

METHODOLOGY FOR INVESTIGATION OF CRIMES IN THE FIELD OF THE NATIONAL CULTURAL HERITAGE

Dr. **Augustin Lazăr**
Deputy General Prosecutor
Prosecutor's Office Attached to the
Alba Iulia Court of Appeal

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1. Field of National Cultural Heritage

National Cultural Heritage is defined, by legislation, as the “ensemble of goods identified as such, regardless of the ownership regime thereof, which represent a testimony and an expression of the values, beliefs and traditions that are in a continuous evolution; it contains all the elements resulting from the interaction, in the course of time, between human and natural factors” (Article 1 paragraph 2 of Law No. 182/2000 as amended and supplemented).

Legislation and doctrine distinguish the following *fields* of the national cultural heritage: immovable national cultural heritage (historical monuments), archaeological heritage, movable national cultural heritage and immaterial national cultural heritage.

Historical monuments are defined as “immovable goods, constructions and plots of land located on Romanian territory, significant to the history, culture, and universal and national civilization”, and the historical monument regime is granted by classifying these immovable goods according to the procedure provided by law. Immovable goods located outside the borders, property of the Romanian State may be classified as historical monuments, subject to the legislation of the State on whose territory such goods are located (Article 2 of Law No. 422/2001, as republished).

Archaeological Heritage is “the ensemble of archaeological goods formed of the archaeological sites registered in the National Archaeological

Repertoire, except for those destroyed or missing and the sites classified under the List of historical monuments, located above the ground, underground or underwater, which contain archaeological vestiges: settlements, necropolises, structures, constructions, groups of buildings, as well as the plots of land with identified archaeological potential, defined according to the law; mobile goods, objects or remains of human activities, together with the plot of land on which such goods were found” (Article 2 paragraph 1 letter b of Government Ordinance No. 43/2000, as republished).

Movable National Cultural Heritage is formed of goods having a historical, archaeological, documentary, ethnographic, artistic, scientific and technical, literary, cinematographic, numismatic, philatelic, heraldic, bibliophile, cartographic and epigraphic value, representing material testimonies of the evolution of the natural environment and of the human being’s relationships with it, of the human being’s creative potential and of the Romanian contribution, and of national minorities to universal civilization (Article 3, paragraph 1 of Law No. 182/2000, as amended and supplemented).

Immaterial cultural heritage contains the practices, representations, expressions, knowledge, abilities –together with the cultural instruments, objects, artifacts and spaces associated thereto – which communities, groups and, in certain cases, individuals acknowledge as an integral part of their cultural heritage. This immaterial cultural heritage, transmitted from generation to generation, is recreated at all times by communities and groups, according to their environment, by the interaction with their nature and history, granting them a feeling of identity and continuity and thus contributing to the promotion of respect to cultural diversity and human creativity. The international convention only takes into consideration the immaterial cultural heritage compatible with the international instruments with regard to existing human rights and with the requirements of mutual respect among communities, groups and persons and of sustainable development. (Article 2 item 1 of Law No. 410/2005 regarding the acceptance of the Convention for safeguarding immaterial cultural heritage adopted in Paris in year 2003).

The surveys conducted at national¹ and international² levels listed criminality against the cultural heritage among the types of evolved transnational criminal manifestations, committed by an elevated class of

¹ See Aug. Lazăr, *Criminalitatea contra patrimoniului cultural național*, in Dreptul No. 7/2007, p. 168.

² See P.G. Ferri, *Uscita o esportazione illecite. Brevi cenni ale problematiche di maggiore rilievo in tema di beni culturali*. International conference on fighting illicit traffic in cultural property stolen from the archeological sites of Central and South-Eastern Europe, Alba Iulia, May 28 – 31, 2007.

criminals “in white collars”, which deeds may prejudice certain fundamental social values, such as the National Cultural Heritage, national history and identity.

2. *Modi Operandi* Specific to Crimes in the Field of National Cultural Heritage.

An examination of statistical information revealed that the most frequently perpetrated crimes against the national cultural heritage are: theft of works of art, archaeological and religious goods; destruction of movable and immovable cultural goods; performance by unauthorized natural persons of detection or digging works in archaeological sites; performance of illegal export operations of classified movable cultural goods. Specialty analyses revealed that the *modi operandi* methods that were most frequently used by criminals are the following: breaking doors and security systems, breaking and escalating windows, cutting bars, using forged keys, distracting the attention of the personnel hired to ensure the security of cultural goods.³

Archaeological poaching on the sites classified as historical monuments, some of which being on the UNESCO list of monuments of the world's cultural heritage, is a frequent crime in Romania. Such deeds were perpetrated by specialized groups, organized in criminal associations, endowed with state-of-the-art detection equipment, sport utility vehicles, radio communications equipment, watchdogs and even guns. The members of such groups sell the archeological objects stolen by them from sites to certain collectors and “investors” from the country, often public persons, to whom they resort, requesting protection against judicial bodies, through press campaigns, counseling and public interventions, criminal denouncements, etc. Such groups are also in contact with international networks of Romanian, Serbian, German, Italian, etc. traffickers, which are illegally removing from Romania the cultural goods stolen from sites and are placing them on the black market, through illegal transactions, to certain collectors from EU States or from the USA.

The objectives of a major interest for poachers are the sites of Dacian citadels and of Roman camps from the area of the Orăștie Mountains, located in Hunedoara and Alba counties, and also those from the counties of Olt, Teleorman, Tulcea, Constanța (Greek citadels), Caraș-Severin, Timiș, Bihor, Bistrița-Năsăud and Sălaj. Such sites have frequently been the target of *raids of “teams” of poachers* who made unauthorized detection works, then digging works, within the area of archaeological sites, from where they stole thousands of objects. Robbers are particularly interested in monetary treasures, jewelry,

³ Aug. Lazăr, A. Condruz, *Corpus Juris Patrimonii. Patrimoniul Cultural Național*, Lumina Lex Publishing House, Bucharest, 2007, p. 26.

funeral artifacts, guns and military equipment (swords, helmets, shields, clasps, etc.). The information regarding the locations of archaeological sites rich in artifacts may be often found on duly operating Internet sites, and also in the specialty books published by the researchers that managed certain archaeological sites; such works were found upon searching the domiciles and the sport utility vehicles of network members.

Occasional finds of artifacts in these areas triggered an interest in illegal prospecting works, at the same time with minimizing the risks of punishment by authorities, in the hope of an easy way to get rich, within the general process of capital accrual. Unlike occasional finders, poachers that call themselves “treasure hunters” carry out this activity in a professional manner, consistently and regularly, having very good knowledge on the environment in which they act and the rules regarding the secrecy of their illegal activity. They also know how to approach the locals, to gather information on the areas where occasional finds took place, respectively the locations rich in archaeological vestiges and the channels for the illegal capitalization of artifacts.

The criminal prosecution practice in the last years confirmed the remarks made in the specialty literature⁴, in the rule regarding the requirement of local intermediaries between the groups of “low profile poachers” and the intermediaries or traders of antiques that have national or international contacts. These intermediaries are fully aware of the factual situation on site, they know how to evaluate the trading potential of the finds and they have close relationships with certain representatives of local authorities to make the latter depend on them, and to promote their interests through blackmail.

