

THE MATERIAL OBJECT OF THE CRIMINAL OFFENCES PROVIDED BY THE ARTICLES 199¹-199⁴ OF THE CRIMINAL CODE OF THE REPUBLIC OF MOLDOVA: CRITICAL OBSERVATIONS AND PROPOSALS *DE LEGE FERENDA*

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Abstract

The basic purpose of the present scientific research is the critical analysis of lawmaking updates concerning material object of the criminal offences sanctioned by articles 199¹-199⁴ of the Criminal code of the Republic of Moldova. The systematical method, the comparative method, analysis and synthesis have been chosen. As a result, the present study of penal legal norms was performed in a systematical and comparative way. Especially, there have been concluded that some lawmaking solutions settled in the legislation and penal doctrine of Romania would constitute a relevant scientific support and a good lawmaking sample in order to formulate some suggestions of legislative improvement in the sphere of protection of the cultural heritage by means of Criminal law. Finally, after a critical research there have been detected a great amount of unclear expressions and deficiencies of the modern lawmaking procedure used in the process of creating legal norms, and have been formulated new proposals to reform.

Keywords: cultural heritage; goods of cultural heritage; misappropriation of goods of cultural heritage; destruction of goods of cultural heritage.

JEL Classification: H41, K14

1. The introductory section

The problem investigated in this scientific study is the juridical-criminal analysis of the material object of the crimes stipulated in art.199¹-199⁴ of Criminal Code of the Republic of Moldova.

This research raises some sensitive aspects of the criminal-law norms contained in art.199¹-199⁴ of the Penal Code and identifies legislative deficiencies and gaps. Although some legislative steps have been taken, the novels of the Criminal Law of the Republic of Moldova in the field of legal protection of cultural heritage have caused some controversies in the science of criminal law. In this sense, we sought to clarify the approaches through our own vision.

In order to obtain valid results, we have addressed the existing doctrine in the field, especially we have capitalized the works of the reputed authors who meticulously treat the legal aspects of safeguarding and protecting the cultural heritage (S. Brînză, V. Stati, A. Calugariță) I have examined some legislative acts in the Republic of Moldova, as well as some international acts in the circumscribed legal perimeter.

The actual research was based on clarifying and identifying the concept of cultural heritage both in national and international law; clarity has been made in defining the concept of natural heritage and archaeological patrimony; it has been demonstrated that "the cultural heritage built" does not coincide, from the semantic point of view, with the "the real estate cultural heritage"; it has been noticed that the Moldovan legislator uses the term "archaeological potential", which is a process that lasts until the completion of the archaeological research and the appropriate measures of protection and valorization of the archaeological discoveries. The author identifies the lack of regulation and independent legal protection of areas of cultural and indigenous importance (*vernacular areas*) and notes that the lack of the elaborated direction of identifying and safeguarding the vernacular areas in the inevitable national legislation of the Republic of Moldova will lead to major negative consequences for the patrimony culture of the state. Therefore, I have intervened with certain proposals *de lege ferenda*.

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2. Novels of the criminal law on the legal protection of cultural heritage

In the light of the amendments introduced by the Law of the Republic of Moldova No. 207 of 29 July 2016 (in force as of 07.11.2016)², Chapter VI of the Special Part of the Penal Code of the Republic of Moldova was completed with five articles on the legal and criminal protection of cultural heritage.

Analyzing in a meticulous manner this group of new articles in the Criminal Law of the Republic of Moldova, we noted that the reference to the cultural patrimony, in terms of the material object, can be found in the following articles of the Criminal Code:

1. Art.199¹ CP RM (Damage or destruction of cultural heritage assets): Material object - cultural heritage assets.

2. Art.199² CP RM (Making unauthorized works in archaeological sites or areas with archaeological potential): Material object - soil in archaeological sites, soil in areas with archaeological potential.

3. Art.199³ CP RM (Preservation or illegal keeping of movable archeological assets): Material object:

- a) mobile archaeological assets;
- b) movable archeological assets, including treasures discovered by accident;
- c) movable archeological assets, including treasures, discovered in land-use works;
- d) movable archeological assets, including treasures, discovered in interventions by means of metal detectors or other remote sensing devices.

