

DOI: <https://doi.org/10.34069/AI/2022.56.08.28>

How to Cite:

Tarasiuk, Y., Samsin, I., Bliakharskyi, Y., Epel, O., & Pokhylenko, I. (2022). Administrative law tools regulating high-rise construction in historic city districts: Ukraine and Germany. *Amazonia Investiga*, 11(56), 291-304. <https://doi.org/10.34069/AI/2022.56.08.28>

## Administrative law tools regulating high-rise construction in historic city districts: Ukraine and Germany

### Інструменти адміністративного права, що регулюють висотне будівництво в історичних районах міста: Україна та Німеччина

Received: September 1, 2022

Accepted: October 3, 2022

Written by:

**Yurii Tarasiuk**<sup>116</sup><https://orcid.org/0000-0001-8616-7431>**Igor Samsin**<sup>117</sup><https://orcid.org/0000-0003-4118-8452>**Yaroslav Bliakharskyi**<sup>118</sup><https://orcid.org/0000-0003-3348-1683>**Oksana Epel**<sup>119</sup><https://orcid.org/0000-0002-4400-7808>**Iryna Pokhylenko**<sup>120</sup><https://orcid.org/0000-0001-5409-7408>

#### Abstract

Historical quarters in cities are a living embodiment of people's culture and their collective memory, which preserve their heritage and past achievements. Urban identity depends on meeting the current needs while preserving the past. At the same time, urbanization exercise pressure on most countries, therefore they require updating administrative law regulation tools capable of protecting the identity of the rich national heritage. The aim of the article was a comparative legal analysis of the realities and prospects of preservation of historical districts of cities in the context of the practice of administrative law regulation of Ukraine and the Federal Republic of Germany. The methods of comparative legal analysis and observation were the leading methodological tools. The research revealed specific physical, socio-economic, and socio-cultural factors of urbanization, which caused noticeable and significant changes in the features of the administrative law tools that regulate urban planning. It was established that

#### Анотація

Історичні квартали в містах є живим втіленням культури народу та його колективної пам'яті, які зберігають його спадщину та минулі досягнення. Міська ідентичність залежить від задоволення поточних потреб при збереженні минулого. Водночас урбанізація тисне на більшість країн, тому вони вимагають оновлення інструментів адміністративно-правового регулювання, здатних захистити ідентичність багатой національної спадщини. Метою статті був порівняльно-правовий аналіз реалій та перспектив збереження історичних районів міст у контексті практики адміністративно-правового регулювання України та ФРН. Провідними методичними засобами були методи порівняльно-правового аналізу та спостереження. Дослідження виявило специфічні фізичні, соціально-економічні та соціокультурні чинники урбанізації, які спричинили помітні та суттєві зміни в особливостях інструментів адміністративного права, що регулюють

<sup>116</sup> PhD of Law, Associate Professor of the Department of Law, Private Higher Educational Establishment University of Emerging Technologies, Kyiv, Ukraine.

<sup>117</sup> Doctor of Law, in Philology, Professor of the Department of Constitutional, Administrative and Financial Law, Khmelnytsky University of Management and Law, Khmelnytsky, Ukraine.

<sup>118</sup> PhD in Law, Senior Lecturer of Department of Labor, Land and Commercial Law, Faculty of Law, Leonid Yuzkov Khmelnytsky University of Management and Law, Khmelnytsky, Ukraine.

<sup>119</sup> Doctor of Law, Judge of Sixth Administrative Court of Appeal, Kyiv, Ukraine.

<sup>120</sup> PhD in Law, Associate Professor of Department of Political Sciences and Law, Faculty of Urban Studies and Spatial Planning, Kyiv National University of Construction and Architecture, Kyiv, Ukraine.

the widespread German concept providing that every planning act of a lower-level body must take into account certain mandatory provisions established by the acts of higher-level bodies is gradually being tested in Ukraine. It is substantiated that the armed aggression of the Russian Federation forces Ukraine to take further actions to build new safe real estate objects and preserving historically significant buildings that were damaged by war. In this context, the national administrative law tools that regulate urban planning in Ukraine will also be transformed. The vector of further scientific research will be a comparison of the practice of implementing administrative law tools that regulate urban planning in terms of post-war reconstruction in the selected states.

**Keywords:** urban planning, historical heritage, urban areas, urbanization, high-rise construction.

## Introduction

An appropriate participation, which determines the link between heritage and sustainability, is an integral part of international heritage regulation (Rosetti et al., 2022). Historic urban areas are part of the history and memory of the city, representatives of the style of the city and the main elements of the urban landscape, which gives them greater value. The types of urban interventions in historic districts vary depending on the situation in their urban structure, economic, social and environmental contexts. Urban regeneration is one of the important practices of urban intervention policy which deteriorates urban areas, with the aim of adapting their urban structure and bringing them into line with modern requirements (El-Basha, 2021). In this aspect, historical urban areas are key elements of protecting the genesis of the urban development and culture of the city. Preserving their safety involves not only planning, but also comprehensive efforts with the specific methods and policies for the safety of historic urban areas as their components (Bu et al., 2022).

In turn, rapid urbanization leads to shifting accents from the preservation of historical heritage in the city's buildings to the activation of developers and the construction of a large number of multi-story buildings to ensure the comfortable existence of citizens (Ignatenko, 2014, p. 116). High-rise buildings are an integral part of cities and will exist in the future despite

містобудування. Встановлено, що в Україні поступово апробується поширена німецька концепція, згідно з якою кожен акт планування органу нижчого рівня повинен враховувати певні обов'язкові положення, встановлені актами органів вищого рівня. Обґрунтовано, що збройна агресія Російської Федерації змушує Україну вживати подальших дій щодо будівництва нових безпечних об'єктів нерухомості та збереження пошкоджених війною історично значущих будівель. У цьому контексті трансформуються і національні адміністративно-правові інструменти, які регулюють містобудування в Україні. Вектором подальших наукових досліджень стане порівняння практики реалізації інструментів адміністративного права, що регулюють містобудування в умовах післявоєнної відбудови в обраних державах.

**Ключові слова:** містобудування, історична спадщина, міські території, урбанізація, висотне будівництво.

such reasons as changing social needs and rapid population growth.