In Romania, some local intermediaries of the traffic in archaeological goods, under the protection of public persons having concerns specific to mercantile collectors, accrued fortunes allowing them to become major figures of the underground world, having access to the highest State institutions and enjoying an aggressive support from the mass-media available to them. In this way, local intermediaries became leaders of the underground world and carried out a systematic activity of archaeological poaching. They invested the product of their criminal activity in ultramodern and state-of-the-art detection equipment and they organized “poaching teams”, with the necessary logistic support, which started to operate in the sites from the Orăștie Mountains.

Found and stolen artifacts are usually deposited in safe hideouts, located in forests, mountain chalets, etc., being hidden at the robbers' domicile

⁴ See B. Deppert – Lippitz, *Die strukturen des legalen und illegalen, Handels mit Antiken*, p. 8. The international conference on fighting illicit traffic in cultural property stolen from the archeological sites of Central and South-Eastern Europe, Alba Iulia, May 28 – 31, 2007.

only occasionally and with great caution (arranged niches, holes, etc.), so that their chances to be discovered by authorities are very low in the absence of certain information.

The evaluation operation is conducted by intermediaries, usually on site, their movement being performed with caution, upon receipt of the telephone announcement “there is merchandise”. After examining and consulting the catalogues of auction houses, the intermediary will decide, based on the value of the [cultural] objects, whether or not to contact the representative of the higher rank of the network, the higher regional or international intermediary.

The intermediary of the “grey zone” is sometimes contacted on site, according to the pieces value and volume. The meeting is regularly organized in a point that has already been checked: boarding house, motel etc., located half the way the interested persons must go. In this way, the meetings of Romanian intermediaries from the Hunedoara county, who had on them sample “merchandise”, with the Belgrade and Vienna dealers initially took place in Deva, then in one of the Romanian cities located near the Western border: Reșița, Timișoara, Arad, etc. *Transport* is secured by attendants designated by intermediaries from among the concerned poachers, by dividing the treasure in tranches in order to avoid any risk of total loss or by resorting to certain representatives of the authorities subordinated to the network to attend their meetings.

The route followed by ancient objects from the place of illegal digging works to the auction house has three stages: removing artifacts from their area of origin, their illegal removal from their country of origin and their legal introduction in a country with an art market.

Artifact capitalization is made in countries with art markets, most often by art dealers with very small businesses, sometimes even by a single man or by amateur traders, and more seldom by an auction house. The main commercial centers where valuable archaeological pieces surface “spontaneously” are: Basel, Zürich, Geneva, Munich, London and Paris in Europe, and New York in USA. Artifacts are regularly surfacing with *agents or intermediary traders* originating from the provenience country of the “merchandise” or from the respective region, who have sound knowledge of the language and mentality from that country. Either buying those pieces, or taking them under consignment, the agent or intermediary trader is considered to be the last stage on the illegal supply market and the first stage on the legal sale market. Although the locations crossed by cultural goods until their official access to the country with an art market are immediately forgotten, these intermediaries know the illegal circumstances of the discovery of the objects in their provenience country, and the traffic “actors”. Such

intermediaries also represent the connection with the owners of art galleries or with the traders known on the sale market.

The trader from the countries with an art market does not usually take the risk to take part in the illegal export from the country of origin. In the cases in which he takes this risk, as he has his personal contacts and a good knowledge of the mentality, language of the respective country, the discovery of the first deed in which he is involved will rapidly entail the closing of his trading activity. This is also the case of a perpetrator, a small Romanian trader established in the United Kingdom, having companies in London and Florida, USA, who sold to certain New York auction houses two of the Dacian bracelets excavated and illegally removed from the Romanian sites of the Orăștie Mountains, which were subsequently recovered by Romanian judicial authorities.

“*Antiques laundering*” is a fraudulent manoeuvre meant to dissimulate the illicit origin and nature of the archaeological pieces resulting from criminal activity, to create the appearance of legality and to insert them in the flow of legitimate antiques businesses. *The legality appearance* artificially created for the artifacts that cross the “grey zone” and reach the country with an art market is grounded on the opinion that the legal or illegal exit of an object “cannot be seen on the object”. The trader knows or suspects the country from which the piece is coming, but prefers not to be informed of the route of such piece from its finding place to the art gallery. Under the circumstances, the buyer perceives the risk taken and may claim that the artifact price should decrease appropriately. The risk of a request for repatriation increases on a *pro rata* basis with the price of the artifacts, as it includes both its artistic quality, rare nature and cultural importance. To mitigate this risk, traders adopted several technical sale procedures such as: taking the cultural good for sale under *consignment*, subject to the payment of a commission representing a percentage from the sale price; *lending* the good to a museum in order to be exhibited for a period of time; then, such good is considered as “laundered”, for the reason that no claims were raised during its public exhibition time⁵.

Analyzing the issue related to “*antiques laundering*” in order to create an appearance of legality, we find similarities with the judicial practice created in the field of combating money laundering. In this way, the specialty literature on the combating of money laundering, revealed that any crime-related activity may be described by means of three specific elements⁶:

- *iter criminis* – the itinerary traveled by the perpetrator from the criminal resolution to the stage related to preparation acts, the execution stage, completed through the perpetration of the crime;

⁵ See B. Deppert – Lippitz, *op. cit.*, p. 12

⁶ See Aug. Lazăr, *Ancheta antifraudă în mediul afacerilor*, “Lumina Lex” Publishing House, Bucharest, 2004, p. 21

- *modus operandi* – the operation method composed of a complex of activities, habits and procedures used, which characterize a criminal's activity before, during and after the perpetration of an intended crime;

- *punctum saliens* – the characteristic point, *i.e.* the perpetration particularities that may be noted through the observation of the criminal itinerary.

With respect to the traffic in antiques, such elements may be revealed through a careful examination of the circuit of acts, merchandise and payment methods, of the sequence and logic of the operations performed by traffickers, of the genuineness of documents, securities, etc., which activities allow *the identification of perpetrators* and *the evidencing of the fraudulent intent (dolus ex re)* to offer an appearance of legality to trafficked cultural goods.

The judicial experience with regard to combating money laundering, able to identify the nature of dirty money, paraphrased in this way the Latin proverb “*Pecunia non olet*” (Money has no smell), through the conclusion “*Pecunia olet*”, money has a smell, since it leaves tracks, and its tracks can be verified⁷. Similarly, stolen cultural goods leave tracks, starting with the holes dug in the archaeological site, Internet messages and images through which the respective goods are offered for sale, the detectors and documents that indicate the poachers' concerns, other pieces (the “orphans”) of the treasure left on them or in the country, contracted under consignment or against invoices, the amounts transferred into the accounts of participants in traffic, the procurement of valuable goods (luxury motor vehicles, houses, detection equipment, etc.). A *modus operandi* similar to that used by the launderers of dirty money is represented by the procurement by traffickers of car washes that will continue to allow them to preserve a legality appearance of the dirty money produced through the illegal capitalization of the pieces that form the object of traffic.

