

THE ROLE OF SPECIAL INVESTIGATIONS IN THE PROTECTION OF CULTURAL HERITAGE ASSETS IN THE REPUBLIC OF MOLDOVA

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***Abstract:** Special investigative activity has always been an essential legal instrument of the state, intended to protect fundamental social values, including cultural heritage assets that are the subject of crimes. The recent legislative changes in the Republic of Moldova have changed the way this activity is regulated, generating difficulties in the understanding and unitary application of the new regulations. This study aims to explain, highlight and analyze the problems related to the normative framework that prevent special investigations to be carried out in order to prevent and investigate crimes, including those that attack cultural heritage assets. Finally, recommendations will be made to improve the legal framework and to optimize the application of the special investigative activity in this specific context.*

***Keywords:** special investigative activity, special investigative measures, criminal process, criminal prosecution, cultural heritage assets.*

Introduction

Cultural heritage goods are a distinct type of goods, created by man to satisfy his spiritual and aesthetic needs, while having scientific, historical, artistic and cultural value. The special importance of these goods has meant that their commercial price has remained stable and high, even under market economy conditions. This factor has led to an increase in the volume of investments in this area and, as demand has been met, the number of criminal attacks on objects of cultural value has also increased, most of these crimes being thefts (Glavan, 2007: 195-199).

The term "cultural heritage goods" entered the Moldovan legal vocabulary through the ratification by the Republic of Moldova of the UNESCO and Council of Europe conventions in the field of cultural heritage protection: UNESCO Convention on the Protection of the World Cultural and Natural Heritage of 23.11.1972 (Convention Concerning the Protection of the World Cultural and Natural Heritage), in force for the Republic of Moldova since 23.12.2002; The Convention for the Protection of Cultural Property in Case of Armed Conflict, together with Protocol I to the Convention, of 14.05.1954 (Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention), in force for the Republic of Moldova since 09.03.2000; Convention for the Protection of the Architectural Heritage of Europe of 03.10.1995 (Convention for the Protection of the Architectural Heritage of Europe), in force for the Republic of Moldova since 01.04.2002; Convention on the Measures to be Taken for the Prohibition and Prevention of Illicit Operations of Import, Export and

Transfer of Ownership of Cultural Property, of 14.11.1970 (Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property), in force for the Republic of Moldova since 14.12.2007; European Convention for the Protection of the Archaeological Heritage (revised) of 16.01.1992 (European Convention on the Protection of the Archaeological Heritage), in force for the Republic of Moldova since 22.06.2002.

Following the ratification of these very important international legal instruments, the Republic of Moldova intervened in 2016 (Law of the Republic of Moldova no. 75 of 21.04.2016 on the amendment and completion of certain legislative acts) with some amendments to the criminal law meant to criminalize certain acts that threaten the cultural heritage, namely the completion of art. 186 of the Criminal Code "Theft" with para. (21), of art. 187 of the Criminal Code "Robbery" with para. (21), of art. 188 of the Criminal Code "Robbery" with para. (21), of art. 190 of the Criminal Code "Extortion" with para. (3) and art. 191 of the Criminal Code "Embezzlement of foreign property" with para. (22), the inclusion of new articles such as Art. 1991 "Deterioration or destruction of cultural heritage goods", Art. 1992 "Carrying out unauthorized works in archaeological sites or areas with archaeological potential", Art. 1993 "Concealment or illegal preservation of movable archaeological goods", Art. 1994 "Unauthorized commercialization of movable archaeological goods and classified movable cultural goods".

It seems that the inclusion of these rules in the criminal law was also determined by the fact that crimes related to the theft of cultural heritage goods were treated and investigated in the same way as other crimes. Also, the estimation of the objects of cultural value stolen at a very low price was a problem in initiating the procedures for investigating these facts (Odagiu, 2009:87-89).

The doctrine emphasizes that crimes related to the trafficking of cultural property are extremely difficult to investigate and research. These crimes pose an increased social danger, characterized by the difficulty of being prevented, detected, and discovered, as well as by the personality traits of the offenders. Most of these crimes are committed on demand and are meticulously prepared by criminals who use technical means, methods, and modern weapons. The organizers of these crimes are highly conspiratorial, which allows them to evade criminal liability (Bogdanov et al., 2019:53-56).

