Commentary

The Shulgan-Tash Nature Reserve (Russian: заповедник Шульган-Таш) is a strict nature reserve (*zapovednik*) run by the Ministry of Natural Resources and the Environment of the Russian Federation. It is located on the western slopes of the southern Urals in the Republic of Bashkortostan in Russia. Some of the oldest caves to have been inhabited by humans (e.g., Kapova Cave) are located here, and 13 full-time practitioners of the ancient art of beekeeping wild bees (also known as *bortevikov*) are also here. In 2012, the reserve was included in the UNESCO Bashkir Ural Biosphere Reserve specifically to protect the burzyuan bee, which has been cultivated since ancient times by the local people of Bashkortostan. In the 1990s, development began on a museum and excursion complex near the reserve, and the local population began to have dealings with tourism.

The most valuable objects in the reserve are the rock paintings from the Paleolithic Age in Shulgan-Tash (Kapova) Cave that were discovered in 1959 by the zoologist A.V. Ryumin and are known as Abei-Batkan-Tash (Russian: Абей-Баткан-Таш – надпись-рисунок). Scientists have determined the paintings to be from 14,000 to 17,000 years old, and the discovery has become famous worldwide. According to Russian federal law, the Abei-Batkan-Tash is an archaeological monument listed in the

Unified State Register of Cultural Heritage Monuments of the Russian Federation (Russian: Единый Государственный Реестр Объектов Культурного Наследия) under the number 021640728350006, and it is a strictly protected federal history monument.<sup>1</sup> According to art. 4 of the Federal Law of 25 June 2002 N 73-FZ On objects of cultural heritage (historical and cultural monuments) of the nations of the Russian Federation,<sup>2</sup> monuments are defined as objects of cultural heritage of federal, regional, and local importance. They also have to be objects of historical, architectural, artistic, scientific, and memorial value of special importance to the history and culture of the Russian Federation. This makes the pre-historic rock paintings a monument within the meaning of Russian law.

However, the subject of this judgement is not the definition of a monument, but the possibility of reserving the name of a monument for promotional purposes of the institution. The case began in June 2019 when the Federal State Budgetary Institution of the Shulgan Tash State Biosphere Reserve filed a lawsuit in the Arbitration Court of the Republic of Bashkortostan against the State Budget Institution of the Republic of Bashkortostan.<sup>3</sup> The basis of the lawsuit was the federal institution's request to stop using the short name Shulgan-Tash in the name and documentation of the Bashkortostan institution. On 17 March 2020, the Arbitration Court of the Republic of Bashkortostan dismissed the lawsuit, stating that the defendant's actions did not violate the exclusive rights of the federal institution to the brand by the Republic of Bashkortostan institution. The judgment was appealed by the federal institution. On 12 August 2020, the 18th Arbitration Court of Appeal upheld the decision of the court of the first instance, which entered into force as required by law. As a result, the Shulgan-Tash Historical and Cultural Museum-Reserve, established in 2016, will retain its full name.

To date, no one has commented on the legal doctrine of the protection of the heritage in the abovementioned judgement. In my opinion, the judgment raises a key issue concerning the marketing of cultural institutions. Can proper names of historical objects be reserved by a budgetary unit? Raising awareness about heritage and popularizing heritage excludes the possibility of reserving its name to a particular entity. The name must be commonly known so that the average person is able to identify it with the proper place. Hence, the names of numerous institutions, companies, and enterprises are associated with a particular place in the case of historical buildings. The names of historical buildings are regarded as tourist products and have an undeniable effect on the environment of the monuments. It should be remembered that cultural tourism<sup>4</sup> began to develop in the 1990s, and in the 2000s it has become the main source of income for many inhabitants of small towns where monuments are located.

<sup>1</sup> <https://opendata.mkrf.ru/opendata/7705851331-egrkn/> (accessed: 1.11.2020).

<sup>2</sup> [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_37318/f33075ca7d257c05bb88b0909565de7ecf2755d7/](http://www.consultant.ru/document/cons_doc_LAW_37318/f33075ca7d257c05bb88b0909565de7ecf2755d7/), (accessed: 1.11.2020).

<sup>3</sup> <https://okn.bashkortostan.ru/presscenter/news/298224/> (accessed: 1.11.2020).

<sup>4</sup> Ł. Gawęł, *Szlaki dziedzictwa kulturowego. Teoria i praktyka zarządzania*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2011, pp. 66–68.

Many towns have developed because of the designation of cultural routes on which monuments are located. In Poland, thanks to EU programs, funds, and other subsidies, regions began to be promoted based on their tangible and intangible heritage. On the other hand, a major change occurred in the approach of managing heritage monuments, which is to avoid destroying them. Numerous local initiatives to protect them have arisen, and entrepreneurs have ceased treating them as obstacles to the implementation of their projects. This approach is not purely European, but global, while the problem of insufficient public funds for the protection of monuments is also global. This is also why cultural institutions obtain funds for their basic activities from sources other than subsidies from their founders.

