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**THE FORENSIC INVESTIGATION OF CRIMES
AGAINST THE NATIONAL CULTURAL
HERITAGE**

SUMMARY OF THE DOCTORAL THESIS

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The Object of the Study

The thesis is titled *The forensic investigation of crimes against the national cultural heritage*. The study focuses on the criminalistic component of the investigation of these crimes, without overlooking other related aspects such as legislation or certain criminological considerations.

The object of the study encompasses a wide range of issues due to the diversity of goods that constitute the national cultural heritage, the complex and, at times, fragmented legislation, the investigative procedures, the application of general aspects to the field of cultural heritage and not least, due to scientific and technological advancements. Thus, it covers a broad range of topics, yet all interconnected.

The Necessity and Objectives of the Study

Over time, I have noticed that the interest given to this field is lower than what the existing needs would require. At conferences and in specialized articles, various aspects have been addressed sporadically, predominantly from a criminal (penal)/criminal procedure perspective. While we find extensive studies and theses on criminal law, I have not discovered an extensive work in the national legal literature that approaches the issue from a forensic perspective.

On the other hand, in most criminalistics works (courses, treatises etc.), aspects related to cultural heritage are only tangentially treated or entirely omitted.

As a result, I set out to conduct a thorough study of the issue from a criminalistic perspective.

Even though criminalistic research is an extremely important component in the process of protecting cultural heritage, protection is a means, with the ultimate goal being the preservation of identity, information about the past, and the transmission of these values to posterity, along with contributing to European and global cultural diversity. This reality requires combining criminalistic research with other protective measures to achieve a more enhanced result.

Thus, the objectives are summarized as follows:

- To study the existing technical-criminalistic methods and tools and to present their potential use in investigating crimes related to the national cultural heritage.
- To highlight the interdependence of criminalistics with other sciences in this specific field.
- To identify effective means of investigating large areas (e.g., large archaeological sites).
- To update the set of methodological directions for investigating crimes against the national cultural heritage.
- To present the possibilities for investigation, research, and expertise based on scientific and technological advancements, as well as artificial intelligence.

The structure of the thesis

In the first chapter, **INTRODUCTORY ASPECTS, CONCEPTUAL CLARIFICATIONS AND CLASSIFICATIONS**, I addressed some preliminary aspects as follows.

I presented the problem (the topic), along with a brief mention of the purpose, and emphasized the importance, even the indispensability, of criminalistic research in this endeavor.

Regarding the stage of the research, it is noted that after 1989, for various reasons, criminal activity against the national cultural heritage began to flourish. This aspect triggered the interest of the authorities, who showed sensitivity to this field, mobilizing themselves in an exemplary manner to counteract the phenomenon. Thus, through the work of judicial bodies, the phenomenon was documented, and later, through analyzing jurisprudence, publishing works in the field, and organizing specialized conferences, it began to be studied, analyzed and synthesized. Opinions, critiques, and recommendations regarding future directions were formulated. All of this had a predominantly criminal or criminal procedural nature, even though forensic articles and studies also emerged.

The doctoral thesis is justified by the current stage of research and the lack of a more comprehensive national work that addresses the research of crimes against the national cultural heritage from a forensic perspective, with the ultimate goal of preserving national and cultural identity and knowledge of the past and transmitting these values to posterity.

After presenting the research objectives, I introduced the working methodology used.

The research methodology was multifaceted. The desire to understand the phenomenon as thoroughly as possible and to depict even the context of the topic led to a multidisciplinary study.

Thus, I took into consideration and studied elements that are significant in this process: the crimes themselves, modes of operation, relevant legislation, jurisprudence in the field, expert reports, statements, etc. During the research, the study of historical, ethnographic, archaeological, museological, cultural aspects etc., was also necessary.

The research consisted of content analysis of legislation, jurisprudence, and specialized literature, etc. Both qualitative and quantitative methods were used.

The criminalistic analysis of the phenomenon was possible due to the information gathered from specialized studies, jurisprudence, discussions with field specialists, and participation in relevant conferences (both in the field of cultural heritage, such as the Patrimonium conferences, and in criminalistics, such as the criminalistics conferences organized In memoriam Emilian Stancu).