The construction of new high-rise buildings in the historical district of cities significantly affects the traditional urban structure. Such buildings transform the existing infrastructure and transport systems, thus impacting their historical component, changing the city's horizon. From an aesthetic perspective, high-rise buildings mostly create contextual problems when located next to historical buildings. We can observe that local authorities are increasingly trying to find grounds for the demolition of old historical buildings in order to prepare land plots for the construction of modern buildings. In the 21st century, construction of an increasing number of innovative buildings can be expected in historic cities using advanced technologies (Makaklı & Özke 2017). Sustainable initiative methods should be used when designing the location of high-rise buildings, so that the construction is not considered as an undesirable manifestation of an extreme form of technological leap penetrating the existing historical environment (Baiz & Hoskara, 2022). Unique historical and cultural features of buildings are their heritage, which extends beyond the boundaries of the project itself to the surrounding area, and is mostly common property of the people (Foster, 2020). At the same time, high-rise buildings can be archaic and belong to cultural heritage. They can be former places of religious worship,

aristocratic residences, places of public gatherings, industrial facilities, early modern office buildings or military facilities.

In this context, the administrative law regulation itself is aimed at finding sustainable solutions for harmonizing the preservation of historical buildings and the construction of new ones. This regulation is designed at establishing relations between that public authorities, and determines the legal rights and obligations of the participants in the relevant regulated relations (Bortnyk & Zarosylo, 2022). The aim of public interest-oriented administrative management is supposed to mean as the requirement to take into account the relevant values and interests of all members of society and strive to respond to their needs and their views on policy goals in the best possible way (Coglianese, 2022). Legal regulation of administrative and legal relations is carried out by applying legal provisions. A set of tools developed for the implementation of the legal provisions regulating public law relations performs the role of a mechanism of administrative law regulation (Korostashova, 2019).

In this context, preservation of the historical and architectural state of cities, formation of a complex value perception of the authenticity of historical buildings, and the prevalence of territorial approaches to the preservation of urban monuments are of particular importance to executive authorities. The given vectors qualitatively transform both the approaches to the study of the historical background for appropriateness of construction of a certain type of buildings, as well as the content of the relevant administrative decisions.

In view of the foregoing, the aim of the article is a comparative legal analysis of the state and prospects of the administrative law regulation of high-rise construction in historical districts in Ukraine and Germany. The aim involved the following research objectives:

- 1) identify the major current problems of urban planning in the historical districts of cities in the territory of Ukraine and Germany;
- 2) analyse the impact of negative factors that can produce an impact on the destruction of historical buildings of cities;
- 3) propose reasonable administrative law solutions in order to find a balance of comfortable legal development in the states under research.

## Literature Review

The choice of the research topic correlates with the modern vectors of the theoretical research in different states. The dissertation of Malokhlib (2020) entitled *Legal Bases of Use of the Ground Areas for Housing Construction* became the main tool and background for the article. In the course of research, the scholar summarized the grounds for defining the concepts of building density and height of the buildings in the context of preserving the historical and cultural area. The work of El-Basha (2021) *Urban Interventions in Historic Districts as an Approach to Upgrade the Local Communities* also had an influence on the author's opinion on the researched topic. The scholar prepared the background for outlining the research vector of administrative law tools of regulating high-rise construction in the historical districts of cities.

In turn, the articles of Bortnyk and Zarosylo (2022) and Coglianese (2022) revealed the essence of the subject of administrative law regulation, as well as economic and social management in the relevant context for the author of this article. The achievements of Bu et al. (2022) and Makaklı and Özke (2017) regarding the impact of newly built high-rise buildings on historical urban landscapes were taken into account in the course of the research.

Special attention should be paid to the works of Foster (2020) on strategies for the adaptive reuse of cultural heritage buildings and Yasinsky (2018) on the administrative law mechanisms of reproduction of residential quarters in the central parts of small historical cities.

The work of Rosetti et al. (2022), which is used in the article, emphasize the importance of participation in the regulation of the historical districts of cities, as well as the link between heritage and sustainability. This work helped to identify the priority areas of relevant measures and problematic components.

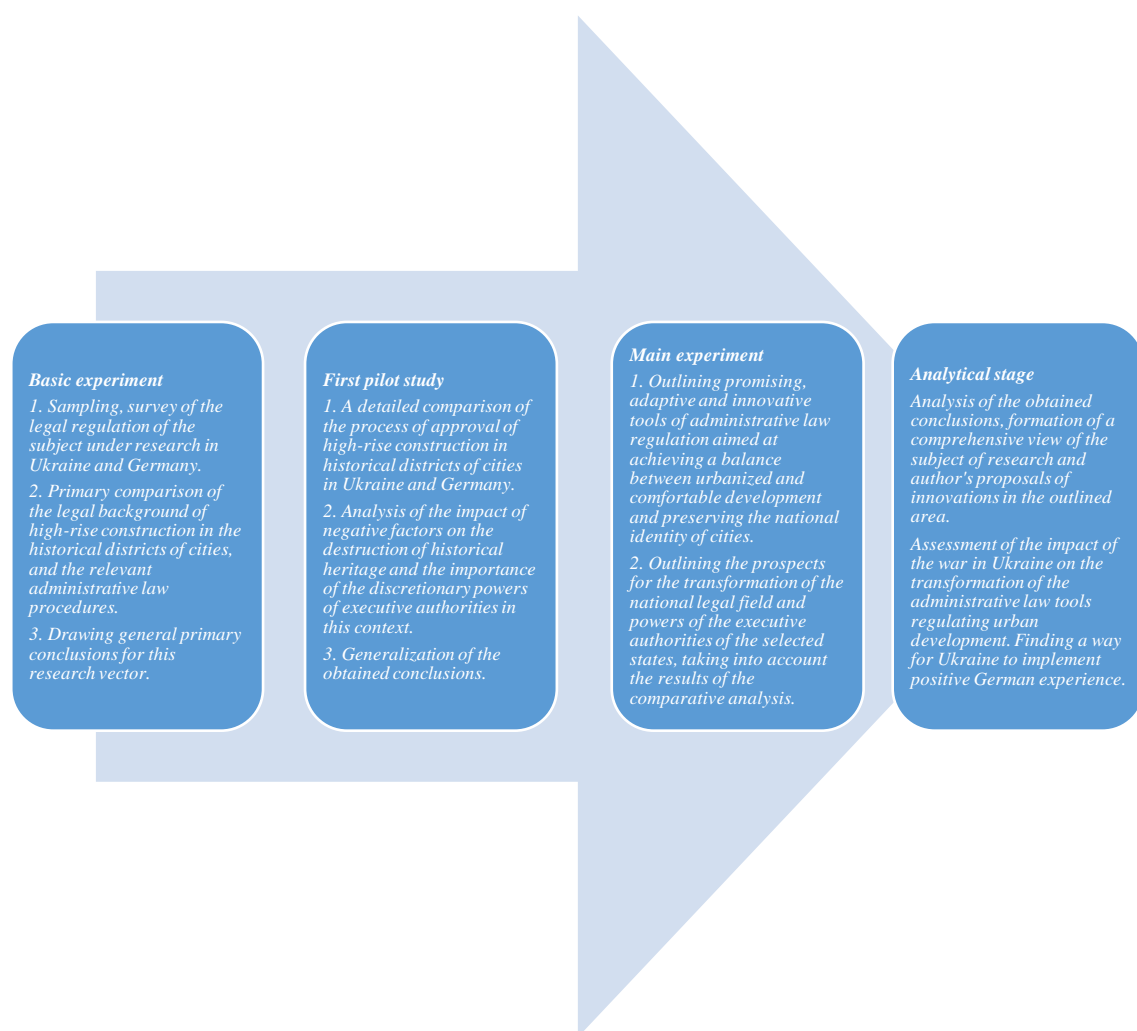
The author Al-Kodmany (2018) outlined such relevant vectors as innovativeness (novelty), objectivity, subjectivity, purposefulness, demand, implementation in practice, effectiveness of the potential of new digital technologies for the sustainability of the construction of high-rise buildings, which were taken into account in this research.