The appearance of e-trade provided an evolved *modus operandi* to the networks of traffickers that trade cultural goods whose provenience cannot be demonstrated through legal documents. Given that internet sites provide them with the possibility to perform operations without giving any details to their customers with regard to the origin of goods, this type of rapid trades, with a very low degree of control by site administrators, grants to the involved

⁷ Aug. Lazăr, op. cit., p. 74. According to the investigative experience of National Antimafia Department from Italy, “dirty money has smell, taste and also color“ („il denaro sporco ha odore, ha sapore ed ha anche colore”) P.L. Dell’ Osso, *Combating Dirty Money Laundering*, A work presented at the “Tempus” seminar regarding combating organized criminality, P.Î.C.C.J. Bucharest, 2001.

persons an increased degree of security regarding the preservation of their anonymity.⁸

Investigations conducted in the virtual space highlighted the circumstance that a large number of heritage goods - genuine art objects, archaeological artifacts, and their reproductions - is sold on eBay. The frequently used sale method is auction, the seller having the possibility to conceal the eBay identity of the auctioneer who, under the circumstances, do not know who their trading partners are. Another sale method is that in which the seller who presents its artifact sets a fixed price, a method known on the eBay domain under the name "buy it now for this price" ("*buy it now*").

Payments are made by the means indicated by the seller, either through the pay pal system, of money electronic transfer from the buyer's account into the seller's account, which may be either controlled, or through the money order system, which allows the money collection from any bank, similarly to a bearer check.

Fast electronic trades offer the possibility to move a huge volume of archaeological pieces within auctions and to obtain significant amounts of money, resulting from the sale of such goods. Note must be made of the fact that low and undervalued prices of archaeological pieces traded do not attract attention, and individual sales do not exceed legal ratings so as to be reported as liable to constitute money laundering operations.

Site administrators waive any responsibility regarding the creditworthiness of the trades concluded. eBay system users are personally liable for all the aspects related to the accurate description of the object, its dispatch to the buyer, without any obligation whatsoever to inform any authority in connection with the provenience or ownership right over the sold good, and the respective artifact may belong to the seller or to any other person.

The criminal prosecution practice in the environment of trades with goods resulting from archaeological poaching revealed as the sellers' cautious operation method the indication as artifacts' origin location of huge areas belonging to the same culture, avoiding to locate their origin on the site of provenience. For example, a perpetrator, a Romanian citizen, an administrator

⁸ In the specialty studies, international traffic in cultural goods is quoted as one of the primary sources for dirty money, used inclusively in *financing international terrorist activities*. Since the mentioned type of criminal activity is not so known and studied, this source being apparently "cleaner" than the traffic in guns, drugs or persons, well known criminal manifestations, which are carefully supervised by law enforcement bodies, terrorist networks started to express their interest in this field with a particular financial potential. See G. Matei, Em. Stancu, *Comerțul electronic cu artefacte arheologice, potențială sursă de finanțare a unor activități teroriste*, în "*Contribuția Criminalisticii la investigarea actelor teroriste și a altor evenimente cu consecințe grave*", Romanian Criminalists' Association, Bucharest, 2006, p. 61.

of commercial companies headquartered in the United Kingdom and in USA, offering for sale golden Dacian bracelets and ancient monetary treasures, originating in the archaeological sites classified as a historical monument from the Orăștie Mountains, Dobrogea and other regions of Romania, presented them on the website of his companies, as artifacts of Thracian origin, coming from the cultural area of the Balkan Peninsula.⁹

According to the same cautious operation method, sellers are putting up for sale large treasures, divided in tranches of tens or hundreds of pieces at each auction session. In this way, making the offer does not endanger the whole treasure. On the other hand, after selling a lot of pieces, such as Dacian bracelets, upon the sale of the following pieces, the good faith resulting from the public sale of the previous pieces is invoked. In this way, the perpetrators, members of a poaching team from the Orăștie Mountains, after locating and stealing through unauthorized detection and digging works performed in the archaeological site Sarmizegetusa Regia a treasure composed of 3,000 Koson golden coins, offered for sale to the National History Museum of Romania and to the National Bank of Romania lots containing 200 coins each, presenting the coins as inherited from their predecessors. Afterwards, dissatisfied with the received amounts, they capitalized the remaining treasure on the internal and international black market of antiques¹⁰.

The same operation method entails other cautions as well, such as setting *reference prices* which are concealed to the auctioneers, named “*back-up prices*”, which offer an auctioneer the possibility to procure pieces when he/she reaches their prices. The artifact is thus sold to the auctioneer only when such price is offered. Otherwise, the piece is re-placed in the auction procedure within a future session.

3. Methodological Guidelines for the Investigation of Crimes Against National Cultural Heritage

After evaluating the data characterizing the criminality phenomenon, and the judicial bodies' response capacity, the research effort was materialized, as a practical strike back solution, into a methodology for the investigation of crimes specific to this environment, which implies resorting to *specialized operative units* characterized by the *team action method* led by a prosecutor (*task-force*), specialist *counsel* in the field of interest and the research orientation according to the following methodological guidelines¹¹:

⁹ Prosecutor's Office attached to the Alba Iulia Court of Appeal, File No. 151/P/2005 (not published).

¹⁰ Prosecutor's Office attached to the Alba Iulia Court of Appeal, File No. 92/P/2006 (not published).

¹¹ Aug. Lazăr, *Ancheta antifraudă în mediul afacerilor*, “Lumina Lex” Publishing House, Bucharest, 2004.

1. *Modus operandi knowledge*, which entails the examination of the illegal conduct types used by *perpetrators* in the field of the traffic in cultural goods and the establishment of the particular, factual situation;
2. *Regulatory framework knowledge* regarding the cultural heritage protection, *i.e.* knowledge of specific *activities* in the field of interest (movable, immovable, immaterial, underwater cultural heritage) and of the legal provisions that incriminate illegal manoeuvres;
3. *Performance of the acts preceding criminal prosecution* by organizing the information flow, investigative activities meant for verifying the information and supplying the evidentiary means;
4. *Use of procedures to find and collect writs and material evidentiary means* (on site research, collecting objects and writs, search), in accordance with *the operative investigation guide* profiled during the inquiry, with *the reference system* regarding the documentation possibilities supplied by each indicated source and the data resulting from *consulting the specialists in the field*;
5. *Use of technical investigation procedures* (technical and scientific findings and expert appraisals) in order to examine the circuit of the pieces, acts, payment methods and to identify the prejudice; genuineness, geographical region and site from which the artifact is coming, historical period to which it belongs, whether or not such artifact was part of a collection, whether or not it was recently extracted from an archaeological site (isolated find or a treasure);
6. *Ordering the performance of tapping, audio-video recordings, rendering the telephone calls listings valuable, as well as rendering the images presented by the parties valuable* in order to discover crimes, identify perpetrators and their criminal connections in various environments, highlight reckless conducts that evidence a guilty conscience;
7. *Hearing persons* (injured parties, witnesses, charged persons or defendants), using special tactics, adequate for identifying the circumstances under which the deed was perpetrated, perpetrators' operation methods, identity and contribution to the performance of illegal manoeuvres, as well as the place where the goods were hidden, etc.
8. *Taking preventative actions related to civil remedy*, in order to protect the rights of the civil party and to guarantee the efficient performance of the civil action;
9. *Taking preventive actions* in the cases and under the conditions provided by the law, in order to remove the risk related to hiding the charged persons or defendants, destruction or altering the crime tracks, avoiding the criminal prosecution or punishment, obstruction of finding the facts;

10. *Presenting the criminal prosecution material* in order to verify the value of the produced evidence, create the conditions required for the guilty person (defendant) to be able to examine them and contribute in the clarification of all aspects of the cause for its fair settlement.