The cross-border scale of the criminal phenomenon in this field, along with organized crime, necessitated collaboration among specialists, which also crossed national borders, thus requiring the examination of works by foreign authors, alongside international legal acts on the matter.

Study visits to archaeological sites and to historical monuments contributed to the development of a broader vision of the issues at hand.

From the specialized literature and jurisprudence, I extracted relevant elements, and by studying more recent works (not necessarily in the field of cultural heritage), I identified methods and techniques that can also be used in the criminalistic research of national cultural heritage.

I clarified the notion of *national cultural heritage* and presented aspects regarding the necessity of protecting cultural heritage, in order to support the chosen structure.

Defining the concepts was thus the first step, based on two considerations: on the one hand, it helped us form an overview of the field, and on the other hand, we aimed to do the same for the readers of the paper. At the same time, the etymological analysis of the concept of *national cultural heritage* revealed nuances that helped us better understand the value of this cultural heritage and the obligations that lie upon us. It was interesting to discover that protecting cultural goods is, in fact, a mutual activity, meaning that by protecting the national cultural heritage, the heritage also

protects us. The Carpatho-Danubian-Pontic region constitutes a rich and varied area in terms of evidence from the civilizations of the preceding millennia, due to the peoples who have inhabited this territory over time. It is of importance not only locally and nationally, as a factor of cohesion and local and national identity, but also contributes to global diversity.

I also considered it appropriate to include a historical retrospective on the issue of national cultural heritage in order to view the current situation as the result of processes and measures taken over time. Forming a clear image requires understanding both the negative measures and the evident progress made.

The next subchapter, entitled "Composition of National Cultural Heritage - Classifications," addresses the need to emphasize that effective protection requires, first and foremost, the knowledge, inventory, and documentation of heritage assets. These are the premises for their conservation, care, recovery, and research.

The vastness of these assets necessitates their classification according to various criteria. Thus, classification, apart from being essential for maintaining an organized record of these assets and for being able to intervene legislatively only in the category where necessary, also helps us realize how vast this cultural wealth is.

First and foremost, it is necessary to distinguish between tangible and intangible cultural heritage.

Tangible cultural heritage undergoes multiple classifications. One such classification, based on mobility, differentiates between immovable cultural heritage and movable cultural heritage. This distinction is also marked by the normative acts that regulate these categories.

Thus, according to Article 3, paragraph (2) of Law 182/2000 regarding the protection of movable national cultural heritage – republished¹, movable cultural heritage includes archaeological and historical-documentary goods, goods with artistic significance, goods with ethnographic significance, goods of scientific importance, and goods of technical importance, with the subcategories specifically provided by law. Depending on their importance and representativeness, these may belong to the categories of treasure or heritage fund.

Alongside movable assets, there are also immovable ones: historical monuments, archaeological sites, and ensembles. From a representational point of view, they are divided into

¹ Published in Monitorul Oficial (The Official Gazette) No. 259 on April 9, 2014.

two categories: A and B, meaning historical monuments of national or even universal value, and historical monuments that are representative on a local level.

Another category is represented by archaeological heritage. This heritage consists of goods resulting from human activity and can be either immovable or movable, categories that can be further subdivided. Archaeological heritage holds a special place within the national cultural heritage as it contributes the oldest records from these territories.

According to another classification, depending on the location of these cultural assets, we can distinguish between above-ground, underground, or even underwater heritage.

Cultural goods can also be divided into sacred and secular goods. These categories, in turn, can be divided based on different criteria.

An important component not to be overlooked is intangible heritage. This has been a social cohesion factor over time, contributing significantly (perhaps even more significantly than tangible heritage) to the preservation of identity, community cohesion, and the transmission of values to both larger and smaller communities.

A recent development is digital cultural heritage, but the real challenge lies in properly addressing works created by artificial intelligence (AI). This raises the question of whether such works can be included in the cultural heritage of humanity. The reality of the 21st century requires a general answer to this question, alongside finding answers to issues such as: who holds ownership rights over such a good, can we speak of a "good" in this context, and do the legal requirements for possible legal disposition apply to them? Thus, we propose the creation of a hybrid category to include these goods, which, regardless of how they are created, may be culturally valuable.

