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Improving the legislation on preventive archaeology in Romania – an urgent requirement for the protection of archaeological heritage

Abstract

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Preventive archaeology in Romania has been only quite recently formally regulated by law. Even though the principles established by the Malta Convention, which regulates the guidelines for the protection of archaeological heritage, are complied with, at least in theory, there are numerous shortcomings at the national level. Based on discussions with several archaeologists and other stakeholders involved in archaeological research and heritage protection in Romania, we would like to present some of the issues raised. We offer recent convincing examples, but also potential solutions to these issues, which clearly affect Romania's cultural heritage protection and research. We refer to both the difficulties encountered by archaeologists due to the confusion and shortcomings present in the legal texts, but also to the inability of the authorities to enforce the existing laws

Keywords: preventive archaeology, Romania, legal framework, protection of archaeological heritage

▪ Abreviations: L - law, OG – Government Ordinance; OMC – Ordinance of the Ministry of Culture

Preventive archaeological research is a branch of archaeology that has evolved much in recent decades, as a result of fast-paced economic development, of infrastructure, and also due to major urban transformations. The risk of irreparable destruction of archaeological heritage has attracted the specialists' response to this problem by signing several European conventions adopted by many states aware of these dangers. The London Convention, signed in 1969 and in force since 1970, was adopted by 24 states and was one of the first initiatives in this field. The text was followed and improved by the Amsterdam Declaration (1975) and the Convention on the Protection of Architectural Heritage (Granada, 1985). In 1992 the *Valletta* or *Malta Convention* was adopted, signed by 39 European countries and ratified by 27 of these (Angelescu 2005, 56-58, Borş 2016, 15-30). For many European states this was the foundation of modern legislation on the protection of archaeological heritage and it became one of the first vectors of legislative unification in the field (contrary see Angelescu 2005, 23). However, each country has developed over time appropriate legislation in line with its peculiarities. Such legislation was connected to regulations on infrastructure, construction, environmental impact, etc. The final objective of these legislative documents was to establish the principles and means to protect national and world archaeological heritage.

In the case of Romania, the main act that regulates preventive archaeological research activity is the Government Ordinance no. 43 / 2000, which is mainly based on some other regulatory provisions related to the monuments and archaeological sites (L. 50/1991, regarding the issuance of building permits; L. 150/1997 for the ratification of the European Convention for

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the Protection of the Archaeological Heritage – La Valletta). The legislation base of departure was very poor, in the sense that there were no consistent legislative regulations on heritage protection. The ordinance no. 43/2000 was supplemented by other legislative documents, minister's orders particularly, aimed at improving the research activity, but, above all, protecting heritage. The law 422/ 2001, regarding the protection of historical monuments, is one of the most important heritage acts. However, a number of ministerial orders were issued that regulate or supplement issues related to archaeological research in Romania: OMC 2061/2000 on the approval of the Regulation on the organization and functioning of the National Archaeology Commission, OMC 2071/2000 on the creation of the Regulation for the organization of archaeological excavations in Romania, OMC 2072/2000 regarding the creation of the Romanian register of archaeologists, OMC 2392/2004 for the establishment of archaeological standards and procedures, OMC 2432/2004 regarding the approval of the Regulation for the management of the National Archaeological Inventory, OMC 2518/2007 for approving the methodology of implementation for the procedure of archaeological discharge, OMC 2562/2010 on the approval of the procedure for granting of archaeological research permits, Order No. 653/2010, regarding the establishment of the National Highways Archaeological Research Program – in connection with the major road infrastructure government expenditure projects.

The direct involvement in preventive archaeology projects, as well as the numerous signals sent by some Romanian archaeologists, led us to address a series of shortcomings and to propose some solutions for the improvement of the legislative framework required for normalcy in the field of archaeological research in Romania. These few aspects found in this text are the result of discussions with archaeologists, with public servants of the County Directorates for Culture and Heritage, as well as with officers of the Heritage Police. All those involved are formally tasked with the protection and preservation of heritage, implicitly the archaeological one.