A number of theoretical and applied problems remain unsolved despite thorough theoretical studies on some aspects of the subject under

research. In particular, the essence and prospects of certain administrative law tools to regulate high-rise construction in historical areas of cities remain poorly studied. The vector of the research into the importance of preserving the historical and cultural heritage in the territory of the cities of Ukraine and Germany was chosen with due regard to the fundamental achievements of scholars.

## Methods

There were 34 sources surveyed in the course of this research. Special attention was paid to the regulatory acts and documents that introduce innovations in administrative law tools regulating high-rise construction in general, and in historical districts in particular. The research design is described in Figure 1.



**Figure 1.** The research design.

The methodological background of the research was a set of methods and techniques of research, which allowed to achieve the aim and fulfil the objectives, as well as ensured the reliability of the obtained results. The dialectical method formed the methodological background of author's research and was used as a basis for the general description of the administrative law tools regulating high-rise construction in the historical districts of cities, and well as for outlining vectors for their further improvement.

The main research method was the method of comparative law analysis, which allowed comparing the realities of the implementation of declared regulatory measures in the studied area in Ukraine and Germany. This method also helped to determine the prospects of the post-war restoration of the historical districts of the cities of Ukraine in the context of the practice of Germany after World War II.

The observation method allowed identifying adaptive vectors of transformation of the set of competencies of executive authorities in order to

ensure effective preservation of the historical and cultural heritage of cities. This method was also useful during the review of negative factors influencing the preservation of historically significant buildings, finding effective ways to eliminate them.

The formal dogmatic approach was applied for consideration of the provisions of the legislation of Ukraine and Germany, which regulate the legal relations under research. This method helped to determine the regularities of the emergence and development of the appropriate tools of administrative law regulation, as well as to consider the evolution of doctrinal provisions on the subject under research. The research involved a system-structural approach, which allowed identifying problems in the specifics of the implementation of the declared administrative law tools of regulation, determining their constituent elements, developing a system of standard versions for drawing general author's conclusions and providing proposals on reforming the relevant legislation of Ukraine and Germany.

The described methodological background allowed covering the chosen subject of the research and establishing a well-founded author's opinion on further prospects of improving the tools of administrative law regulation in order to effectively preserve the historical districts of cities.

## Results

According to the Washington Charter (ICOMOS, 1987), the protection of the historic urban centre of the city and other historic landscapes requires special attention to spatial planning and the relationship between the historic block and its surroundings. Protection of historical and urbanized areas of cities should be an integral component of the general understanding of the urban structure and the surrounding area. This requires a coordinated policy of economic, environmental, cultural and social development, with due regard for the historical districts of the city at all levels of planning, pays special attention to their social structure and cultural diversity (The Valletta Principles, 2011). In turn, historical and architectural areas are supposed to mean any group of buildings, structures and open spaces, including archaeological and paleontological sites, that represent human settlements in an urban or rural environment (UNESCO, 2011). Their integrity and value are confirmed from an archaeological, architectural, prehistoric, historical, aesthetic or socio-cultural

perspective. The local authorities should develop a specific plan with a detailed analysis of the relevant values for this purpose. It should be accompanied by constant monitoring.

It is appropriate to emphasize that both Ukraine and Germany have ratified the international agreements referred to above and have undertaken to ensure compliance with the declared provisions. Therefore, it is reasonable to compare the achievements of the states in the effective implementation of administrative law tools of regulation in the area under research.

In Ukraine, the planning and development of territories remain the main directions of urban planning (Law No. 2780-XII, 2020). Among other things, it is appropriate to include the protection of cultural heritage and the preservation of the traditional environment of settlements to the requirements related to such activities. This requires a coordinated mechanism of inter-agency cooperation. In particular, the activities of government bodies, institutions, ordinary citizens and economic entities aimed at ensuring an effective balance of preservation of architectural monuments and the introduction of innovative technologies into urban planning are becoming increasingly important (Law No. 2780-XII, 2020). The effective and legal development of territories necessitates a comprehensive planning of settlements, latest zoning with appropriate detailing. Planning restrictions regarding the preservation of legally protected historical areas and monuments of cultural heritage should not remain outside the attention of the authorities responsible for making reformation decisions on the development of these areas (Law No. 3038-VI, 2020).

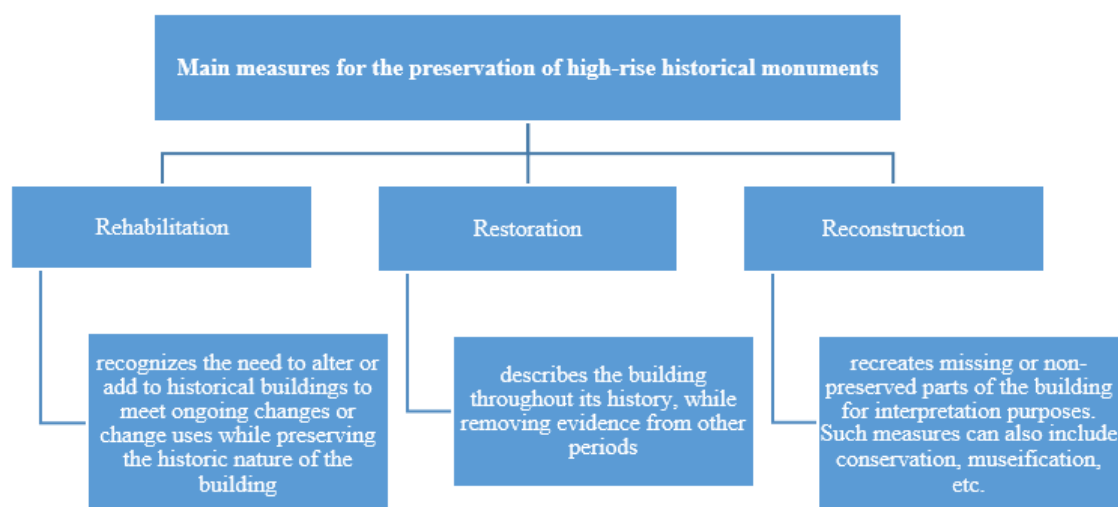
In this context, it is appropriate to indicate the bodies authorized to regulate and ensure the urban planning. Article 5 of the Law of Ukraine (Law No. 1704-VI, 2022) regulates the range of subjects that have the relevant competence. The authorized bodies must also take into account the Building Code in their activities DBN B.2.2-12:2019 Planning and Development of Territories (Order No. v0104858-19, 2019). It should be emphasized that it is the Ministry of Culture and Information Policy of Ukraine and its authorized bodies that are responsible for determining the boundaries and appropriate regimes for the use of historical areas (Decree No. 318-2002-п, 2018). In turn, historical sites can be separated only in territories that are included in the List of Historical Settlements of Ukraine (Decree No. 878-2001-п, 2001).