In Chapter II, **PROTECTION OF CULTURAL HERITAGE THROUGH LEGAL NORMS**, I first presented the legislation in the field as outlined by the categories of goods discussed. The effective protection of cultural heritage can only be achieved through a detailed understanding of the legislative framework and the prompt application of legal provisions in practice, a responsibility shared by various individuals and institutions.

The material legislation in the field of cultural heritage includes international conventions ratified, accepted, and approved by Romania, European regulations and decisions, along with directives that are transposed into national legislation, and of course, internal norms. Internal

normative acts were presented starting with relevant articles from the fundamental law, followed by the criminal code, with subsequent legislation based on categories of cultural goods (with certain exceptions such as Law 50/1991 Regarding the authorization of construction works – Republished.²). Last but not least, I reflected on the issue of the Cultural Heritage Code of Romania, which is currently in a phase of stagnation.

Considering that criminalistic research is predominantly initiated by the commission of crimes, I dedicated a subchapter to the offenses that make up the majority of undesirable acts directed against national cultural heritage (theft, destruction, illegal export operations, access with metal detectors or their use in archaeological heritage areas, etc.), noting that in many cases, related offenses such as concealment, use of a forged document, money laundering, and organized crime group formation were also committed.

The analysis of case law highlighted not only the methods of operation but also legislative shortcomings, evoking the need to amend the legislation, primarily through the future National Cultural Heritage Code. To prevent situations like the one in Alba Iulia, where a 1700-year-old Roman sarcophagus was destroyed, we propose amending the legal provisions regarding the expansion of cemeteries to better protect archaeological sites.

The investigation of crimes against national cultural heritage must be conducted with strict adherence to the legal framework, ensuring respect for the fundamental rights of individuals, while international regulations that facilitate judicial cooperation between member states are also extremely important.

Thus, the presentation of material legislation was followed by presenting the relevant legislation in the investigation of crimes related to the protection of national cultural heritage. The forensic investigation of these assets requires knowledge of the criminal procedure regarding criminal investigations and understanding the legislation on conducting expert evaluations. It is also important to be familiar with other normative acts, depending on the activity carried out, such as internal norms within the Criminalistic Expertise Institute of the Romanian General Police Inspectorate (IGPR), the European Convention on Human Rights etc. One of the most important normative acts in the field remains Government Ordinance 75/2000 regarding the organization of criminalistic expertise activities³.

² Published in Monitorul Oficial (The Official Gazette) No. 933 on October 13, 2004.

³ Published in Monitorul Oficial (The Official Gazette) No. 407 on August 29, 2000.

Chapter III, titled **INVESTIGATIVE PROCEDURES, TECHNIQUES, AND INTERDISCIPLINARY COLLABORATION** is the most extensive. I chose this structure because I wanted to provide a comprehensive presentation of the actual criminalistic research, somewhat in chronological order.

After presenting some considerations regarding the essential purpose of forensic research in the field, I discussed the investigation at the crime scene. In addition to covering general aspects, I aimed to capture as many specific aspects as possible related to the investigation in the field of national cultural heritage. Even the notion of investigating the crime scene obviously carries specific characteristics. The case law derived from the multitude of possible crime scenes (places of worship, museums, archaeological sites, means of transport, etc.) allows for the identification of case-specific considerations.

I highlighted the importance of using drones for investigating vast or hard-to-access areas (for example, archaeological sites in mountainous regions). I emphasized the significance of investigating the crime scene, as it is primarily through this activity that materials are collected, which serve as the basis for scientific works (technical-scientific findings, expert evaluations). I also referred to the selection of the most suitable investigative model, both for enclosed spaces (e.g., places of worship, private residences, museums) and outdoor locations (e.g., archaeological sites).

I opted to present considerations regarding the possibilities of recording the results of the crime scene investigation.

I proposed the completion of the legislation regarding the investigation of the crime scene in the Criminal Procedure Code, with the most important activities carried out at the scene, and a detailed description of the key aspects and rules.