The scale of this phenomenon is primarily due to the fact that illegal transactions in goods of cultural value are almost on a par with illegal arms or drug trafficking in terms of profitability. Even a single successful operation brings huge profits to criminals. This is explained by the fact that the price of cultural goods on the international market is several times higher than on the domestic market. In addition, illegally obtained funds are used to finance new similar crimes. All these factors contribute to better cooperation between domestic and international crime (Gherman, 2008:96-101).

The prevention, detection and investigation of theft of cultural heritage assets remains a very complicated problem in the Republic of Moldova. Some researchers have drawn attention to the lack of statistics on the number of thefts of cultural heritage goods, despite the fact that in the last 10 years more than 60 churches have become the target of thefts of objects of cultural value. The number of private individuals who have become

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victims of such acts remains unknown. Even worse is the fact that some people have not even realized that they have become victims of scammers (Odagiu, 2009:87-89).

In this context, the issue of strengthening measures to ensure and protect cultural assets becomes particularly topical. Among these measures, a special place belongs to the measures characteristic of the special investigative activity.

The methodology of the study includes the traditional research methods: logic, grammar, analysis and synthesis, deduction and induction, observation and comparison. Based on the analysis of relevant materials (national legislation, specialized literature, other relevant materials) the appropriate conclusions and proposals are formulated.

Results obtained and discussions. The special investigative activity is a complex type of state activity, to which certain unusual investigative instruments are specific, strictly regulated by law. These instruments are intended to be applied subsidiarily to protect and ensure the security of certain social values of particular importance. Given the intrusive nature of these investigative instruments in the rights and freedoms of the person, appropriate legal regulations are required to guarantee the absence of possible abuses by the bodies competent to apply them (Glavan, 2019:88-108).

The legislation of the Republic of Moldova has been in a continuous process of reforming the regulation of the special investigative activity for more than a decade, trying to balance the balance between the public and private interest. The difficulties of traditional investigation of crimes through procedural methods, which have become more and more evident as the criminal phenomenon is professionalized and transformed in the context of the technical-scientific progress of the recent period, have led to the modification of the normative framework of criminal procedure. Thus, the results obtained during the special investigation activity can be used in the evidentiary process.

The lack of a clear model about the architecture of the legal regulation system of the special investigation activity and, probably, the conflicts of interest, led in 2012 to the reform of the normative framework in this area, generating problems of understanding and unitary application of the legal norms (Glavan, 2018:142-147). The reform has generated contradictory discussions regarding the location of the legal regulations regarding the special activity of investigations in the national law system. The polemics continued regarding the implementation of special investigative measures within and outside the criminal trial as well as other topics (Covalciuc, 2018:145; Covalciuc, 2023:52,57, 70; Botnari, 2022:162).

The numerous attempts to harmonize the legislation led to new legal changes in 2023. Although they were intended to improve the regulatory framework, the new regulations make it difficult to investigate some crimes, including those related to the theft of goods of cultural value.

According to the current legal regulations, the special investigative measures provided by Law no. 59/2012 can be carried out only outside the criminal trial. This means that, in the investigation of crimes, including in the preparation and attempt phase, only the special investigative measures regulated in the Code of Criminal Procedure can be applied. Thus, the previous paradigm, according to which the special investigative measures regulated

by Law no. 59/2012 could have been carried out for the prevention and investigation of crimes, it no longer works.

Currently, the Code of Criminal Procedure regulates 14 special investigative measures, seven of which are authorized by the investigating judge: search of the home, use and/or installation in it of devices that provide photography or surveillance and audio and video recording; technical supervision; interception and recording of communications and/or images; retaining, investigating, handing over or picking up postal items; monitoring or control of financial transactions and/or access to financial information; collection of information from providers of electronic communications services; accessing, intercepting and recording computer data.