4. Art.199⁴ CP RM (Unauthorized Marketing of Movable Archaeological Goods and Classified Movable Cultural Goods) Material object - mobile archaeological goods, classified movable cultural goods.

We will analyze them successively.

Cultural heritage assets are the material object of the crimes stipulated in art.199¹ CP RM. In our opinion, the good of cultural heritage as a material object of this crime is both mobile and immobile.

In this respect, we agree with the statement made by the author S.Brînza and V.Stati, according to which the goods belonging to the immovable cultural heritage can not represent the material object of the offenses provided in paragraph (2¹) art. 186, paragraph (2¹) art.187, paragraph (2¹) art.188, paragraph (2¹) art.190 and paragraph (2²) art.191 CP RM. Instead, they may be the material object of the offenses specified in art. 199¹ CP RM. For retaining to qualification of the paragraph (2¹) art.186, paragraph (2¹) art.187, paragraph (2¹) art.188, paragraph (2¹) art.190 or paragraph (2²) art.191 CP RM, not compulsory that the purpose of eviction should occur to the perpetrator until his entry into the archaeological sites or areas with archaeological potential³.

Thus, we will try to formulate the notion of cultural heritage. According to the Romanian Language Explanatory Dictionary, the patrimony is:

- all rights and obligations of economic value, as well as the material goods to which these rights relate, belonging to a person (physical or legal);
- all property belonging to the community and administered by state bodies; good public. Spiritual goods belonging to the whole people (transmitted from ancestors); cultural heritage; spiritual, cultural goods, etc. which belong to the whole mankind.

3. Approach to international law

At international level, the cultural heritage brings together "the whole corpus of material signs - both artistic and symbolic - transmitted from the past to each culture and, therefore, to all humanity. As a constituent part of the affirmation and enrichment of cultural identities, as well as an

² Official Gazette of the Republic of Moldova, 2016, no. 369-378.

³ Brînza S., Stati V. *Protecția penală a patrimoniului cultural din perspectiva amendamentelor operate prin Legea nr.75/2016*, „Studia Universitatis Moldaviae”, 2016, no. 3(93), Social Sciences Series, p.12-25.

inheritance belonging to the whole of humanity, the cultural patrimony gives each place specific characteristics and is the depository of human experience"⁴.

In this respect, a comprehensive response is provided by the UN Convention on the Protection of the World Cultural and Natural Heritage of 23.11.1972⁵. Therefore, in the spirit of Article 1 of the UN Convention on the Protection of the World Cultural and Natural Heritage of 23.11.1972⁶, they are considered as cultural patrimony:

- monuments: architectural, sculptural or monumental works of art, elements or structures of archaeological character, inscriptions, grottos and groups of elements of exceptional universal value from a historical, artistic or scientific point of view;

- assemblies: isolated or grouped building groups, which, due to their architecture, unity and landscape integration, have an exceptional universal historical, artistic or scientific value;

- sites: human works or works resulting from the combined actions of man and nature, as well as areas including archaeological sites of exceptional universal value from a historical, aesthetic, ethnological or anthropological point of view.

In accordance with Article 2 of the UN Convention on the Protection of the World Cultural and Natural Heritage of 23.11.1972⁷, it is considered as a natural heritage:

- natural monuments constituted by physical and biological formations or by groups of such formations which have an exceptional value aesthetically or scientifically;

- geological and physiographic formations and strictly delimited areas, constituting the habitat of threatened animal and plant species, which are of exceptional universal value in terms of science or conservation;

- natural sites or strictly defined natural areas, which are of exceptional scientific value, conservation or natural beauty.

Cultural heritage is an ensemble of inherited resources from the past, which people regard, irrespective of property ownership, as a reflection and expression of their evolving values, beliefs, knowledge and traditions⁸. Romanian author Cr. Georgescu points out: "Cultural heritage is more than what our forerunners left us. It is both the history of buildings, artifacts and sites, and a source that can be capitalized, including economically, to be left to the descendants"⁹. So, we have determined the semantic expression of the "cultural heritage" as well as its definition in the international acts in force.

In a different way, we will specify that, at national level, the cultural heritage includes all the elements resulting from the interaction between human and natural factors over time. The cultural heritage is made up of two major areas: tangible or material heritage and intangible or intangible heritage, each with a large number of components.