The next subchapter focused on presenting the methodological directions for investigating these crimes, as several approaches have proven to be useful in the field of cultural heritage as well. This process essentially represented an update of the methodologies found in the specialized literature. Some of these directions were extensively developed in subsequent chapters.

First, I presented searches and the seizure of objects and documents, for two reasons: alongside crime scene investigations, these actions provide materials for scientific analyses and have proven useful in proving numerous crimes and recovering exceptional artifacts.

The role of forensic expertise and technical-scientific findings in the field is supported by the multitude of aspects addressed. They have demonstrated their importance in the broader scope of criminalistic investigations, both in the context of criminal offenses and in the classification of cultural assets.

I also analyzed aspects related to the profession of expert (forensic specialist), offering specific proposals for actual access to this profession (studies, acquiring experience, examinations). In this regard, I believe it would be beneficial to establish a higher education institution focused on criminalistics, where students could acquire both theoretical knowledge (including legal foundations) and practical experience through internships, volunteer work, or even employment after graduation. This would help address the challenge of gaining experience or, at the very least, facilitate it.

I also conducted a thought exercise regarding the use of artificial intelligence (AI) in the field of specialized works, concluding that, given the current state of AI, it can only serve as an adjunct to the expert.

Regarding expert evaluations, I emphasized the need for collaboration between specialists from different fields (for e.g. a forensic expert and an archaeologist) and the use of the most advanced technical means. The case law in the field of national cultural heritage has demonstrated the successful application of both approaches. While we believe that the era of the universal genius has passed, and advocate for collaboration among specialists, continuous professional development remains a necessity.

In this particular field, it may be essential to first conduct expert evaluations of cultural heritage items (e.g., bracelets, coins, paintings, etc.), but it may also be necessary to evaluate crime-related objects (e.g., metal detectors, vehicles, computers, etc.), as well as perform expertise on traces of human origin (e.g., handprints, lip marks, blood, etc.) or even the context (e.g., archaeological context). I also addressed graphic and technical document expertise, which is relevant in several cases (e.g., proving the authenticity of cultural inscriptions, documents confirming ownership rights or other rights, etc.).

I also treated the difference between expert evaluations and technical-scientific findings.

Specialized scientific works, thanks to scientific and technological advancements, have made it possible to clarify aspects that were unimaginable decades ago.

Regarding the relationship between the outcome of an expert report and the judge's assessment, I concluded that the credibility of the definitive results of scientific works cannot depend on the judge's subjective judgment, unless they are clearly erroneous (objective results cannot be subject to subjective evaluation). This does not interfere with the overall assessment of the entire body of evidence and the corroboration of the evidence.

I provided numerous examples with relevant parts from judicial practice and specialized literature developed based on case law in the field. In doing so, I highlighted both the general applicable elements and the more specific ones.

The hearing of individuals has often contributed to uncovering the truth. Thus, the testimony of witnesses, the injured party, the suspect, or the defendant are key activities in criminal proceedings involving cultural heritage crimes. Regarding witnesses, I referred to the statements given by various categories of individuals interviewed in this capacity, such as guards, experts, etc.

I discussed aspects of forensic tactics and techniques, but also provided examples from the case law I studied. The process of questioning is based on identifying the witnesses, creating an appropriate environment for confessions, and gathering general information about the witness.

In the phase of free testimony, the witness is allowed to freely recount what they know while their behavior and gestures are observed. The questioning phase (interrogative phase) is optional and serves to supplement and verify the free testimony or clarify any ambiguities.

In some cases, it may be necessary to use techniques to detect simulated behavior during the statement-taking (such as the polygraph or emotional stress detectors in the voice). However, the results of these methods are not entirely reliable and are considered only indicative.

In the field of national cultural heritage, witness statements have often contributed both to uncovering the truth and to recovering cultural property. In some cases, this required the hearing of over 100 individuals as witnesses.

Due to the cross-border scope of criminal activities in this field, relevant examples highlight the necessity of using the instruments provided by Directive 2014/41/EU, which outlines investigative methods that can be subject to the European Investigation Order. Among these methods, we find the hearing of witnesses via videoconference or teleconference.