The technical component of development transformation also requires attention. New buildings and reconstructed objects are subject to certain restrictions that coordinate their binding with historical structures. In particular, the height of high-rise buildings directly depends on the height of historical buildings within a particular historical area (Law No. 1805-III, 2022). The provisions of this Law detail the mentioned and other restrictions related to the preservation of cultural and historically significant heritage. It can be stated that the components of the new proposed high-rise building in the historical districts of the city should be of high architectural quality and ensure a sustainable approach to construction as a whole. The architectural quality of a building includes scale, shape, mass proportions and silhouette, facing materials, relationship with other structures, impact on the horizon line, impact on the urban landscape and surrounding views. This type of buildings should

be quite urban, but they should also respect the historic district of the city, as its impact on the public space and skyline is different in its scale and density. It is extremely important to responsibly manage urban development around objects of historical value to the city. In this regard, it is necessary to take into account the regulation of the buffer zone and maintenance, which are necessary for the protection of historical objects from negative effects.

At the same time, the powers of the executive bodies of Ukraine include the implementation of measures aimed at preserving high-rise historical monuments, which should be based on high-quality contractual legal relations. Such measures are legally divided into rehabilitation, restoration and reconstruction (Figure 2), which require appropriate administrative law tools of regulation.



**Figure 2.** The main measures for the preservation of high-rise historical monuments in Ukraine (summarized by the authors based on the results of the analysis of legislative and doctrinal definitions)

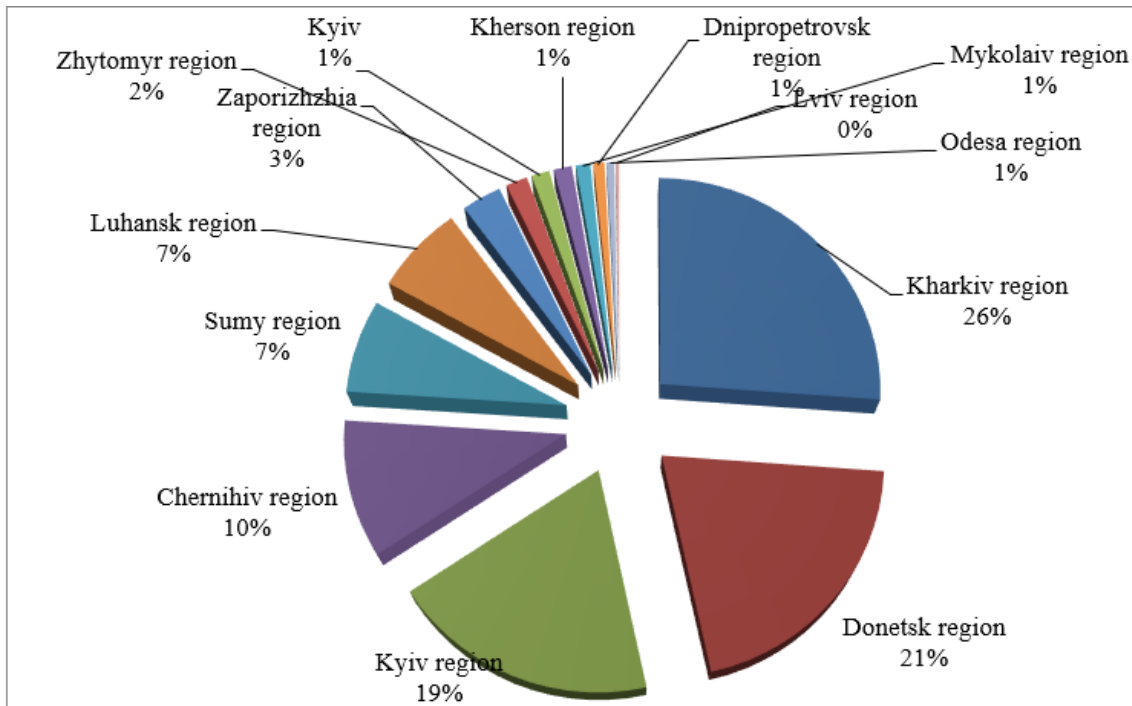
Therefore, the above technical components produce their direct influence on decision-making by competent authorities in the field of proper regulation of high-rise construction in historical districts of cities. It is worth noting that in 2019, the Draft Concept of Public Administration in the Field of Urban Planning for 2019-2030 was prepared (Cabinet of Ministers of Ukraine, 2019). This Draft Concept established and recognized qualitative transformations in spatial development on the territory of Ukraine, which led to irreparable negative changes in the field of preservation of historical and natural environments. The developers of this document also noted a critical decrease in the public trust in government bodies in the field of urban planning.

This Draft Concept was never approved by the Cabinet of Ministers of Ukraine. Instead, a rather significant event was the adoption of the Procedure for Developing, Updating, Amending and Approving Urban Planning Documentation, approved by Resolution No. 926 of the Cabinet of Ministers of Ukraine of September 1, 2021 (Decree No. 926-2021-п, 2021). This document has become an effective regulator that currently ensures the implementation of administrative law tools regulating high-rise construction in Ukraine.

However, the events of February 24, 2022 will force to revise the entire global system of urban planning in qualitative terms, focusing on the

construction of new safe buildings and the preservation of historically significant buildings that were damaged by the war. Besides, according to the data of the Ministry of Culture and Information Policy, 367 episodes of war

crimes committed by the aggressor state against the cultural and historical heritage of Ukraine have already been recorded as of the end of May 2022 (Interfax Ukraine, 2022). The data are illustrated in Figure 3.