4. Regulatory Framework for Incriminating and Investigating Crimes in the Field of National Cultural Heritage

4.1 Police Structure with Duties in Relation to the Protection of the National Cultural Heritage

4.1.1. Organization of activity at central and territorial level

The Service for the Protection of the National Cultural Heritage is operating within the structure of the Department for Criminal Investigation within the General Inspectorate of Romanian Police, on the strength of the provisions of Art. 83 of Law No. 182/2000 regarding the protection of the movable national cultural heritage, as amended and supplemented, and Art. 3 of Law No. 259/2006 for amending and supplementing Law No. 422/2001 regarding the protection of historical monuments.

This service is organized according to the principle of the line of work, its actions aim at knowing and controlling the phenomenon of crime, at preventing and fighting against illegal deeds of this type.

Service for the Protection of the National Cultural Heritage *is cooperating* with the other departments within the General Inspectorate of Romanian Police, with institutions/structures from the Ministry of Interior and Administrative Reform, with the Romanian Information Service, with the Foreign Information Service, with the foreign liaison officers accredited in Romania, with the National Customs Authority, the Prosecutor's Office attached to the High Court of Cassation and Justice, and with authorized bodies within the Ministry of Justice and the Ministry of Culture and Religious Affairs, by means of exchange of data and information necessary for the organization of joint activities and actions for preventing and fighting against the criminal phenomenon in the field of the national cultural heritage.

In the field of *international police cooperation*, the Service for the Protection of the National Cultural Heritage is collaborating by means of the Center for International Police Cooperation within the Ministry of Interior and Administrative Reform, with similar structures from other countries and with authorized international organisms, carrying out the following activities:

a) realizes exchanges of operative data and information, and carries out joint actions with corresponding structures from other countries or by means of the foreign liaison officers accredited in Bucharest, in order to identify and neutralize certain groups of criminals acting in this field;

b) exploits the data and information obtained by specific means, with reference to the persons having such concerns, ensuring their transmission in an operative manner to competent territorial units in order to take the necessary actions:

c) in cooperation with the other authorized units, it makes the required efforts, according to the international conventions to which Romania is a party, in order to reacquire the cultural goods that were illegally exported, removed from archaeological sites, religious locations, museums or collections or that are held abroad without any legal grounds.

At a territorial level, the services for criminal investigations within the county police inspectorates include a *compartment* formed of 1-3 police officers, while –for the Bucharest General Police Department- such compartment has 5 police officers.

These work compartments are hierarchically subordinated to the Service for the Protection of the National Cultural Heritage and directly to the management of county police inspectorates, respectively to the Bucharest General Police Department.

The head of the Service for the Protection of the National Cultural Heritage and the heads of the line compartments formed at the level of county police inspectorates, respectively at the level of the Bucharest General Police Department, shall set and execute the actions required in consideration of the evolution of the operative situation and the information obtained during the work process, according to their duties under the law.

4.1.2. Duties of the Service for the Protection of the National Cultural Heritage

Specialists within the Service for the Protection of the National Cultural Heritage shall have the following duties:

a) to initiate and support draft regulatory acts, for realizing a dynamic and efficient framework in order to protect the national cultural heritage;

b) to place under surveillance stolen movable cultural goods, forming the object of criminal files, and to post their photographs on its web page;

c) to create, subject to applicable legal provisions, an operative database containing information on: stolen objects (with certain individualization items), which are under general and international surveillance, injured parties, place and date when deeds were perpetrated, the operation methods used by criminals, tracks and data resulting from the on site research, the result of technical and scientific findings reports and expert appraisal reports ordered in the case, suspects and gathered information, any data that might help in the settlement of criminal cases with unknown perpetrators and in the recovery of the goods;

d) to ensure a consistent, dynamic and efficient cooperation, both at the local level, and at the foreign level, with other State institutions having duties related to the protection of the national cultural heritage, particularly with the Ministry of Culture and Religious Affairs, for an operative exchange of data and information with the police departments of other countries, in order to prevent the criminal phenomenon in this field, settle the cases with unknown perpetrators and recover stolen values;

e) to initiate cooperation protocols with the Romanian Information Service, Public Ministry, Foreign Information Service, National Customs Authority, State Inspectorate for Constructions, Romanian Patriarchy, and with the other religious affairs from Romania, for the exchange of data and information that may contribute in the prevention and fight against the crimes that prejudice the values belonging to the national cultural heritage, as well as in the recovery of stolen goods;

f) to periodically analyze the criminal phenomenon in relation to the issues of the service and, depending on the findings made, to set measures in order to make the performed activities more efficient;

g) to carry out information and operative and research activities in complex cases, with respect to certain groups of criminals that acted or are acting for large periods of time within the territory of several administrative and territorial units, with particular operation methods or that caused very high prejudices;

h) to gather information and supervise suspects identified by their own specific means, by means of other units within the Ministry of Interior and Administrative Reform or signaled by petitions and notifications;

i) activities of monitoring, supporting and guiding subordinated task forces, in order to direct the work, settle the cases with unknown perpetrators or those with known perpetrators, which refer to complex cases (criminal actions extend to the territory of several administrative and territorial units or are carried out by an organized group of persons);

j) to analyze the performance stage of the tasks included in the instruction memoranda received from surveillance prosecutors, and to initiate meetings with them in order to realize an exchange of data resulting from the connections and correlations to other cases that exhibit the same operation method and are being processed by other territorial units, proposing new measures to render the work for identifying perpetrators more dynamic and to recover the damage;

k) to cooperate with the General Department for Cultural Heritage, the National Commission for Museums and Collections, the National

Commission for Historical Monuments and with the Institute for Cultural Memory, which institutions are subordinated to the Ministry of Culture and Religious Affairs, in order to find new solutions to eliminate malfunctions and vulnerabilities in the field of the national cultural heritage;

l) to carry out its own activities for the identification and recovery of classified movable cultural goods which were placed under general and international surveillance;

m) jointly with representatives of the Ministry of Culture and Religious Affairs, to inspect the deconcentrated public services of the Ministry of Culture and Religious Affairs, at institutions and business companies which hold, exhibit, store or manage movable or immovable cultural goods;

n) to carry out information and operative activities at the following objectives: deconcentrated public services of the Ministry of Culture and Religious Affairs (for counties and Bucharest), public collections and museums, laboratories for the restoration and conservation of movable cultural goods, memorial houses, religious locations, art galleries, archaeological sites, historical, architectural and cultural monuments, places for the storage, preservation and exhibition of religious and art objects with heritage value, business companies for the capitalization and reconditioning of works of art, private holders of such goods.