In addition to the hearing of witnesses, it may also be relevant to hear the injured party. Given that the ownership of cultural property can belong to natural persons, legal entities, and the state, as well as to certain communities, the injured party exists in this field as well. In some situations, the general and specific passive subjects are distinct entities, while in others, both qualities are held by the state.

Finally, among the statements given by individuals, we also find the statements of the suspect/defendant, which have on numerous occasions, contributed to uncovering the truth.

Given that prevention is preferable to repressive measures, and that the ultimate purpose goes beyond merely holding offenders accountable (protecting heritage assets and, through them, safeguarding communities and the future), in Chapter IV, **CRIMINOLOGICAL CONSIDERATIONS OF A PREVENTIVE NATURE**, I analyzed the factors (causes) that can negatively influence attitudes toward heritage, as well as the reverse — identifying those factors that foster sensitivity toward these assets. Therefore, factors that lead to destructive attitudes must be minimized, while those promoting a protective attitude should be supported and encouraged. These aspects are criminological in nature but are closely linked to the criminal phenomenon in this field.

On one hand, we identify those who fight for this heritage, while at the opposite pole are those who exhibit a destructive attitude toward these assets. An intermediate category consists of individuals who maintain an indifferent stance, which can also lead to destructive outcomes.

Since these are assets with a value greater than their monetary worth (due to their representativeness), often extracted from contexts that are irreversibly destroyed and for which *restitutio in integrum* is no longer possible, it is preferable to prevent their theft and destruction.

It is important to note that, most of the time, the offenders' goal is not to destroy cultural heritage, but to gain quick benefits at the cost of its destruction.

Most of the causes and motivations behind crimes against cultural heritage are not unique to this particular field; some are common to the general causes of antisocial behavior, while others relate to a narrower range of offenses.

A broad spectrum of factors has been identified as contributing to the development of a destructive attitude toward cultural heritage. These factors are biological, psychological, social,

and economic in nature, with the caveat that, generally, a combination of these factors leads to the commission of antisocial acts.

The development and cultivation of a protective attitude also stems from numerous factors. Some factors may promote a destructive attitude toward cultural heritage (e.g., poverty, lack of education, negative experiences, inappropriate urbanization policies, etc.), while others lead to the development of a protective attitude (e.g., education, tourism potential, etc.), and some can fall into both categories (e.g., economic factors).

Postmodern criminology highlights the unpredictability of the interaction between these factors and even the unpredictability of human actions. Like in many other fields, citizens' attitudes toward cultural heritage show certain patterns, but humans remain inherently unpredictable.

Technology also plays a major role in the evolution, change, or adaptation of these factors, and consequently in shaping attitudes toward cultural heritage.

The complexity and unpredictability of certain behaviors and actions derived from them may seem discouraging. However, this should motivate us to analyze and anticipate possible future scenarios in order to ensure effective protection of these invaluable cultural assets.

The research results in the formulation of **CONCLUSIONS** along with proposals for legislative amendments (Chapter V).

I.

The etymological analysis of each component of the concept of *national cultural heritage* helped us to better understand what it encompasses, what rights and financial obligations we have in relation to it, and how it contributes to preserving national identity and transmitting values to future generations. The assets that are part of Romania's cultural heritage are unique because they form a unique heritage due to the historical context of this territory, a context reflected even in cultural goods.

The classification of assets helps with their inventory, protection, research, and recovery, and the regulatory framework plays an essential role in this process. Technological developments in recent decades highlight the need to define and regulate a new category of goods, such as digital heritage. Therefore, we propose the creation of a new category of goods, for example, under the name of digital cultural heritage.

II.

The protection of national cultural heritage cannot be achieved without the legislative component.

Substantive norms in the field, alongside procedural norms, serve as valuable tools in the protection and research of cultural goods.

Analyzing the legislation, alongside issues revealed by specialized literature based on case law in the field, highlights gaps in the legislation and the urgent need for the adoption of a national cultural heritage code that is more firmly grounded in reality.