Infra, we will try to determine the structure of the cultural heritage in the Moldovan legislation. According to Annex no. 1 to the Government Decision of the Republic of Moldova no.271 of April 9, 2014 "Culture Development Strategy - Culture 2020", the national cultural heritage comprises the following basic categories: 1) archaeological heritage; 2) built cultural

⁴ Recommendation on the Safeguarding of Traditional Culture and Folklore, 15 November 1989 (the document is available online at: http://portal.unesco.org/en/ev.php-URL_ID=13141&URL_DO=DO_TOPIC&URL_SECTION=201.html, date last visited: 18.02.2018.

⁵ UN Convention on the Protection of the World Cultural and Natural Heritage of 23.11.1972. (Text published in the Official Gazette of Romania, in force since March 31, 1990). Convention Concerning the Protection of the World Cultural and Natural Heritage. The General Conference of the United Nations Educational, Scientific and Cultural Organization meeting in Paris from 17 October to 21 November 1972, at its seventeenth session (the document is available online at: <http://whc.unesco.org/en/conventiontext/>, date last visited: 18.02.2018.

⁶ *Idem*.

⁷ *Idem*.

⁸ Council of Europe Framework Convention on the Value of Cultural Heritage for Society. CETS No.199. Faro, 27/10/2005. (the document is available online at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/199>, date last visited: 20.02.2018).

⁹ The Strategy for the Protection of Historical Monuments in Alba County 2018-2023, Department of Territorial Planning and Urbanism (the document is available online at: <http://www.cjalba.ro/wp-content/uploads/2018/01/Strategia%20de%20protec%20a%20monumentelor%20istorice%20din%20judetul%20Alba.pdf>, date last visited: 18.02.2018.

heritage; 3) mobile cultural heritage; 4) intangible cultural heritage; 5) audiovisual cultural heritage and 6) public monuments.

In the Republic of Moldova are known over 10 thousand objects of heritage, of which 5 596 were included in the State Monument Registry, approved by the Moldovan Parliament's Decision no.1531-XII of June 22, 1993¹⁰.

The archaeological heritage is the essential element that defines the age and originality of culture, history and traditions of every nation, state or cultural space in relation to other peoples, states or ethnocultural spaces. Every people has an obligation to preserve their cultural assets and to harness them for the benefit of all humanity. Thus, according to letter a) of art. 2 of the Law of the Republic of Moldova no. 218 of 17.09.2010 on the protection of archaeological heritage¹¹, archaeological heritage constitutes an ensemble of material goods, as a result of the human activity of the past, preserved under natural conditions underground or underwater, in the form of archaeological sites (settlements, necropolises, isolated graves, tumuli, fortresses, waves, constructions, churches, buildings, household annexes, etc.) or movable goods (objects or fragments thereof) to be identified and studied, requires the application of archaeological methods.

Archaeological heritage consists of all archaeological assets, consisting of: the archaeological sites comprising the historical monuments located above ground, underground or underwater, including archaeological vestiges: structures, constructions, groups of buildings, as well as the lands with potentially archaeological potential, defined according to the law; movable goods, objects or traces of human manifestations, along with the land on which they were discovered. Archaeological heritage assets are recognized as mobile national cultural heritage assets or historical monuments.

The archaeological heritage is present in all areas of the Republic of Moldova, in the vicinity or in the space of contemporary localities, in agricultural, industrial, forestry, aquatic areas, etc. At the national level, by 2012 there were 7411 archaeological sites, which included 2428 settlements, 70 fortifications, 135 plain necropolis and 4778 tumulus. Annual field research and random finds are completing the list of archaeological sites, which is why their number can increase by more than 20% over a decade¹².

As outlined in Annex 1 to the Government Decision of the Government of the Republic of Moldova no.271 of April 9, 2014: "Culture 2020" Culture Development Strategy, a negative impact on the archaeological sites in the last 15 years has had the illicit activities of the seekers of treasures using metal detectors that extracted from the cultural strata and sold hundreds of treasures and thousands of movable archaeological objects of inestimable cultural and scientific value, which is a financial loss of tens of millions of euros to the state.