4.1.3. Duties of compartments organized at the level of the Bucharest General Police Department and county police inspectorates

The compartments organized at the level of the Bucharest General Police Department and county police inspectorates have the following duties:

a) in cooperation with the representatives of the institutions in the territory, authorized with the protection of the national cultural heritage and of the heritage of religious affairs, to fulfill the tasks established under cooperation protocols concluded at a central level in order to prepare clear and accurate records of the goods in this field, and to exhibit, store and preserve such goods under maximum safety conditions;

b) to carry out information and operative and research activities in the criminal files with unknown perpetrators, which relate to art and religious objects, deeds perpetrated within their competence area, accurately and timely executing the instructions received from the surveillance prosecutor;

c) to assist, at the request of the specialists from deconcentrated public services of MoCRA, upon ascertainment of misdemeanors and applying the penalties for misdemeanors provided under Art. 60 of Law No. 182/2000 (according to Art. 62 of the same regulatory act);

d) to ascertain misdemeanors and apply penalties for misdemeanors (Law No. 422/2001, G.O. No. 43/2000);

e) to cooperate with the authorities of local power, which have the obligation to deliver to the deconcentrated public services of the Ministry of Culture and Religious Affairs the goods from this category accidentally found and remitted by natural persons;

f) to gather information and other data on illicit activities from this field, to select suspects for qualified surveillance purposes and for taking actions to identify the persons in charge with the detection and stealing of heritage objects from the areas of archaeological sites;

g) to inspect the security methods provided for heritage and religious objects in the places where such goods are exhibited, held and stored, to periodically establish measures and make analyses, together with the specialists from within the deconcentrated public services of the Ministry of Culture and Religious Affairs, to monitor the performance stage of such measures and analyses;

h) to inspect (municipal, city and communal) police units within the territory of objectives that hold, under any form, heritage goods or archaeological sites, in order to ascertain the performance manner of the measures established for the prevention and fight against the criminal phenomenon in the field;

i) to periodically inspect the deconcentrated public services of the Ministry of Culture and Religious Affairs, to observe compliance with the rules for issuing certificates for temporary or final export of movable cultural goods;

j) to inspect the economic agents trading movable cultural goods, in order to identify any non-compliances with the regime of the rules for trading such goods;

k) to ascertain the crimes that impair the national cultural heritage as provided in the Criminal Code and in the special laws, in the objectives within its competence area;

h) to carry out activities for searching, identifying and recovering movable cultural goods which were placed under general and international surveillance, for these purposes preparing prosecution files according to Art. 40 of this Methodology.

4.1.4. Cooperation with the Other Units of the Ministry of Interior and Administrative Reform

Police structures specialized in the protection of the national cultural heritage shall cooperate with police task forces for public order, fraud investigation, fight against organized crime, and with the territorial structures of the General Department for Information and Internal Protection and of the General Inspectorate of the Border Police, to:

- a) verify the guard of objectives, goods and values, according to the provisions of Law No. 333/2003 regarding the guard of objectives, goods, values and the protection of persons;
- b) place under surveillance by public order and safety patrols of the places where goods with heritage value are held, exhibited and preserved;
- c) perform economic inspections at the business companies that capitalize cultural goods;
- d) obtain data and information on the criminal activity of the suspects in the criminal files related to such field or in order to identify and recover stolen movable cultural goods;
- e) catch in the act the persons that remove or prepare the removal over borders of movable cultural goods without any temporary or final export certificate obtained under the conditions provided by Art. 37 of Law No. 182/2000.

4.1.5. Interinstitutional Cooperation

Police structures specialized in the protection of the national cultural heritage shall cooperate with the Ministry of Culture and Religious Affairs, the National Customs Authority, the State Inspectorate for Constructions and their territorial structures, and with the Romanian Patriarchy and the other religious cults in Romania, to:

- a) exchange data and information on those persons that prepare [*to perpetrate*] or perpetrated criminal deeds in relation to the regime of the protection of the national cultural heritage – movable, immovable, underwater, archaeological;
- b) support each other as concerns the ascertainment and punishment of misdemeanors perpetrated in this field;
- c) make technical and scientific findings reports and expert appraisals ordered by the judicial authority;
- d) identify, make an inventory list of, photograph, store, preserve, conserve, restore movable and immovable cultural and religious objects, liable to be classified under the national cultural heritage;

e) elaborate plans of actions – an integral part of the strategy to counteract actions generating negative effects on the protection of the national cultural heritage.

4.2. Crimes in the Field of the National Cultural Heritage

In the areas, places and environments which form the object of this line of work, the crimes provided by the following regulatory acts may be committed:

a) the Criminal Code: Arts. 208, 209, 211, 213, 214, 215, 215¹, 216, 217, 218, 219, 246, 248, 248¹, 249, 263, 280¹, 281, 319 and Art. 360;

b) special laws:

1. Law No. 182/2000 regarding the protection of the national cultural heritage: Arts. 65 – 76;
2. Law No. 422/2001 regarding the protection of historical monuments: Art. 55;
3. G.O. No. 47/2000 regarding the establishment of measures for the protection of the historical monuments that are part of the World Heritage List: Art. 11;
4. G.O. No. 43/2000 regarding the protection of archaeological heritage and the declaration of archaeological sites as zones of national interest Arts. 25 – 27, 31 and 32;
5. Accounting Law No. 82/1991: Art. 43;
6. Law No. 241/2005 for the prevention and fight against tax evasion: Chapter 2;
7. Law No. 178/1934 regulating the consignment contract (published in *Monitorul Oficial* No. 173 of July 30, 1934): Arts. 23 – 25;
8. Law No. 50/1991 regarding the authorization of making constructions and certain measures for the realization of dwelling houses, as republished: Art. 24;
9. Law No. 333/2003 regarding the guard of objectives, goods, vales and the protection of persons: Art. 58;
10. Law No. 86/2006 regarding the Customs Code of Romania: Title XII - Section 1.

5. Performance of acts preceding the criminal prosecution¹²

Information is defined as being a communication, novelty, news which updates someone in relation to a situation, clarification regarding a person or

¹² See Aug. Lazăr, *Supravegherea procurorului asupra actelor premergătoare. Activitatea informativ investigativă a poliției judiciare și materializarea ei în mijloace de probă*, in „Dreptul” No. 1/2005, p. 179.

fact, the entirety of the information and documentation material; springs, sources (from fr. *information*, lat. *informatio*).¹³ In the French judicial system, the information also has the meaning of the ensemble of the instruction acts having as its object to produce evidence in relation to a crime and to discover its perpetrators.¹⁴

The performance of the inquiry represents in fact an *informational confrontation* between investigative structures and the structures of criminal organizations; during such confrontation, each side is trying to obtain the *informational supremacy* by means of gathering data on the adversary in order to achieve its own goals. Criminal are interest to know the following: investigators' identity, evidentiary proceedings used against them, the investigators' soft points and the possibilities to influence the investigators' decisions. After gathering and evaluating data, they often resort during the performance of judicial activities, to forms of asymmetrical confrontation¹⁵ consisting in: exerting pressure by means of influent persons, blackmail, corruption, mass-media attacks, etc.