The other seven measures are authorized by the prosecutor: identification of the subscriber or user of an electronic communications network; control of the transmission or receipt of money, services or other material or intangible values claimed, accepted, extorted or offered; supervised delivery; acquisition of control; undercover investigation; visual tracking; collection of information.

Obviously, the measures authorized by the investigating judge, compared to those authorized by the prosecutor, have a more intrusive character in the sphere of the rights and freedoms of the person. They are also the most effective in investigating crimes. According to statistical data from previous years, the most requested investigative measure is "Interception and recording of communications and/or images", constituting approximately 50% of the total number of measures performed. With a frequency of about 14%, the measure "Collection of information from electronic communications service providers" is applied.

On the third place, with about 10%, would be positioned the measure "Technical surveillance", given that it derived from the merger of two previous measures: "Home surveillance by using technical means that ensure registration" and "Documentation with the help of technical methods and means, location or tracking through the global positioning system (GPS) or by other technical means". "Visual tracking" is applied in about 8% of cases, and 7% of the measures are represented by "Identification of the subscriber, owner or user of an electronic communications system or an access point to an information system". The other 11% of the measures belong to other types of special investigative measures (Statistical data on the performance of special investigative measures in the period 20015-2022 obtained on the basis of the annual reports of the Prosecutor General's Office of the Republic of Moldova) [<https://www.procuratura.md/activitate.html#item-3>].

By analyzing these figures, we can see the potential of special investigations to combat crimes, including those related to the theft of cultural heritage goods. At the same time, it is also worth taking into account the new conditions for carrying out special investigative measures. Among the general conditions enshrined in Article 133 of the Code of Criminal Procedure, it is necessary to have a criminal investigation initiated with regard to the preparation or commission of a serious, particularly serious or exceptionally serious crime, with the necessary exceptions.

Considering the fact that the crime of theft of cultural heritage goods from archaeological sites or areas with archaeological potential provided by art. 186 para. (21) The Criminal Code does not belong to the category of serious, particularly serious or exceptionally serious, it can be noted that for the investigation of these facts practically no

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special investigative measures can be carried out. The same statements can be made regarding the crime of damage or destruction of cultural heritage goods provided by art. 1991 para. (1) and (2) CP; the crime of carrying out unauthorized excavations or searching for treasures in archaeological sites or in areas with archaeological potential provided by art. 1992 CP; of the crime of concealment or illegal storage of movable archaeological goods provided for by art. 1993 of the Criminal Code; as well as the crime of unauthorized sale of movable archaeological goods and classified movable cultural goods provided by art. 1994 CP.

Although the legislator has provided for some special investigative measures special conditions for carrying them out, indicating by name the articles of the Criminal Code for which these measures can be carried out, including for some minor and less serious crimes, we can nevertheless observe that the respective lists practically do not include the facts that threaten cultural heritage assets.

Thus, the legislator conditioned in art. 1381 para. (2) CPP, carrying out the measure of interception and recording of communications and/or images through a list of facts prohibited by the criminal law, but in that list there are no offenses provided by art. 186 para. (21); Art. 187 para. (21); Art. 190 para. (21); Art. 191 para. (22); Art. 1991 - Art. 1994 CP.

Special conditions were also provided for the measure of monitoring or control of financial transactions and/or access to financial information (art. 1383 para. (2) CPP) and even in this case we do not find most of the crimes that attack cultural heritage assets, except for the crimes provided by art. 190 para. (21) and art. 191 para. (22) CP.

Thus, we find that the only crimes that directly attack cultural heritage assets and in respect of which certain special investigative measures can be carried out, because they are part of the category of serious, particularly serious and exceptionally serious crimes, are those provided for in art. 187 para. (21); Art. 190 para. (21); Art. 191 para. (22) CP.

The reports reveal that the potential of the special investigation activity is not fully exploited in order to protect cultural heritage assets, most likely that the legislator did not draw sufficient attention within the reforms carried out regarding the regulation of special investigations. These limitations in the application of special investigative measures significantly reduce the ability of authorities to effectively prevent and combat these crimes, leaving cultural heritage vulnerable to illegal activities. A reassessment of the legislative framework is needed to allow the use of special investigative measures in the case of these offences as well, thus ensuring adequate protection of cultural heritage.