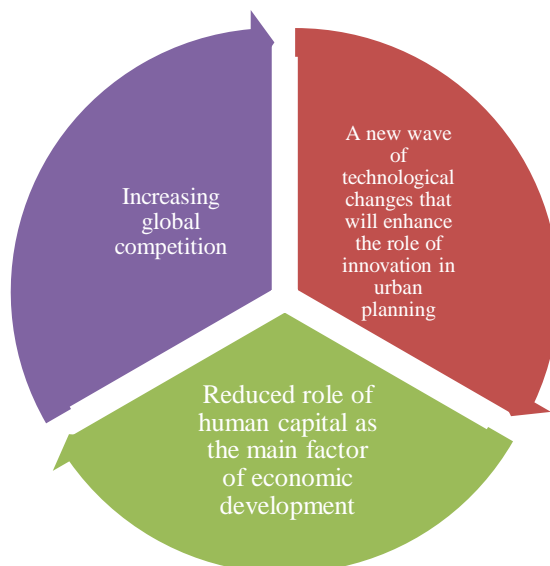
**Figure 3.** Regional distribution of the destruction of historical and cultural buildings in Ukraine as a result of the armed aggression of the Russian Federation as of the end of May 2022 (grouped by the authors on the basis of data published by the Ministry of Culture and Information Policy)

It is obvious that the post-war reconstruction of the state will only support this thesis and determine the processes to implement the measures to ensure the sustainable development of territories, the reproduction and further preservation of objects of historical and cultural purpose with the simultaneous expansion of the areas of high-rise buildings. Such ambitious goals will require legal support at the level of material and procedural legislative acts and by-laws. Besides, further deregulation of economic activity which significantly reduced the institutional capacity of the state in exercising control over the development of settlements and territories outside their borders should be considered conceptually correct in terms of revival of the investment attractiveness of the relevant construction.

The decentralization reform that expands the powers of local self-government bodies to

manage territories is being implemented slowly and improperly because of the lack of documentation on spatial planning (urban planning documentation), lack of experience, shortage of qualified personnel and difficult access to public cadastral information.

The rate of informal influence of business on making decisions by government bodies and officials still remains extremely high. This significantly complicates the implementation of the necessary legislative changes in the country. The lack of public access to the necessary information about urban planning, complex permitting procedures, lack of a competitive environment and numerous conflicts with the public lead to abuses and reduce the investment attractiveness of the urban planning industry. We can single out three leading factors that will shape post-war public administration in the field of urban development (Figure 4).



**Figure 4.** The main factors of post-war public administration in the field of urban development (proposed by the authors based on the results of the analysis)

The concept of public administration in the area under research should include, in particular, the need for transition from budgetary to pure investment financing. There is no doubt that persistent administrative barriers, corruption risks, low development of transport and inefficient engineering infrastructure, the lack of highly qualified research, engineering personnel and workers will significantly reduce the pace, in particular, of high-rise construction. However, one more important issue in this process — the coordination of regulations for the development of the territory with the simultaneous preservation of the historical and cultural area — requires attention. The concept of public management in the field of urban planning in this aspect provides that it is possible to enshrine a complete ban on new construction and reconstruction of buildings and structures within historical areas, and in the absence of their approved boundaries — on the entire territory of historical settlements, in cases where no clear boundaries of monument protection areas are established, in the absence of an approved historical and architectural reference plan. Besides, the legislation on the organization and holding of architectural and urban planning competitions should be harmonized with the current urban planning legislation and international standards, encouraging customers to practice competition in the central parts of cities and within the historical areas of historical settlements.

The main principle of high-rise construction should primarily be the publicity of procedures for consideration and approval of documentation

regarding land works, urban transformations in historical settlements. It is necessary to enshrine the procedure for conducting public examinations of draft legal acts on the preservation of cultural heritage, as well as the introduction of mandatory public hearings of construction projects in historical areas of settlements at the regulatory level.

Another legislative act that should regulate the issue of high-rise construction is the Urban Planning Code of Ukraine (Liga360, 2010). The Draft Urban Planning Code (Article 72) proposes the following types and composition of functional areas in settlements:

- 1) areas of public, business and commercial activity;
- 2) residential areas;
- 3) industrial areas;
- 4) non-industrial areas;
- 5) special purpose areas;
- 6) utility and storage areas;
- 7) recreation areas;
- 8) promising development areas.

Besides, this project provides that areas will be determined for historical settlements, for which a special regime of use is established in accordance with the legislation on the protection of cultural heritage:

- a) historical areas of historical settlements;
- b) lands of historical and cultural purpose;
- c) cultural heritage protection areas (Liga360, 2010).



That is, the mentioned zoning should exclude the possibility of high-rise construction on land plots of historical and cultural purpose and historical areas.

It is necessary to consider the foreign experience of such activities on the example of the Republic of Germany for a more thorough and comprehensive analysis of the problems of administrative law regulation of high-rise construction in the historical districts of cities. The system of land use planning on the territory of Germany was launched in 1935 with the creation of a special national body (Imperial Office for Spatial Planning). In 1936, this office determined the vectors of planning land use within the boundaries of both the entire state and individual territories.

Moreover, until 1960, governments and local self-government bodies on the territory of individual lands were delegated unlimited powers to develop the rules of local land use and their zoning.

The above had its negative consequences, manifested in the uneven development of territories and the loss of objects of historical and cultural heritage.

In Germany, there are currently almost a million archaeological sites, settlements, churches, workers' buildings, palaces, cultural areas, industrial and administrative buildings that belong to the cultural heritage. Along with international charters and conventions, Germany also adheres to international recommendations for the development and implementation of strategies related to the protection and preservation of monuments and cultural landscapes. Examples include the 1972 Recommendation concerning the Protection, at the National Level, of Cultural and National Heritage Paris; the 2011 Recommendation on the Historic Urban Landscape, Paris; the 2018 Warsaw Recommendation on Recovery and Reconstruction of Cultural Heritage.

In the Federal Republic of Germany, the protection of historical heritage is the responsibility of individual federal states. Each federal state issues its own regulatory act, which regulates issues of security, protection, conservation and study of historical heritage. Federal laws on the state protection of historical monuments describe the goals, principles, organizational structures, and duties of agencies that deal with the protection of monuments and other entities entrusted with protection. Besides,

general safety control tools and procedures are legally enshrined. The rights and obligations of the owners of monuments are also established, funds which can be directed to the financial support of measures for the preservation of historical monuments are determined.

The Federal Building Code (Federal Ministry of Justice, n.d.), the Federal Regional Planning Act (Federal Law Gazette, 1997) and the Federal Land Utilisation Ordinance (BauNVO, 1962) together form a comprehensive legal background for spatial and urban planning with regard to the protection of cultural values of the Federal Republic of Germany. These legislative acts contain provisions on urban development and construction projects, the parameters of urban land use planning, specify conservation and design laws, as well as the duties of the authorities that issue permits. At the local level, the authorities develop specific protection rules, which are coordinated with the protection authorities that deal with the monuments located at the federal land. In addition to the state, private organizations or individuals, such as the German Foundation for Monument Protection (Deutsche Stiftung Denkmalschutz) or volunteers for heritage protection, are involved in the protection of monuments.