Under the circumstances of this informational confrontation, the success of investigative activities is essentially depending on the capacity of the judicial body to communicate, to acquire the information necessary to conduct its inquiry.¹⁶ The judicial information of a good quality, used in the appropriate tactical moment, may have a decisive role in shedding light in a case.

The investigation of crimes in the field of the National Cultural Heritage requires a deep knowledge of the phenomenon by gathering, storing and processing in the databases of a significant volume of information regarding criminals, their criminal records, criminal organizations, *modi operandi*, suspicious transactions, etc. The information flow is directed to

¹³ Academia Română, *D.E.X.*, Univers Enciclopedic Publishing House, Bucharest 1998, p.491.

¹⁴ *Le Petit Larousse*, Larousse Publishing House, Paris, 2003, p.546.

¹⁵ In the military doctrine, asymmetrical confrontation forms entail the use, during the information war, of means and methods that differ from those used by the adversary. See M.Şuteu, *Războiul informațional la pace, în situații de criză și de conflict armat*, doctoral dissertation, Academy of High Military Studies, Bucharest, 2002, p.23.

¹⁶ *Knowledge, as a source of high quality power* is appreciated as a highly valuable force. By means of [*information*] processing, the knowledge process goes from bits, data, information, perceptions, significances and understanding, to knowledge, and then to wisdom. During time, access to information significantly increased, and its effect was a process of influencing human thought. Under these conditions, in the information doctrine, the question of mental influencing and attacks to [*people's*] knowledge space was raised with reference to the possibilities to use or conceal the information in order to win a mental duel, in order to control a situation and obtain power at various levels.

The informational confrontation has various actors: pirates of information systems, specialized forgers of cross-border criminal organizations, mass-media specialists, specialized State structures. M.Şuteu, op. cit., p.43.

feeding investigation and criminal prosecution activities of judicial bodies. The organization of a constant and efficient information flow marks the performance of a cultural advancement in the criminal prosecution activity, from the empirical level to the level of professional specialization.

Also, note must be made that the practice in which public authorities organize *databases* on persons whose activities intersect with the competence sphere of the respective authority formed the object of a detailed *analysis in the doctrine and jurisprudence of human rights*, in order to provide the individual with sufficient guarantees against the arbitrary.¹⁷

Mass-media is a significant participant in the global informational environment. Being equipped with state-of-the-arte means to record and transmit information in real time and at a great distance, the connections with national and international agencies, governmental organizations, judicial authorities etc., the entities acting in mass-media may influence in operational and strategic terms, the actions to collect judicial information, and, in the end the activity of making justice.

¹⁷ Starting from the premise that *right to private life* also includes the right to establish and develop relationships with other persons, the Court decided that such notion should not exclude *professional or commercial activities* (D.Niemietz vs. Germany, December 16, 1992). In this way, within the scope of Art. 8 of ECHR is analyzed the search which targeted only the commercial activities of a person (Chappel vs. United Kingdom, March 30, 1989; Halford vs. United Kingdom, May 27, 1997, in Recueil des décisions de la Cour Européenne des Droits de l'Homme, 1997, III, p.1016), and the telephone calls made from a professional venue such as a lawyer's office (Kopp vs. Switzerland, March 25, 1998, in R.D.C.E.D.H.,1998, II, p.540).

Examining the Court jurisprudence (Rotaru vs. Romania, May 4, 2000; Amann vs. Switzerland, February 16, 2000), the *doctrine* concluded that the very gathering of public data on a person, such as the data referring to one's university education, political activity and criminal record, may enter the domain of private life, when it is systematically collected and archived in files. Access to the file is in itself a matter of private life. The reasons for an interference entails that three requirements be met: such interference should be provided under the law, it should pursue a legitimate purpose (it should be necessary for the national security, public safety, country's economic welfare, defense of public order and prevention of crimes, health or moral protection, or for the defense of other's rights and freedoms), it should be necessary in a democratic society (Art. 8 para. 2). Since the application of secret surveillance measures eludes the control of the person at issue, and of the public opinion, the extent and modalities to exert such interference are required to be clearly defined by the law, to provide the individual with sufficient guarantees against the arbitrary. For such an interference in the exercise of the right guaranteed by Art. 8 to be justified, the existence of adequate and sufficient guarantees against abuses should be ascertained, which requirement is not met by the Romanian legislation invoked in the case Rotaru vs. Romania. See, at length, Fl.Streteanu, *Deținerea și folosirea de către autorități a unor date cu caracter personal în raport cu disp. art. 8 din Convenția Europeană a Drepturilor Omului*, in Studia Universitatis Babeș-Bolyai No. 2/2000, p.18.

The mentioned entities often represent *groups of economical and financial interests* aiming at achieving their goals by trying to manipulate and control the information flows from this environment. The confrontations within the business environment are reflected in press by denouncements addressed to judicial bodies, press campaigns targeted at highlighting real or imaginary facts regarding: fraudulent maneuvers performed by certain businesspeople, corruption acts committed by public servants, etc. Since the role of mass media is more and more important, more and more obvious is also the problem raised in front of criminal prosecution bodies to discern between *quality judicial information* resulting from this source and *distorted information*, by mistake or on purpose, within “image” confrontations of adversary groups.

The deep knowledge of the phenomenon of criminality against the National Cultural Heritage entails a profound study and analysis of pending files, reports and synthesis materials prepared by the specialized compartments of the Public Ministry, Justice Ministry, Romanian Police, etc., with respect to its development and manifestation means. It also entails a selection and study of the information regarding the crimes against the National Cultural Heritage held by the authorized structures of the Romanian Police and information services, as well as of the data obtained from national and international police organisms.

The practice of criminal prosecution bodies revealed that the activity of fighting against the crimes falling under the organized criminality phenomenon in the field of the National Cultural Heritage goes through three important stages: information stage, investigation stage and criminal inquiry stage.

5.1. *The information stage* includes the specific activities, carried out in a continuous, organized and conspired manner by specialized structures in order to know and document the activity of criminal networks.

In accordance with the organization and operation laws, the specialized structures that form the community of information from Romania develop their own information and databases. To efficiently counter criminal groups, in the field of economy, the activity of information services was reorganized by means of the development of a development with interface to the economic field. Their defensive role, in the service of the community, entails a wide range of missions in the field of underground economy, of economic and financial organized crime, of laundering criminal profits.¹⁸

¹⁸See M.Şuteu, *La maitrise de l'information-un facteur strategique determinant dans la societ e contemporaine*, Coll ge Interarm es de Defense, Paris, 1999; G.B lan, *Strategia administr rii informa iei  n cadrul politicii penale de ap rare a securit ţii na ionale*, National Defense College, Bucharest, 2000.

The units for fighting against organized crime networks and corruption within the Public Ministry and Romanian Police organized, according to their competences, databases specific to their activity profile.