The built cultural heritage comprises almost three thousand objects: separate edifices, architectural complexes and built areas (residential and administrative buildings, urban and rural mansions, churches, monasteries, technical and industrial facilities, the historical nucleus of Chisinau, etc.) entered in the Register. According to the Registry, 2,913 monuments are being built under the protection of the state.

It should be noted that the "cultural heritage built" does not coincide, from the semantic point of view, with the "the real estate cultural heritage". Thus, the cultural heritage is a phrase that designates what, in generic terms, bears the name of historical monuments and includes not only historical monuments, but historical ensembles and sites. Therefore, the cultural heritage is not limited to the built heritage, which excludes most of the archaeological sites. Based on the findings, we conclude that the phrase "real estate cultural heritage" is broader than the built cultural heritage.

¹⁰ Annex no. 1 to the Government Decision of the Republic of Moldova no. 271 of 9 April 2014: Culture Development Strategy "Culture 2020" (the document is available online at: http://lex.justice.md/UserFiles/File/2014/mo92-98md/an.1_271.doc, date last visited: 18.02.2018).

¹¹ Official Gazette of the Republic of Moldova, 2010, no. 235-240.

¹² Annex no. 1 to the Government Decision of the Republic of Moldova no. 271 of 9 April 2014: Culture Development Strategy "Culture 2020" (the document is available online at: http://lex.justice.md/UserFiles/File/2014/mo92-98md/an.1_271.doc, date last visited: 18.02.2018).

In this regard, we point out that *the real estate cultural heritage* is the most valuable component of the cultural heritage, both in terms of direct material value and in relation to the possibilities of inserting extra-cultural components, therefore protecting and putting it value is a fundamental objective of sustainable development.

In another hypothesis, the main problems of *intangible cultural heritage* derive from its fundamental feature - *the temporary and unique character*. Owners and translators of intangible assets are natural persons. The intangible cultural heritage element disappears with the death of the individual if the form of manifestation of this heritage has not or can not be passed on to another person.

Mobile cultural heritage - secular and religious objects, books, documents, archives, numismatics, natural specimens, etc.

Non-material (intangible) cultural heritage, consisting of traditions, customs, crafts, local dialects, forms of social life organization, events, etc. is, in fact, intangible cultural heritage.

Audiovisual cultural heritage includes music and oral literature, dance, theater, etc. In our opinion, the audiovisual cultural heritage can not be treated separately, but viewed as part of the intangible cultural heritage.

The public monuments form a form of cultural heritage, as well as other forms of cultural heritage built.

We will specify that a monument is a building or part of a building, together with installations, artistic components, interior or exterior furnishings that form an integral part of it, as well as commemorative artefacts, funerals, public works, together with the terrain, which are historically, historically, artistically, ethnographically, religiously, socially, scientifically or technically significant cultural-historical testimonies. At the same time, the *historical monument* - real estate, constructions and land situated on the territory of the state or abroad, property of the state, significant for the history, culture and national and universal civilization. The following categories of historical monuments are established: monument, ensemble and site.

In our opinion, this normative act offers a fragmentary regulation of monuments. Thus, it should be borne in mind that the *public monument form* is only a form of self-contained historical monuments classified according to their nature. Thus, it is accepted that according to this classification, one can distinguish: monuments of archeology; architectural monuments; monuments for public; memorial monuments; funeral monuments. We note that other forms of historical monuments are not found in Annex no. 1 to the Government Decision of the Republic of Moldova No. 271 of 9 April 2014: *Culture Development Strategy "Culture 2020"*¹³.

In this perimeter, we agree with the Romanian author A.Calugarița, who concludes that the *cultural heritage* is a constantly expanding and developing concept, making it difficult to identify its component elements. Virtually every change of concept leads to the revaluation of assets that enter or may enter into the cultural heritage sphere¹⁴.

In another context, *the material object of the offenses provided in art. 199² CP RM* (Performing unauthorized works in archaeological sites or areas with archaeological potential) is:

- soil in archaeological sites;
- soil in areas with archaeological potential.

Site is terrestrial delimited land comprising those natural human creations that are significant historical, cultural, historical, historical, artistic, ethnographic, religious, scientific, technical or cultural landscape.