Many German cities have historic districts that preserve cultural history, support the functioning of commercial districts, and attract tourists. Historic cities have assets of both cultural and economic value with high growth potential in a sustainable perspective. Historical buildings become protected by the state after their inclusion in the relevant list. The list is made by the state heritage protection authorities at the proposal of the owner or the municipality where the historic building is located.

The territorial planning of the German lands takes place at several levels because Germany is a federation and a member of the European Union: at the EU level, the federal level, the level of federal states, regions and communes (territorial communities). Besides, land use planning has been intensified as part of cross-border cooperation. It should be noted that other countries, in particular in Ukraine, also have a multi-level hierarchical system of territorial planning. Each of the federal self-governing entities of Germany, the federal state (Bundesland), adopts its own separate legislation on territorial planning and land zoning on the basis of national provisions. At the same time, the latter should be based on federal legislation

and only supplement it with due regard to local characteristics.

Urban and rural territorial planning is carried out directly at the level of local administrative units — municipalities (Gemeinden), and usually consists of two levels. The first level is Land Use Plans (Flachennutzungsplan or F-plan). They must take into account the guidelines approved by federal and local legislation and establish the specifics of the development of certain zones on the territory of the municipality. Designation of a certain area as a functional zone under the F-plan is not binding, but helps local municipalities in developing their detailed planning. Documents of the second level of planning in the municipality are binding and determine the detailed planning of the territories and zoning of the lands of the municipality. In Germany, they are called building plans (Bebauungsplan or B-plan). They have a graphic part that defines individual functional areas, it is regulatory in nature and is binding for all landowners and land users. Such plans are not developed for all territories, but only for those that are either planned to be actively developed, or, on the contrary, it is planned to limit commercial activity in a certain area.

The plans developed in Germany establish the requirements for the development of land plots which provide for a number of criteria, in particular, the type of building, the method of construction, the area of the land plot allocated for streets, schools, kindergartens, etc. In turn, if a local authority in Germany intends to carry out new construction or renovation, its representatives must discuss these intentions with those to be directly affected. Ways of implementing the planned measures and collecting the necessary municipal and private funds are discussed. If the implementation of the zoning plan (development plan) will adversely affect those who live or work in the area, the administration must prepare relevant materials and discuss them with the citizens concerned. The community should help those individuals who will be forced to change their place of residence or work, as well as companies and enterprises that will need to change their location. The results of discussions and sociological surveys, as well as proposals developed jointly with the public, shall be documented. Such documents are called social plans in Germany.

From the perspective of practice in Germany, owners need to take into account the cost of maintaining a historical building preserved.

However, buyers of such properties can receive support for their investment and further maintenance of the building through subsidies and tax incentives. In improved condition, such properties can generate high demand among tenants and corresponding income. In turn, the requirements for historic buildings are regulated by the law on the protection of monuments of the respective federal state where the building is located. The local or state administration for the protection of historical monuments carries out relevant administrative law regulation. In addition to the year of construction, information on historical buildings includes data on the rarity, quality of the structure and architecture of the object. The conditions that property owners must adhere to, for example, when it comes to extensions, modifications or renovations shall be the result of the categorization.

The purpose of preservation of historic buildings is to protect and permanently preserve cultural monuments and historically significant buildings without their alteration, damage or destruction. This means that a building included in the list of architectural monuments cannot be altered or transformed in any way, or can only be altered or transformed to a limited extent. Major renovations are only possible after consultation with the heritage authority and only if they do not change the appearance of the building. Preservation of the property is also the owners' responsibility, they are obliged to repair and modernize the building while preserving its historic appearance. Funds for the preservation of historical buildings are the contact persons on these issues.

Investors who want to renovate a property and then rent it out get some tax incentives. The Denkmal-AfA regulates the amount and time for claiming maintenance costs for tax purposes. Accordingly, the property owner is entitled to deduct nine percent of the cost of modernization and repair from taxes during the first eight years after the purchase of the property, and seven percent during the next four years. Besides, the depreciation for traditional capital investment is provided (AFA: Absetzung für Abnutzung). This includes the wear and tear of the Altbau buildings, so the acquisition costs are also deductible. In addition, there are other subsidy options, such as the KfW subsidy, which can be requested when architectural monuments are renovated to improve energy efficiency. Germany gives appointed urban planners great powers to accept or reject a building proposed by developers based on contextual suitability,

thereby preventing chaotic urban design in the city.

In view of the foregoing, it can be concluded that the so-called “counterflow principle” is used to regulate territorial planning in Germany. It provides that every planning act of a lower-level authority must necessarily take into account certain binding provisions established by acts of higher-level authorities.

The implementation of these practices in the national administrative legislation of Ukraine in the field of high-rise construction in the historical districts of the cities of Ukraine would be very useful, especially in the post-war period. This will contribute to the complex and sustainable development of territories in Ukraine and the development of uniform approaches to the control of land use and protection.

### Discussion

In the current context, the issues of proper regulation of high-rise construction in the historical districts of cities are becoming urgent, requiring the executive authorities to ensure the balance of state and private interests. Malokhlib (2020, p. 39-40) expressed a rather essential opinion that the development of cities in Ukraine has been taking place without expanding their borders in the last two decades due to more rational use of urban territories and the completion of the development of each microdistrict and quarter. Besides, the vast majority of high-rise residential buildings are built with a high urban density, mostly in the immediate vicinity of existing buildings and structures. At the same time, the increased density and the height of the building are being revised against the background of the actual backwardness of the engineering infrastructure of settlements, the levelling of socio-cultural, health improvement services for residents by the development, including violations of the provisions on preservation of the historical and cultural area. In this context, the developer’s obligation to preserve the historical and cultural heritage of the relevant locality must be documented in the contracts concluded between the developer and the local self-government body. Moreover, the relevant local self-government body should be entrusted with monitoring compliance with the contractual obligations.

Therefore, balanced actions in the administrative law regulation require the regimes that signal when and where further approval is appropriate

or urgent (Kessler & Sabel, 2021). The result is the need to take additional measures to delay the adoption of a final decision or decisive action to preserve historically significant buildings.

In the context of increased urbanization, executive authorities need to identify and establish “complex protected areas” of fragments of traditional urban buildings that reflect important stages of the city’s history in order to reflect and preserve the continuity of the history of the city’s development. The transformation of the city into a territory solely for the satisfaction of its modern needs can affect the preservation of these fragments of urban development. The limited area of urban land available for new construction and the economic benefit from this construction are the reasons why historical heritage is mostly affected by developers. Moreover, the protection of historical heritage faces new challenges. Cultural heritage faces such problems as the threat of demolition, unqualified reconstruction with changing parameters, old age, desolation, and improper use because of the gaps in the legislative framework, incompletely coordinated institutional interaction, and the complex bureaucratic process of registration of historical and cultural areas (Ragheb et al., 2022).