Informative structures have their own *plans for collecting information*, defined as minimum strategies in the approach of organized criminality.¹⁹ Such plans contain the *fields* in which information is collected (e.g.: privatization, customs, banking loans, subsidies, etc.), *categories of persons targeted* by the activity of operative surveillance and information gathering (e.g.: criminal networks' leaders, customs officers, clerks, etc.), *means for operative surveillance and information gathering* (e.g.: informers, trailing, under cover agents, telephone tapping, access to the databank, surveillance of accounts), *information analysis and exploitation modalities* together with the operative workers authorized to perform preliminary acts, to initiate the criminal prosecution and to capitalize the information material in the criminal prosecution stage.²⁰

The process of searching, gathering, processing and transmitting information, referred to in specialty terms as the *informational cycle*, includes the following stages: *planning*, which involves the setting of the beneficiary's requests (type of requested information, susceptibility of targeted activity, probability of the efficiency of data collection); *access to the targeted environment*, respectively interception of communication; *selection of messages and gathering information*, which operations are regularly performed in an automatic manner by using the databases that have information on the objectives of interest; *processing* may entail the translation or "extraction of the essence" of a message, the analysis, evaluation and interpretation of raw data so that finished information is "produced"; *drafting of reports* consisting of: raw messages (decrypted and/or translated), syntheses, comments or extended analyses. The quality and conclusiveness of

¹⁹ C.Voicu, *Criminalitatea afacerilor*, IGP, Bucharest, 1997, p.358.

²⁰ For example, the *Technical Service for Judicial Inquiries and Documentation of Gendarmerie* from France includes the following compartments: *Exchanges Division*, with departments for documentation, internal exchanges, external exchanges, criminal analysis and Internet cell; *Judicial Inquiries Division*, with departments for identification, judicial comparison - V.A.M.A. (armed robbery), D.E.F.I. (economic, financial and IT delinquency) P.A.M.A.M., (senior citizens, minors, vice), M.O.S.T. (mafia, organizations, sects, terrorism) – Analysis cell, technical cell; *Persons, Descriptions Division* with departments persons under inquiry, file of persons born abroad and automated file of digital fingerprints; *Used Objects, Means Division* containing the technical secretariat, art objects department - arms and means of transportation department. The databases of such compartments may provide answers to requests for operational information or may be used for strategic analyses. *Le Service Technique de Recherches Judiciaires et de Documentation*, Rosny-sous-Bois, Cedex, 1998.

transmitted reports outline the priorities for gathering information, completing the organization of the information cycle.²¹

Information structures must actively cooperate in specific cases concrete in order to make a complete informative documentation and to advance to the next stage, that of investigation.²²

5.2. *The investigation stage* is composed of the ensemble of activities carried out by specialized structures in order to secretly verify the information obtained in the information stage. These activities may be: the operative surveillance of suspects by means of trailing or stake out, surveillance of a location including by taking judicial photos and video recordings; verifying suspect transactions, acts and writs used by the perpetrator, obtaining data from the Interpol, etc.

The investigative action is initiated at a favorable time, characterized by the existence of sufficient accruals in the information stage, and the efficiency of the action is determined by the extent to which the criminal group is known. The specialty literature²³ draws attention to the fact that the *basic rule* to be observed is to ensure continuity and interference of informative and investigative plans, a continuous monitoring of the crime activities of the criminal group in the investigation and in the criminal prosecution stages.

The *purpose of the operative surveillance* should be the identification of the connections of the criminal network in the fields of public administration, politics, finance and banking, etc., the identification, location and evaluation of the cash, goods and values acquire, and the business activities managed directly or by agents by the criminal network.

The phenomenon related to a progressive globalization of economy triggered the unification and an increase in the interdependence degree of criminal markets and perpetrators operating within the area of such markets. Under these circumstances, internationally coordinated inquiries which benefit from a permanent flow of information exchanged in real time represent the “last frontier” in the field of combating the networks of traffic in cultural goods.

During the investigation means, the evidentiary means to be produced in the prosecution stage are identified and ensured. In this way, witnesses,

²¹ E.Străinu, S.Topor, *Spionajul electronic*, Ed.Deliana, 2002, p.27.

²² The importance of information and criminal prosecution in the criminal lawsuit was highlighted in the legal literature by quoting the aphorism of Ayrault, according to which the prosecution is the soul and basis of the lawsuit („L’instruction c’est l’ame du proces”, „L’information c’est le fondement du proces”); *L’ordre, formalité et instruction judiciaire* - Lyon, 1624, Book I, Art.1, No. 1, Book III, Art.2, No. 39, after N.Volonciu in *Drept Procesual Penal*, Ed. Didactică și Pedagogică, Bucharest, 1972, p.239.

²³ C.Voicu, op.cit., p.363.

victims, suppliers, intermediaries, etc. may be identified, and their reports may be mentioned in the *minutes for recording the performance of the acts preceding* criminal prosecution. The same minutes may record the results of other investigative actions: operative surveillance, taking and checking documents and writs, performance of raids²⁴, etc.

The practice of criminal investigation carried out by judicial bodies reveals frequent deficiencies in going from information to investigation, then to inquiry. One of the most serious deficiencies is the “syncope” which occurs during preceding acts, between the information and investigation activity and the criminal inquiry activity. Information, which is an extremely perishable product, goes through a fast “aging” process so that, if it is not used at the right time to become evidence, it loses its value. *Informative “syncope”* may be avoided by involving investigators who plan the criminal prosecution as early as in the investigative “hot” stage of the inquiry. Knowing all the information acquired through investigations, investigators are able to appreciate the evidentiary value of the collected material, to appreciate the appropriate time to trigger the inquiry and to convert information into evidentiary means according to the criminal lawsuit provisions.

5.3. Materialization of the investigative activity into evidentiary means. The activities carried out in the investigation stage, after notifying the judicial body represent in terms of the criminal lawsuit *preceding acts*, external to the criminal lawsuit. The most relevant activities are recorded in the minutes for the performance of preceding acts, having an important role with regard to the initiation, performance and resolution of the criminal lawsuit.

The contents of the acts preceding criminal prosecution relate to:

a) *Discreet investigative activities*²⁵: operative surveillance; verification of income sources; verification of acts and writs, suspect transactions; obtainment of data through the Interpol.

b) *Non-discreet investigative activities*: organizing a filter, performing a raid, legitimating and identifying unknown persons.

c) *Activities similar in form to certain procedural acts*: requesting verbal or written information, verifying technical hypotheses, taking the list of telephone calls, checking records by means of accounting reviews.

d) *Activities consecrated in the law of criminal lawsuit*: preceding acts carried out by under cover investigators, taking objects and writs, searching,

²⁴ This data serves to elaborate inquiry versions, logical assumptions of the criminal prosecution body referring to the deed in its ensemble or to certain circumstances of the deed. I.Mircea, op.cit., p.223.

²⁵ Art. 31 of Law No. 218/April 23, 2002 regarding the organization and operation of the Romanian Police, published in *Monitorul Oficial* No. 305/May 9, 2002.

technical and scientific findings report,²⁶ on site investigation, telephone tapping, audio or video recordings.