Archaeological sites are areas of priority archaeological interest that extend over the territory comprising archaeological sites whose scientific research, protection and valorisation is of exceptional importance to national history and culture through material testimonies, movable or

¹³ the document is available online at: http://lex.justice.md/UserFiles/File/2014/mo92-98md/an.1_271.doc, date last visited: 16.02.2018).

¹⁴ Călugărița A., *Protecția juridică a patrimoniului cultural național mobil în România și Germania: Rezumat al tezei de doctor.* – Bucharest: Ministry of Internal Affairs, Police Academy "Alexandru Ioan Cuza" Doctoral School Public Order and National Security, 2014, p.8-11 (the document is available online at: https://www.juridice.ro/wp-content/uploads/2014/09/rezumat_teza_calugarita.pdf, date last visited: 20.02.2018).

immovable goods. Zone is that coherent built area, topographically delimited, determined by the existence of cultural heritage values, the protection of which is of public interest and is declared as such for the achievement of the specific objectives of preservation and rehabilitation of heritage values.

According to the Decision of the Government of the Republic of Moldova no. 1009 of 05.10.2000, *on the approval of the Regulation on natural and built protected areas*¹⁵, protected areas - the territories in which are located objectives or ensembles of objectives that are part of the built or natural heritage, to which they apply specific regulations in order to preserve their quality, maintain balance by interventions and conservation, and to ensure harmonious relations with the environment. They are geographically and / or topographically delimited, and are declared as such.

Depending on the value of the natural or built heritage, three categories of protected areas are distinguished:

1. *The protected area of international importance* - contains nationally built and naturally international heritage assets. It is subject to the UNESCO regulations on the inclusion of values in the world cultural heritage list.

2. *The protected area of national importance* - contains heritage values that are of interest to the history and culture of the Republic of Moldova.

3. *Protected area of local significance* - it includes aesthetic, historical or other significance of the natural and built environment for a certain area, period, style, author.

Thus, *the areas with archaeological potential* are the land that, as a result of archaeological research, the cultural heritage assets have been discovered or can be discovered. This area is an area where the existence of archaeological remains is scientifically documented or assumed on the basis of indirect data.

We note that the Moldovan legislator uses the term "*archaeological potential*". We will bring clarity to this effect. Thus, the *archaeological potential* expresses a process that lasts until the completion of archaeological research and appropriate measures to protect and enhance archaeological discoveries. This archaeological potential can be a known one, or only one researched. The concept examined also includes the boundary ground in which archaeological research is to be carried out on the basis of information or scientific studies attesting to the existence of underground or underwater archaeological heritage assets which may be part of the national cultural patrimony.

It should be noted that the archaeological potential can be accentuated in cases in which some cultural heritage assets have been unforeseen on the ground due to: human actions other than certified archaeological research (eg construction works, works geological prospecting, including remote sensing, agricultural works, as well as other types of underground or underwater works and research, etc.); as a result of the actions of natural factors (eg earthquake, landslides, floods, soil erosion and others).

It is specified that until the completion of the archaeological research and the appropriate measures to protect and enhance the archaeological discoveries, the protection zones are also areas with archaeological potential.

Another problem is the lack of regulation and independent legal protection of areas of cultural-identity value (*vernacular areas*). From the etymological point of view, the term comes from Latin, *vernaculus* meaning *indigenous, native, domestic*, a term derived from the verb, which was the term used for the "*birth slaves*." Vernacular architecture, often called traditional architecture, although terms are not totally synonymous, tends to evolve over time to reflect the cultural, technological, economic, and cultural context in which they are held¹⁶.

Vernacular architecture is influenced by a wide range of aspects of human behavior as well as by the environment, which has led to the existence of extremely different forms of construction, for each context. Even in neighboring villages there may be slightly different approaches to house

¹⁵ Official Gazette of the Republic of Moldova, 2000, No. 127.

¹⁶ the document is available online at: <http://proiecte-online.com/blog/uncategorized/arhitectura-vernaculara-refuzul-originalitatii-cu-orice-pret/>, date last visited: 21.02.2018.

construction, even if at first glance identical. Despite these variations, any construction is subject to the same laws of physics, resulting in significant similarities of structural forms.