Therefore, it is necessary to take into account both the preservation of cultural and historical heritage, and the satisfaction of the needs of a living and dynamic city. A delicate balance should be found between both phenomena, as high-rise buildings can create a powerful and positive image in the context of collective urban memory and can become elements that enrich the urban texture (Makaklı & Özke, 2017). Elegant and logical design combined with research and experiments with new forms is necessary in the construction and renovation of high-rise buildings in historic urban areas. In this case, it is very important to use modern technologies, local culture, historical context, natural environment and cost-effective solutions (Al-Kodmany, 2018).

It is very important to introduce patronage and public control over historical heritage objects in order to comply with the legislative requirements in the field of cultural heritage protection (Yasinsky, 2018). According to the researcher, it is also necessary to improve the system of preferential taxation of organizations and enterprises that can take responsibility for the preservation of relevant objects. The result can be an increase in their interest in the protection of cultural heritage and the attraction of additional

investments. It is appropriate to emphasize that administrative law tools of regulation are the balancing link between urban planning, architectural design and business.

The guiding principles and methods of sustainable development of the historical districts of cities can be implemented through preserving the spatial characteristics of the historical urban environment, its social content, as well through the qualitative transformation of the urban environment based on the constant development of local culture, traditions and the preservation of the memory of the area (Pietrostefani & Holman, 2021). The researchers have supported the author's position (Minghang & Guanghu, 2021) that modern strategies aimed at preserving urban heritage should be people-oriented and satisfy their needs, shall take into account cultural traditions, and even established social ties. Further effective activity at the level of local executive authorities will be the balance lever on the way to resolving the critical situation of destruction of historical heritage.

## Conclusions

Preservation of the architectural, aesthetic, historical and cultural significance of historical buildings has become a cornerstone of urban planning for current and future generations. High-rise buildings, which are an integral part of modern cities, will exist in the future despite the evolution and change of social needs, rapid urbanization and population growth. Urban development is certainly not destructive, but disorderly development, unmanaged modernization, uncoordinated planning and lack of awareness of heritage values create significant problems. It can be stated that excessive population growth, economic development and the lack of an institutional or legal framework have currently prepared the background for the destruction of historical heritage — viable buildings and structures — in the world. In this context, the administrative law tools regulating the development require urgent reform. The realities require new guidelines for planning, development and implementation of reforms that will include such factors as cultural and architectural heritage.

The conducted research showed that Ukraine and Germany have a phased procedure for approval of high-rise construction in the historical urban areas. At the same time, the mechanisms of such approval remain insufficiently transparent, and regulatory legal acts have inaccuracies, which gives rise to misinterpretation. The introduction

of a completely transparent procedure for approval of the development of historical urban districts, with due regard to the latest achievements of the digitalization of the state and active involvement of the public in making relevant decisions, seems quite promising for Ukraine. At the same time, the high risk of corruption, which can lead to biased decision-making before the approval of the latest reforms, remains an extremely negative factor in the territory of this state. This problem exists in many areas and directly affects the gradual destruction of historical buildings in cities. Besides, the fate of historically significant buildings and structures destroyed on the territory of Ukraine as a result of the military operations of the Russian Federation remains uncertain. In the future, the public and leading specialists in the field of historical and urban planning should take a balanced approach to this issue, defending the possibility of preserving the national identity of Ukraine.

It is appropriate to emphasize that Germany quite effectively implements the declared decisions made in compliance with the administrative law in order to find a balance of comfortable legal construction and preservation of the state's heritage. Despite the strict prescriptions of the legislation, the approbation of certain tools of regulation is based on the value criteria of preserving the historical urban districts and the active participation of society in the formation of such criteria.

A comparison of the administrative law background of regulation in the studied area in the territory of Ukraine and Germany evidenced thorough groundwork in Ukraine and significant positive practical experience in Germany. At the same time, the vector of further research in the context of comparison with Ukraine will be the analysis of Germany's experience in the field of state and regional protection of war monuments in the context of urbanization.

## Bibliographic references

- Al-Kodmany, K. (2018). The Sustainability of Tall Building Developments: A Conceptual Framework. *Buildings*, 8(1), 7-38. <https://doi.org/10.3390/buildings8010007>
- Baiz, W. H., & Hoskara, E. (2022). Developing a measurement scale for sustainable high-rise building in city of Erbil. *Journal of Asian Architecture and Building Engineering*, 21(3), 717-734. <https://doi.org/10.1080/13467581.2021.1900855>