1. First of all, the Romanian legislation, as well as the standards and procedures applicable at present, is quite confusing and imbalanced in defining the stages of preventive archaeological research. (Angelescu 2004) For example, archaeological assessment, preliminary to the preventive research, might be invasive and non-invasive, but a clear definition on the necessity of one or both of these two procedures is not provided in current legislation. Since these assessments contribute to the authorization of certain works, in the case of some major projects, particularly of linear type (Colțeanu, 2015, 87-98), the deficient regulation of this stage of research may affect both the government expenditure project and the quality of archaeological research itself. The permit issued by the Ministry of Culture is called, quite laconically, an archaeological assessment permit, and the sole purpose of the assessment is to verify the possibility that a government expenditure project will affect previously unidentified archaeological sites. The degree of damage to sites, their delimitation both on the ground and chronologically, the definition of type and significance of the sites, as well as the elaboration of a cost and time estimate necessary for preventive archaeological research, remain at the discretion and rely only on the experience of archaeologists conducting the assessment (Istina et al., 2017). Therefore, there are huge differences in the assessments carried out in the pre-investigative stages.

Another stage that often creates problems is archaeological supervision. Unfortunately, it often occurs as the first stage of research, in the absence of a thorough prior assessment. The result is the identification of vestiges that will result in halting the works and starting a thorough preventive investigation. However, in this case, the building permit is suspended for the entire duration of the research, irrespective of whether or not the archaeologist has made an assessment of the situation, affected area, types of monuments identified, research duration and costs, with possible modification of the construction project, etc. The purpose is only to obtain the certificate of archaeological discharge by carrying out the archaeological excavation, when, in fact, the primary purpose should be the protection and, if not possible, the recording and publication of archaeological heritage elements.

Therefore, the field assessments, both intrusive and non-invasive, followed by actual archaeological research completed with archaeological supervision, are all part of the same research process and should be treated consistently in specific legislation.

2. Then, we are dealing with shortcomings, confusions and reinterpretations of some terms, definitions and responsibilities within the legal framework that covers the preventive research in Romania. For example, European legislation clearly states the partiality to preserve by means of recording. Invasive research is the last-recourse solution, to be used only when absolutely needed. However, this principle is violated precisely by the legislation in force in Romania. For example, the restoration of historical monuments stipulates the

requirement of preventive archaeological research, prior to restoration, without defining the stages and necessity of the former (OG. 43/ 2000, article.2). This leads to situations where restoration projects target monuments of a certain type and age, ignoring the underlying heritage, even if such remains have higher cultural value. Those cannot be reached, because the restoration would destroy the later stages of such an archaeological site. So, there is a legislative incongruity that must somehow be managed by archaeologists. The legally defined purpose of preventive archaeological research is the issue of a certificate of archaeological discharge, which, in the context of the restoration of a monument, may mean the destruction of some of its stages.

Subsequently, the regulations stipulate that it is mandatory to carry out preventive archaeological research when the project ground area does not need to be investigated, for example in the construction of light, foundationless extensions or surface parking. **Therefore, emphasis is placed on destructive research, rather than insisting on the delimitation, protection and preservation of identified sites, provided they cannot be effectively utilized.** A satisfactory solution could be an increase in the use of non-invasive research methods, which could, to some extent, replace excavations. Such regulations could even make the usage of preliminary surveys mandatory, and only in imperative cases intrusive research would be allowed, with archaeological discharge.

Then, the Building Code (L. 50/ 1991, article 10) requires that the developer must obtain the permit from the Ministry of Culture for construction works only for areas where a protection regime has been established beforehand through land use plans and zoning permits. This regime applies, in principle, only to the sites that are listed in the List of Historical Monuments (LMI) and the National Archaeological Inventory (RAN). But these two lists are deficient in the sense that the topographical limits between such sites and the surrounding areas are missing or inaccurate (Teodor 2015, 383-386; Teodor 2016). Many of the data newly published in archaeological repertoires at county level are not automatically taken up in the national inventories. Hence, the notion of random find, applicable to many of the construction projects, is very common. In fact, the "random finds" cover the shortcomings in the legislation, poor administration of the databases by the Ministry of Culture, and the failure to enforce the application requirements for permit issuance (Borş 2014, 125).