Thus, *vernacular architecture* is an architectural style based essentially on the local needs of the community, the building materials available in that community, and, above all, the architecture that reflects to the highest degree the tradition of the place. As a rule, architecture designed by professional architects is not considered vernacular. As an argument, it is considered that the process itself consciously constructing a construction makes that construction not belonging to the vernacular style. However, not many modern architects have carefully studied vernacular buildings and said they were inspired by these, including vernacular elements in their architectural concepts.

Regretfully, we must note that the lack of the elaborated direction of identifying and safeguarding vernacular areas in Moldova's national legislation will inevitably lead to major negative consequences for the state's cultural patrimony. We therefore welcome the insertion in the text of the criminal law, in particular, of the phrase "... *as well as in the vernacular areas*" after the words: "Making unauthorized works in archaeological sites or areas with archaeological potential ..." and in the provision of paragraph (1) art.199² CP RM after the words: "*Making unauthorized excavations or searching for treasures in archaeological sites or areas with archaeological potential ...*".

In another order of this scientific study, we will specify that as a *material object of the offenses provided for in art. 199³ CPC* (Preservation or illegal keeping of movable archeological assets) the legislator distinguishes:

1. mobile archaeological assets;
2. movable archeological assets, including treasures discovered by accident;
3. movable archeological assets, including treasures, in land-use works;
4. movable archeological assets, including treasures, in the course of intervention work with metal detectors or other remote sensing devices.

Pursuant to letter a) art. 2 of the Law of the Republic of Moldova no.280 of 27.12.2011 on the protection of the national mobile cultural heritage¹⁷, *the mobile national cultural heritage* is an ensemble of movable cultural goods, classified in the national cultural heritage of exceptional or exceptional value archaeological, documentary, ethnographic, artistic, scientific and technical, literary, cinematographic, numismatic, philatelic, heraldic, bibliophile, cartographic, epigraphic, aesthetic, ethnological and anthropological. , of the human creative potential.

In the same way, *the protection of the mobile national cultural heritage* represents a set of measures of a scientific, legal, administrative, financial, fiscal and technical nature, meant to ensure identification, research, inventory, classification, preservation, security, maintenance, preparation, restoration and highlighting the mobile national cultural heritage, with a view to democratic access to culture and the transfer of this patrimony to future generations.

For the purposes of Article 4 of Law No.280 of 27.12.2011, *the movable archaeological assets* are classified into the following categories: archaeological and historical-documentary assets; goods of artistic significance; goods of ethnographic significance; goods of scientific importance; goods of technical importance; goods with memorial significance.

Archaeological and historical-documentary assets include archeological pieces from land and underwater excavations or from random discoveries, except for samples of building materials, site materials, which constitute archaeological evidence for specialist analyzes; inscriptions, separate elements from the dismantling of historical monuments; material and documentary testimonies of political, economic, social, military, religious, scientific, artistic, sporting or other fields; manuscripts, incunabula, rare books and old books, publications of various types, autographs and ex-libraries, periodicals; documents and social interest papers: archival documents, maps and other cartographic materials; objects of memorial value; objects and documents of numismatic, philatelic and heraldic value: coins, medals, decorations, badges, banknotes, seals, patents, postage stamps, flags and banners; epigraphic parts; photographs, photo clips, films, audio and video recordings; musical instruments; military uniforms and their accessories; clothing.

¹⁷ Official Gazette of the Republic of Moldova, 2011, no. 2012.

Assets of artistic significance include works of fine art: painting, sculpture, graphics, drawing, engraving, stamps and the like; works of decorative and applied art: furniture, tapestries, carpets, glass, ceramics, metal, wood, textiles and other materials, ornaments; cult objects: icons, embroidery, ornaments, furniture and others; design projects and prototypes; primary material of artistic, documentary and animation films; public monuments, artistic components exposed in the open air; postcards and illustrations; decorative pieces for shows.

Assets of ethnographic significance are made up of elements of folk architecture; items in technical installations household and household items, work tools; products of the household textile industry: carpets, bedding, towels, folk costumes and the like; furniture; props of customs; cult objects; contemporary handicraft products.

Assets of scientific significance include rare specimens and collections of zoology, botany, mineralogy, petrology, paleontology, anthropology, speleology, anatomy; game trophies.