We remind you that today's crime phenomenon is at a much more advanced level of development compared to the one that existed 15-20 years ago. The level of technical equipment is much higher. To detect cultural heritage goods, criminals use metal detectors and other remote sensing devices, the use of which is not prohibited in the Republic of Moldova. This happens in the conditions in which the state institutions lack metal detectors. It seems that the price of several thousand euros for the purchase of a metal detector is not an impediment for self-proclaimed archaeologists (<https://adevarul.ro/stiri-externe/republica-moldova/republica-moldova-a-ajuns-prada-vanatorilor-de-1222751.html>).

The high-performance technique used by burglars of apartments and other places where cultural heritage goods could be kept should not be overlooked either. Usually, the crimes of theft of cultural heritage goods, in addition to actions directly aimed at taking possession of values, include methods of preparing and concealing a crime.

Preparation for the theft of cultural goods consists of the following elements:

- 1) Investigation of the subject of theft:
 - Determining the subject of the criminal attack.
 - Selecting and studying the object from which the theft will be committed.
- 2) Selection of the members of the criminal group and the distribution of roles.
- 3) Finding a method of theft:
 - Elaboration of specific methods of stealing cultural heritage goods.
 - Selection of the technical means necessary to commit the crime.
- 4) Determination of the method of concealment of the crime:
 - Determination of distribution channels and the expected amount of enrichment.
 - Development of means of camouflage, destruction of traces and instruments of crime.

The methods of concealment of crimes targeting valuables or documents can be divided into the following types:

- 1) Actions aimed at concealing the material traces of a crime:
 - Using methods of disguise, falsification, imitation, concealment and destruction.
- 2) Actions aimed at hiding information about a known crime from certain persons:
 - Intellectual concealment by withholding information, giving false testimony, spreading false rumors, writing anonymous fake letters, etc.
- 3) Actions carried out directly by the offender or other persons:
 - Actions taken before a crime was committed.
 - Actions carried out during the commission of a crime.
 - Actions taken after a crime has been committed (Gavryliuk, 2007:290-292).

Information about the actions of criminals after committing a crime is important for detecting and investigating crimes in this category. Thus, a detailed understanding of how criminals prepare, commit and conceal crimes can significantly contribute to the development of more effective strategies to prevent and combat these illicit acts. Depending on the situation at the scene of the crime, the presence of criminal experience, social status, connections in the criminal world and among collectors, they choose the places of storage of the instruments of crime and stolen goods, as well as the methods and channels for selling these goods.

Of course, the investigation of these crimes is quite difficult and without the involvement of the special investigation activity it is almost impossible to combat this phenomenon, and in the conditions of the rule of law to which the Republic of Moldova aspires, adequate legal regulations are required.

Conclusions

In conclusion, in order to ensure effective protection of cultural heritage, it is essential that legislation allows for the use of special investigative measures also in the case of crimes related to goods of cultural value. It is also necessary to improve the technical equipment of state institutions and to establish a clear and coherent legislative framework that

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balances the need for security with respect for the rights and freedoms of the individual. Only through an integrated approach, including both preventive measures and effective investigation methods, can the phenomenon of illegal theft and sale of cultural heritage goods be significantly reduced.

As a solution, the legislator could opt to increase the sanction of crimes related to the protection of cultural heritage assets, so that they fall into the category of serious crimes and in this way the condition of art. 133 CPP for the ordering of special investigative measures will be met. At the same time, it is also necessary to complete the lists provided for in art. 1381 para. (2) CPP and art. 1383 para. (2) CPP with the mention of the offenses provided for in art. 186 para. (21); Art. 187 para. (21); Art. 190 para. (21); Art. 191 para. (22); Art. 1991 - Art. 1994 CP. Thus, with regard to these crimes, the full spectrum of special investigative measures will be ordered, allowing the authorities to combat more effectively the theft and illegal trafficking of cultural heritage goods.

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