Case law in the field indicates that there are certain types of offenses that make up the majority of undesirable actions directed against cultural heritage.

In order to prevent the destruction of archaeological sites and artifacts, following the analysis of the destruction case at the Apulum archaeological site we propose a modification of Article 10, paragraph (2) of Law 102/2014 regarding cemeteries, crematoria, and funeral services⁴, as follows: *"For the expansion of operating cemeteries, with the exception of areas with archaeological heritage, the rules established for the establishment of cemeteries do not apply."* We are referring here to already protected areas, archaeological sites, their protection zones, and areas with identified archaeological heritage.

III.

Forensic research in this field involves the use of scientific techniques and procedures aimed at discovering, collecting, preserving, and examining traces and material evidence related to these cultural goods.

The collection and expert evaluation of cultural artifacts can be a true challenge due to their fragility, rarity, and significance.

We have concluded that in this specific field, collaboration among specialists is often required, especially during the crime scene investigation, the search and seizure of items and documents, and, even more importantly, during the expertise phase. The use and continuous updating of equipment and technology, along with the implementation of artificial intelligence advancements, represent an ongoing activity and challenge.

⁴ Published in Monitorul Oficial, (The Official Gazette) No. 520 on July 11, 2014.

The real evidentiary value of items seized during the crime scene investigation, search, and collection of objects and documents becomes apparent after conducting technical-scientific findings or expert evaluations. These activities have often been crucial in establishing the authenticity and provenance of artifacts. In this way, numerous invaluable cultural goods have been recovered, and our knowledge of the past has been enriched.

Due to technological advancements, the continuous training of forensic experts, as well as other specialists, is imperative. Artificial intelligence has indeed significantly eased the work of experts, but it cannot replace the human element.

Given the scientific progress and the accuracy of research results, we propose a change in legislation to ensure that judicial authorities strictly consider the conclusive results of expert evaluations/findings, allowing them to deviate only in cases where the conclusions are clearly unfounded, not based on their own subjective beliefs. Therefore, we believe that judges should always take into account the conclusive results and assess them accordingly. We refer to the credibility of scientific evidence.

Therefore, we propose the amendment of Article 103, paragraph (2) of the Criminal Procedure Code⁵ as follows: *“When deciding on the existence of the crime and the guilt of the defendant, the court shall make a reasoned decision, referring to all the evaluated evidence. The credibility of scientific evidence of certainty is not assessed by the court, on the condition that they are not clearly wrong. Conviction is pronounced only when the court is convinced that the accusation has been proven beyond any reasonable doubt.”* Corroboration with other evidence is still necessary to pronounce a correct decision based on its conviction beyond any reasonable doubt.

In order to improve the efficiency of conducting expert evaluations, we propose amending Government Ordinance no. 75/2000 regarding the organization of criminalistics expert activities, specifically by modifying Article 4, paragraph (1), letter g, to have the following content: *“Has been declared admitted to the exam organized periodically for this purpose by the Ministry of Justice.”* We propose the effective organization of an exam for obtaining the status of authorized forensic expert. We also support the idea of establishing an institute for higher forensic studies, which would provide the opportunity for specialization in one or two areas of forensic science

⁵ Published in Monitorul Oficial (The Official Gazette) No. 486, on 15.07.2010.

(including the necessary legal knowledge in the field) along with the possibility of gaining experience through internships, volunteering, and employment.

Hearing individuals has also proven its usefulness in cases within the field.

We have become convinced that forensic investigations of crimes against the national cultural heritage protection regime are not an end in themselves, but rather a means to an end, namely the recovery of goods, the protection of existing ones, with the ultimate goal being the gathering of information about the past, the preservation of identity, and the transmission of these goods to future generations.

IV.

Considering that in the case of crimes in this domain, it is not possible to fully recover and restore the cultural goods, special attention must be given to measures that prevent the loss and destruction of cultural heritage. Therefore, it is essential to identify those factors that foster destructive attitudes toward this cultural heritage and take action to minimize their influence, alongside identifying and supporting the factors that contribute to the development of a protective attitude and appreciation for the national cultural heritage.

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