In the Russian legal system, as well as in that in Poland, the majority of cultural institutions are public institutions financed by public funds. The struggle for adequate funds urges some institutions to find alternative financing, including income derived from the dissemination of knowledge in a given field, the commercialization of research results, and tourism.

Commenting on the judgment, which is the subject of this article, it should also be noted that the nature reserve and the museum are not in competition. According to art. 26 of the Federal Law on the Museum Fund of the Russian Federation and Museums in the Russian Federation of 5 May 1996 N 54-FZ,<sup>5</sup> "Museums in the Russian Federation are created in the form of institutions implementing the functions of cultural, educational, scientific, and non-commercial nature." The purpose of establishing a nature reserve is to protect natural heritage. In addition, museum-reserves (Музеи-заповедники),<sup>6</sup> i.e., museums, established in areas with interesting places related to reserves or historical and cultural complexes, can be established in Russia. Museums such as these are not nature reserves, and they are under the supervision of the Ministry of Culture of the Russian Federation (Министерство Культуры Российской Федерации). Consequently, they are independent of the Ministry of the Environment. Additionally, museum reserves can, in particular, provide excursion and information services, create tourism infrastructure, and conduct environmental protection activities.

This has become the grounds for the conflict with the authorities managing the nature reserve, which also provides tour services for tourists. In the opinion of the nature reserve authorities, there was potentially unfair competition between the two institutions, and, as a result, revenues from the excursions conducted by reserve employees were potentially lower. In this matter, one of the state budgetary institutions wanted to change its nature, but heritage protection is one of the state's own tasks that is subsidized by the state budget, therefore public institutions are not in competition.

---

<sup>5</sup> [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_10496/3c21587614a2bcdabac66819c51cc057d2d42ec5/](http://www.consultant.ru/document/cons_doc_LAW_10496/3c21587614a2bcdabac66819c51cc057d2d42ec5/), (accessed: 1.11.2020).

<sup>6</sup> Article 26(1) of the Federal Law on the Museum Fund of the Russian Federation and Museums in the Russian Federation of 5 May 1996 N 54-FZ.

They are not entrepreneurs so provisions regarding unfair competition do not apply to them.

In conclusion, it should be stated that using tools applied in the tourism trade is also an element of the heritage management process. Consequently, the name of historic buildings cannot be reserved solely as component names of institutions established to protect them. Unfair competition does not exist when cultural objects are promoted by two separate public institutions established to protect them and educate the public about them. Institutions of this type should cooperate to best perform their statutory tasks. Only if the management model adopted by directors of cultural institutions is based on the principle of interdisciplinary cooperation will the aims of tasks performed by them be fully implemented. Currently, directors should apply innovative, creative thinking to adapt to new realities, which is extremely difficult during the pandemic because everyday life is now online.

## Literature

Gaweł Ł., *Szlaki dziedzictwa kulturowego. Teoria i praktyka zarządzania*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2011.

## Summary

*Żaneta Gwardzińska*

### **The impact of natural heritage protection on the principles of unfair competition on the example of the Russian Natural Reserve Shulgan-Tash**

Issues of heritage protection are interdisciplinary and are not limited only to the legal protection of monuments. Often, the legal problems of heritage protection institutions are related to the current affairs of everyday life, such as labor law, contract enforcement, or public procurement. In the judgment commented on here, the court resolved the issue of unfair competition in terms of naming public institutions. Can the name of the cave be reserved for the nature reserve? Is the museum a competitive institution for the nature reserve? The author of this commentary on the judgment of the Arbitration Court of the Republic of Bashkortostan has attempted to answer these and many other questions.

**Keywords:** Shulgan-Tash, unfair competition, heritage protection, nature reserve, museum

## Streszczenie

*Żaneta Gwardzińska*

### **Wpływ ochrony dziedzictwa naturalnego na zasady nieuczciwej konkurencji na przykładzie rosyjskiego rezerwatu przyrody Shulgan-Tash**

Ochrona dziedzictwa kultury jest zagadnieniem interdyscyplinarnym i nie ogranicza się tylko do prawnej ochrony zabytków. Często problemy prawne instytucji ochrony dziedzictwa związane są z bieżącymi sprawami życia codziennego, takimi jak prawo pracy, egzekwowanie umów czy zamówienia publiczne. W komentowanym wyroku Sąd Arbitrażowy Republiki Baszkortostanu rozstrzygnął kwestię nieuczciwej konkurencji w zakresie nazewnictwa instytucji publicznych. Czy nazwę jaskini można zarezerwować dla rezerwatu przyrody? Czy muzeum może być instytucją konkurencyjną dla rezerwatu przyrody? W niniejszej glosie do przedmiotowego wyroku podjęto próbę odpowiedzi na te i wiele innych pytań badawczych.

**Słowa kluczowe:** Shulgan-Tash, nieuczciwa konkurencja, ochrona dziedzictwa, rezerwat przyrody, muzeum