Assets of technical importance include unique technical creations; rarity, irrespective of brand; prototypes of current devices, devices and machines; orlogerie; achievements of popular technique; technical documents (projects, plans, sketches, patents); means of transport and telecommunications; CD duplicators, CD-ROMs, DVDs.

The *assets of memorial significance* are represented by the goods and the objects of the memorial; documents and photos from the lives of personalities; pieces of events of national and international importance.

According to letter k) art.2 of the Law of the Republic of Moldova no.218 of 17.09.2010 *on the protection of archaeological heritage*¹⁸, the *archaeological discovery* is the identification, through archaeological excavations, of vestiges, objects and other traces of human activity in the past. We will specify that this highlighting of the traces of human manifestations constitutes testimonies of the missing epochs and civilizations.

In letter l) Art. 2, it is realized that random archaeological discovery is the discovery of archaeological heritage assets as a result of human actions, other than specialized archaeological research, or as a result of the action of natural factors that lead to changes on the natural environment.

Consequently, Law no. 218 of 17.09.2010 intervenes with a concretization in letter m) Art.2: *the archaeological treasure* is a good or a set of movable goods with a special artistic and/or documentary value, hidden or buried in past, whose owner can not be identified or lost, under the law, his right to property, regardless of whether it is a random discovery or the result of archaeological research, or an investigation of the law enforcement bodies, or obtained by a court order.

Pursuant to paragraph (2) of Article 4 of the Law of the Republic of Moldova no. 218 of 17.09.2010 *on the protection of archaeological heritage*¹⁹, the person who accidentally discovered archaeological materials or the administrator of the land where the accidental archaeological discovery was made is obliged, 48 hours from the discovery, notify the local public administration authority of this fact and hand over the materials found. The local public administration authority is obliged to ensure the discovery guard and to inform officially, within 24 hours, the Ministry of Culture.

The criminal doctrine demonstrates that the administrator of the land in which the accidental archaeological discovery was made and/or the responsible representative of the public administration authority are those who fail to notify public authorities in good time of the random discovery of mobile archaeological assets (including treasures)²⁰.

¹⁸ Official Gazette of the Republic of Moldova, 2010, no. 235-240.

¹⁹ *Idem*.

²⁰ Brînza S., Stati V., *op. cit.*, 2016, p.12-25.

4. Conclusions and recommendations

For the purposes of the provisions of Art. 199¹ of the Criminal Code (Damage or Destruction of Cultural Heritage), the *material object* is both a good cultural heritage asset and a property of cultural heritage.

The *intangible cultural patrimony* can not be protected by the criminal law within the meaning of the provisions of Art. 199¹ CP RM (Damage or destruction of cultural heritage assets), because the main problems of the immaterial cultural heritage derive from its fundamental feature - *temporary and unique character*. Thus, the owners and transmitters of immaterial patrimonial values are individuals, and the intangible cultural patrimony element disappears with the death of the individual, if the form of manifestation of this patrimony has not been or can not be transmitted to another person.

Immaterial cultural heritage, consisting of traditions, customs, crafts, local dialects, forms of social life organization, events, etc. is, in fact, intangible cultural heritage. The *audiovisual cultural heritage* includes, in our opinion, the audiovisual cultural patrimony specified by the Moldovan legislator in a stand-alone category (music and oral literature, dance, theater, etc.) can not be treated separately but viewed as part of the cultural patrimony immaterial.

The expression "*built cultural heritage*" does not coincide, from a semantic point of view, and is not limited to the "*real estate cultural heritage*" which, apart from the historical monuments, includes both the ensembles and historical sites.

The issue of the lack of regulation and independent legal protection of areas of cultural and identity value (*vernacular areas*) is addressed. The lack of the elaborated direction of identifying and safeguarding the vernacular areas in the inevitable national legislation of the Republic of Moldova will lead to major unfavorable consequences for the cultural patrimony of the state. We therefore welcome the insertion in the text of the criminal law, in particular, of the phrase "... *as well as in the vernacular areas*" after the words: "Making unauthorized works in archaeological sites or areas with archaeological potential ..." and in the provision of paragraph (1) art.199² CP RM after the words: "*Making unauthorized excavations or searching for treasures in archaeological sites or areas with archaeological potential ...*".

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