- BauNVO. (1962). The Building Use Ordinance (BauNVO) dated 06/26/1962. Retrieved from <https://second.wiki/wiki/baunutzungsverordnung>
- Bortnyk, N., & Zarosylo, V. (2022). Subject of Administrative and Legal Regulation. *Global Prosperity*, 2(1), 18-24. <http://www.gprosperity.org/index.php/journal/article/view/56>
- Bu, X., Chen, X., Wang, S., Yuan, Y., & Han, C. (2022). The influence of newly built high-rise buildings on visual impact assessment of historic urban landscapes: a case study of Xi'an Bell Tower. *Journal of Asian Architecture and Building Engineering*, 21(4), 1304-1319. <https://doi.org/10.1080/13467581.2021.1930011>
- Cabinet of Ministers of Ukraine. (2019). The concept of public management in the field of urban planning for 2019 - 2030 [in Ukrainian]. Retrieved from <https://www.minregion.gov.ua/wp-content/uploads/2019/04/Kontsepsiya-nasayt.pdf>
- Coglianesi, C. (2022). Administrative Law: Governing Economic and Social Governance. *Economics and Finance*. Retrieved from <https://oxfordre.com/economics/view/10.1093/acrefore/9780190625979.001.0001/acrefore-9780190625979-e-771?rsk=RYB60>
- Decree No. 318-2002-п. On the approval of the Procedure for determining the boundaries and regimes of the use of historical areas of settlements, restrictions on economic activity on the territory of historical areas of settlements. The Verkhovna Rada of Ukraine, from 28.02.2018. Retrieved from <https://zakon.rada.gov.ua/laws/show/318-2002-%D0%BF#Text>
- Decree No. 878-2001-п. On the approval of the list of historical settlements of Ukraine. The Verkhovna Rada of Ukraine, from 26.06.2001. Retrieved from <https://zakon.rada.gov.ua/laws/show/878-2001-%D0%BF#Text>
- Decree No. 926-2021-п. On the approval of the Procedure for the development, updating, amendment and approval of urban planning documentation. The Verkhovna Rada of Ukraine, from 01.09.2021. Retrieved from <https://zakon.rada.gov.ua/laws/show/926-2021-%D0%BF#Text>
- I-Basha, M. S. (2021). Urban interventions in historic districts as an approach to upgrade the local communities, *HBRC Journal*, 17(1), 329-364. <https://doi.org/10.1080/16874048.2021.1938892>
- Federal Law Gazette. (1997). The Federal Regional Planning Act (Raumordnungsgesetz, ROG). Retrieved from <http://extwprlegs1.fao.org/docs/pdf/ger63579E.pdf>
- Federal Ministry of Justice. (n.d.). The Federal Building Code (BauGB) dated 06/23/1960 [in German]. Retrieved from <https://www.gesetze-im-internet.de/bbaug/>
- Foster, G. (2020). Circular economy strategies for adaptive reuse of cultural heritage buildings to reduce environmental impacts. *Resources, Conservation and Recycling*, 152, 104507. <https://doi.org/10.1016/j.resconrec.2019.104507>
- ICOMOS. (1987). Charter for the Conservation of Historic Towns and Urban Areas (Washington Charter 1987). Retrieved from [https://www.icomos.org/images/DOCUMENTS/Charters/towns\\_e.pdf](https://www.icomos.org/images/DOCUMENTS/Charters/towns_e.pdf)
- Ignatenko, I. V. (2014). Legal provision of land zoning within settlements: monograph [in Ukrainian]. Kharkiv: Vydavnytstvo «Finart». Retrieved from [https://library.nlu.edu.ua/POLN\\_TEXT/MONOGRAFII\\_2017/Ignatenko\\_mon\\_2014.pdf](https://library.nlu.edu.ua/POLN_TEXT/MONOGRAFII_2017/Ignatenko_mon_2014.pdf)
- Interfax Ukraine. (2022). The Ministry of Culture documented 367 episodes of Russian war crimes against the cultural heritage of Ukraine [in Ukrainian]. Retrieved from <https://ua.interfax.com.ua/news/general/835347.html>
- Kessler, J., & Sabel, C. (2021). The Uncertain Future of Administrative Law. *Daedalus*, 150(3), 188-207. [https://doi.org/10.1162/daed\\_a\\_01867](https://doi.org/10.1162/daed_a_01867)
- Korostashova, I. M. (2019). Mechanism of administrative and legal regulation as a legal category and a multidimensional phenomenon [in Ukrainian]. *Scientific notes of the Institute of Legislation of the Verkhovna Rada of Ukraine*, 1, 52-61. <https://doi.org/10.32886/instzak.2019.01.06>
- Law No. 1704-VI. On construction regulations. The Verkhovna Rada of Ukraine, from 09.06.2022. Retrieved from <https://zakon.rada.gov.ua/rada/show/1704-17#Text>
- Law No. 1805-III. On the protection of cultural heritage. The Verkhovna Rada of Ukraine, from 13.05.2022. Retrieved from <https://zakon.rada.gov.ua/laws/show/1805-14#Text>
- Law No. 2780-XII. On the basics of urban planning. The Verkhovna Rada of Ukraine,



- from 16.10.2020. Retrieved from <https://zakon.rada.gov.ua/laws/show/2780-12#Text>
- Law No. 3038-VI. On the regulation of urban planning activities. The Verkhovna Rada of Ukraine, from 10.10.2020. Retrieved from <https://zakon.rada.gov.ua/laws/show/3038-17#Text>
- Liga360. (2010). Draft Law of Ukraine dated May 18, 2010 No. 6400. Urban Planning Code of Ukraine [in Ukrainian]. Retrieved from <https://ips.ligazakon.net/document/JF4XS00A?an=3>
- Makaklı, E. S., & Özke, S. (2017). High rise buildings in historic cities. *The Online Journal of Science and Technology*, 7(2), 60-67. Retrieved from <https://tojsat.net/journals/tojsat/articles/v07i02/v07i02-09.pdf>
- Malokhlib, O. S. (2020). Legal bases of use of the ground areas for housing construction (PhD disirtation). Yaroslav Mudryi National Law University, Kharkiv. Retrieved from <https://acortar.link/OnbrjT>
- Minghang, D., & Guanghu, J. (2021). Analysis on the Protection and Reuse of Urban Industrial Architecture Heritage. *IOP Conference Series. Earth and Environmental Science*, 787. Retrieved from <https://iopscience.iop.org/article/10.1088/1755-1315/787/1/012175/pdf>
- Order No. v0104858-19. On the approval of DBN B.2.2-12:2019 "Planning and development of territories". The Verkhovna Rada of Ukraine, from 26.04.2019. Retrieved from <https://zakon.rada.gov.ua/rada/show/v0104858-19#Text>
- Pietrostefani, E., & Holman, N. (2021). The politics of conservation planning: A comparative study of urban heritage making in the Global North and the Global South. *Progress in Planning*, 152, 100505. <https://doi.org/10.1016/j.progress.2020.100505>
- Ragheb, A., Aly, R., & Ahmed, G. (2022). Toward sustainable urban development of historical cities: Case study of Fouh City, Egypt. *Ain Shams Engineering Journal*, 13(1), 101520. <https://doi.org/10.1016/j.asej.2021.06.006>
- Rosetti, I., Bertrand Cabral, C., Pereira Roders, A., Jacobs, M., & Albuquerque, R. (2022). Heritage and Sustainability: Regulating Participation. *Sustainability*, 14(3), 1674. <https://doi.org/10.3390/su14031674>
- The Valletta Principles. (2011). The Valletta Principles for the Safeguarding and Management of Historic Cities, Towns and Urban Areas. Adopted by the 17th ICOMOS General Assembly on 28 November 2011. Retrieved from [https://mecc.gov.md/sites/default/files/2010-the\\_valletta\\_principles\\_for\\_the\\_safeguarding\\_and\\_management\\_of\\_historical\\_cities\\_towns\\_and\\_urban\\_areas.pdf](https://mecc.gov.md/sites/default/files/2010-the_valletta_principles_for_the_safeguarding_and_management_of_historical_cities_towns_and_urban_areas.pdf)
- UNESCO. (2011). Recommendation on the Historic Urban Landscape, including a glossary of definitions. Retrieved from [http://portal.unesco.org/en/ev.php-URL\\_ID=48857&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=48857&URL_DO=DO_TOPIC&URL_SECTION=201.html)
- Yasinsky, M. R. (2018). Reproduction of residential quarters in the central parts of small historic towns (PhD dissertation) Lviv Polytechnic National University, Lviv. [in Ukrainian]. Retrieved from <https://lpnu.ua/sites/default/files/2020/dissertation/1585/dysertaciyaYasinskyymr.pdf>