Malfunctions also arise in the decisions of the numerous Committees within the Ministry of Culture; for example, conflicts between the decisions of the National Archaeology Commission, composed of archaeologists and the ones of the National Commission of Historical Monuments, dominated by architects and engineers. The double meaning of the term "monument" in text of law, as both an archaeological site and an architectural building with heritage value creates dysfunctions (L. 422/ 2001, article 3). Thus, there are situations in which restoration work on the roof or the facade of a heritage building is done under archaeological supervision, and structural consolidation works, with interventions in the ground, are carried out without including archaeology in any of the stages prior to the beginning of the works.

Thus, a whole series of anomalies arise from confusions, deficiencies and misinterpretations of the legislative framework.

All the above require a greater consistency of committee decisions within the Ministry of Culture and, implicitly, the consolidation of legal provisions and advisory regulations for monuments and archaeological sites, where preventive archaeological intervention shall be mandatory.

3. The third issue to be discussed here concerns the non-involvement of the state institutions and, implicitly, the non-enforcement of the legislation in situations when archaeological heritage is endangered.

Two recent cases demonstrate the unfavourable situation in which preventive archaeology is now in Romania. On one sector of a ring road of an important city in the northeastern region of Romania (Bacău), we have been challenged by problems that show the limitations of the present legislation. The winning bidder of the building contract tender for this section, who also took responsibility for the funding of archaeological research, went bankrupt. Unfortunately, there is a common practice in Romania to impose on the contractor the part of archaeological evaluation and research, in complete disagreement with the FIDIC (Fédération Internationale des Ingénieurs-Conseils) rules and the Valletta convention, as the contractors are in fact entrepreneurs and not beneficiaries of the project. To resume, the work on the archaeological site near Bacău was therefore stopped in the midst of archaeological research. During the last days of excavation, archaeologists have taken care of the basic site preservation in the hope that the National Highway and Road Infrastructure Administration Company, the managing body of the project, will unlock the situation within a reasonable time, at least regarding the exploration of the discovered and partially excavated features. We are about 20 months after the project was halted and nothing happened. Despite the efforts made

by archaeologists, the field situation has deteriorated significantly in the archaeological trenches.

Under the legal framework in force, the Romanian National Highway and Road Infrastructure Administration Company is responsible for the protection of the site and for the continuation of the works already started. In addition, the project management body had the possibility to contract only archaeological works for clearing the land of its archaeological encumbrances, so that the tender for the new building contract would run its course normally. In Romania, such public tenders take an exasperatingly long time, due also to the unclear and sketchy legal framework, which allows countless appeals and court sentences that last up to a few years. The Romanian National Highway and Road Infrastructure Administration Company, the body that conducted the tender and gave the contract to that company failed or was unable to find a solution in this case, which is not unique in Romania. It is worth mentioning that this body also has an archaeological service. Attempts and petitions have been made by both the archaeologists and the Bacau County Directorate for Culture and Heritage, as well as by the National Archaeology Commission. The latter body, advising the Ministry of Culture, has notified the Road Infrastructure Company about the legal obligation to protect the sites under investigation and to identify funding solutions for the completion of archaeological research. No solution until now.

This situation is not an exception. In the 3A section of the Transylvania motorway, Cluj-West – Mihăeşti, the same thing happened, i.e. the premature cancellation of preventive research contracts. The National Archaeology Commission has also recommended the continuation of archaeological research to prevent the destruction of the already excavated features, but also to save money that would have otherwise been spent on site protection and preservation and on restarting the research. We are about a year since the works have stopped on the Transylvania motorway and the forecasts are pessimistic.

Therefore, the institutions and companies of the Romanian State show an unexplained degree of procrastination, verging on law-breaking. We report behaviours that sometimes look a lot like criminal negligence. Moreover, it is not uncommon, ironically, to blame the archaeologists who are at fault for the delays in the infrastructure projects. This shows exactly how archaeology is perceived by the political decision-making establishment of Romania. Instead, the legislator may modify the legal framework regarding heritage preservation when the interests of the national priority projects require so.

For example, the law regarding certain measures required for the implementation of declared national importance projects in the field of natural gas, L. 185/2016, with particular emphasis on the Bulgaria-Romania-Hungary-Austria (BRUA) gas pipeline project, provides for numerous exceptions to the legislation in force on the protection of archaeological heritage. In the preliminary studies conducted on the pipeline route, about 528 km on the territory of Romania only, a large number of archaeological sites were identified. The diagnostics shall confirm the necessity of preventive archaeological research in Giurgiu, Teleorman, Arges, Vâlcea, Gorj, Caraş-Severin, Timiş and Arad counties, for which the provisions of the Government Ordinance no. 43/2000, and the provisions of the special law on gas as well shall apply.

Thus, this last act stipulates a simplified procedure for carrying out archaeological research and issuing the necessary permits, as well as issuing the clearing certificate for archaeological encumbrance of the land. The act also stipulates that the suspension of the construction works on the land where the archaeological heritage is accidentally uncovered does not affect the rights to use, exploit and / or commence or continue the building works for the rest of the land subject to the building permit issued.

The legislator therefore needs to intervene not necessarily when this is required by heritage-related situations, but when other priorities obligate him. The most conclusive example, in addition to what we have said above, is that the attempt to amend Order 43/2000 in view to optimize the regulation of, *inter alia*, the use of metal detectors (Teodor 2014, 43-59) and the clearer definition of what constitutes a random archaeological find, was met with fierce resistance not only from those directly concerned but also from the Ministry of Culture. At the moment, the discussion regarding the improvement of legislation governing archaeological research in Romania is blocked.

▪ Conclusions and Solutions:

One can find that the very basic principle of the Malta Convention, namely that the struggle for the protection of archaeological heritage must be carried out by an alliance of politicians, local or central authorities, urban architects, entrepreneurs and, of course, archaeologists is largely lacking as for the present heritage protection activities in Romania.

The solution, also included in the Valletta Convention, is to raise the awareness and to educate the general public, as the "public awareness" is the only factor

that can exert real and effective pressure on politicians and governments; educating people to perceive the positive potential that heritage has in the evolution of society as a whole.

Other issues to be addressed would be: the blocking of legislative changes that are caused by the needs of the moment, the ignorance or the impotence of politicians to preserve and protect national heritage, as well as by the carelessness of archaeologists in Romania, who are incapable to date to organize themselves in a credible trade association as a serious partner in relation to the authorities.

The solution would be a body with legal identity and with the corresponding responsibility that would replace the National Archaeology Commission that plays a limited, even symbolic role in managing situations related to national archaeological heritage.

In spite of a hodgepodge of Minister's Order, Government Ordinances, even laws and numerous amendments to the laws, the current legislative framework on archaeological research in Romania is incomplete, quite ineffective and sometimes difficult to enforce and to comply with, due the absurdity of certain provisions.

To this, the solution would be a unitary law on archaeological research, in accordance with the Heritage Act and in accordance with the provisions of the Environment Act, of the urban and infrastructure building codes, with precise and non-debatable regulations pertaining to the authorization and approval of the works and the stages in relation to pre-construction studies.

The archaeologists share the blame in this equation. The protection and utilization of heritage is also effected by publishing the results by the researchers in reasonable terms. Many colleagues can, however, be caught procrastinating when one searches for such published results. The legislation in power only requires the submission of a report, often too technical, and at the same time of little use for the interested academia.

In Romanian archaeological academia there have been and there still are concrete proposals for improving the legislative framework, methodologies for approaching archaeological research, as well as for educating the political environment and the general public (Musteață 2014; Borş 2015). However, these initiatives must also be taken into account by policy-makers.

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