Preceding acts are carried out under the prosecutor's supervision, and no trial-related measures or expert appraisals may be ordered, which entail the existence of a criminal lawsuit frame.

The European doctrine and investigative practice express a particular interest in the development of *pro-active or special inquiry techniques*, to be used in the performance of *anti-delictum or special investigations*; such techniques may be used inclusively before the perpetration or ascertainment of a certain crime (pro-active investigation). These techniques are destined to the fight against the crimes falling under organized criminality, in which cases classical inquiry means such as hearing witnesses, searches, etc. prove to be inefficient. The category of special investigative techniques contains: infiltrations of under cover agents, "screen" companies supplying services to criminal networks, informers, telephone tapping, audio or video recordings, use of new technologies for accessing information systems and analyzing information, legal measures to diminish the penalty for criminals that collaborate with judicial authorities.

In order to avoid any impairment to citizens' rights and freedoms, these investigative techniques may only be used in a strictly determined legal framework, by authorization granted to a magistrate only for judicial purposes, in order to collect evidence.

We appreciate that, in the stage preceding the criminal lawsuit, known by all criminal justice systems²⁷ as the stage in which information is collected and verified, writs or material evidentiary means, etc. are taken in order to ensure the grounded nature of the act of initiating the criminal lawsuit, judicial bodies may use the evidentiary procedures previously presented, in order to carry out the acts that are strictly necessary for the commencement of the criminal prosecution. In the stage of preceding acts, it is required to avoid the two extremes that prejudice the criminal lawsuit: breach of the no publicity principle specific to this stage²⁸, resulting in the compromise of the chances to enforce criminal law, and to move the center of gravity of and inquiry in the stage preceding the lawsuit, with the risk of breaching the right to defense of the person under investigation, respectively of preparing acts with no evidentiary value in the criminal lawsuit.

²⁶ In the same sense, N.Volonciu, op.cit., special part, vol.II., p.63; E.Ionășeanu, op.cit., p.189.

²⁷ N.Volonciu, op.cit., special part, vol.II, p.39; J.Pradel, *Manuel de Procedure Penale*, Ed. Cujas, Paris, 2000, p.327.

²⁸ See J.P.Masson, *Le secret de l' instruction*, R.D.P. 1981, p.393.

6. Procedures to discover and take writs and material evidentiary means

Taking objects and writs is a tactical criminalistic activity serving to the collection of known evidentiary means, objects and writs, which activity is carried out either by their willing surrender by the natural or legal persons that hold them or by the forceful taking of the evidentiary means, when their surrender is refused.²⁹

The *search* is a tactical research activity carried out by judicial bodies in order to find and take objects, writs, values that have relevance for the case, when the person that was requested to surrender them denies their existence or denies holding them.³⁰

These activities are of a decisive *importance* for the settlement of criminal cases, that have business frauds as their object, evidenced by the writs and material evidentiary means found and collected on such occasions. Their application in accordance with legal regulations and criminalist tactical rules ensures the procurement of indispensable, sometimes unique evidence for the settlement of the case.³¹ The taking of objects and writs, searches are meant to find and take:

a) *objects constituting a crime product*: counterfeit goods, CDs, products obtained by fraudulent means from virtual stores, amounts of money etc.;

b) *means or tools that served or were meant for perpetrating the crime*: computer, scanner, printer, copier, used for counterfeiting, etc.;

c) *objects that contain or are marked with the traces of the crime*: personal computer containing files that represent e-mail messages sent and received by the perpetrator during the perpetration of the crime, forged education and identity acts, etc.;

d) *objects or values whose holding is prohibited by law*: credit notes, banknotes, forged coins or stamps, held for movement purposes; tools or materials held for the purpose of forging values or securities protected by law;

²⁹ *Activity* is understood as an ensemble of physical, intellectual and moral acts carried out in order to obtain a certain result. The method of action represented by the entirety of the acts adopted as a system, in order to reach that result, defines the used *procedure*. The ensemble of specific procedures and rules destined to carry out certain procedural acts or activities constitutes the criminalist *tactics*. See, in this sense, the Academia Română, *DEX*, Ed. Univers enciclopedic, Bucharest, 1998, p.10 and 853; Em. Stancu, op.cit., p.22.

³⁰ I.Mircea, op. cit., p.298; I.Sima and collab., *Dicționar de criminalistică*, Ed. Științifică și enciclopedică, Bucharest, 1984, p.148.

³¹ C.Bulai, *Explicații teoretice ale Codului de procedură penală român*, General Part, vol. I, Ed. Academiei, Bucharest, 1976, p.238.

e) *any objects or writs liable to serve* in the establishment of the circumstances under which the crime was perpetrated or in the perpetrator's identification: sale-purchase acts, banking documents, dispatch acts, etc.

Taken acts allow the highlighting of the fraudulent intent that characterized the perpetrators' malversation.

It is also recommended as a tactical and investigation rule to gather the IT data recorded on material media of data, which shall allow a subsequent performance of the investigation in the IT environment (the computerized description of the operations from a banking account, etc.).³²

Romanian doctrine and judicial practice assimilated material supports of data, respectively storage environments, to objects and writs, so that the provisions of Arts. 94-111 of the Criminal Procedures Code apply to such supports.³³ The following objects nearing traces of the perpetrated crime shall be deemed as material evidentiary means and may serve for finding out the facts: tapes, disks, C.Ds, integrated circuits, memory microchips, forming the external memory of the computer, the hard-disk, forming the internal memory of the computer.³⁴

7. Technical Procedures for Investigation

On an international plan, the modern concept of *forensic sciences* is gaining more and more importance; these are the sciences that are connected with justice and are defined as the ensemble of scientific principles and technical methods applicable to the investigation of perpetrated crimes, in order to prove their existence. Identify their perpetrator and his/her *modus operandi*.³⁵ The technicalness level of business criminality, accession to new levels such as informatization, virtual trade in art objects, credit cards require an appropriate technical and tactical response.³⁶

³² Ch.E.Lewis, *Resurse și tehnici investigative utilizate de procurorii federali din Statele Unite* (translation from English), P.C.S.J., 2000, p.14.

³³ I.Vasiu, *Unele aspecte de procedură penală privind mediul informatizat*, in R.D.P. No. 1/2001, p.41.

³⁴ D.Stăncele, M.Fackelman, *Mijloace specifice de probațiune a infracțiunilor săvârșite pe internet*, in R.C.C.P. No. 11/2001, p.150.

³⁵ The term of "forensic" is originated in the Latin word "forum" meaning public square, trial premises. The term was adopted as a neologism, in all languages, in order to designate the sciences, specialists, institutes that by means of their research activities bring their contribution to the making of justice. L.Ionescu, *Asigurarea calității în expertiza criminalistică*, in The Law No. 1/1999, Criminalistics No. 1/March 1999, p.22.

³⁶ S.Alămoreanu, *A 13-a Conferință E.N.F.S.I (European Network of Forensic Science Institutes)*, Prague, May 16-19, 2001, in R.C.C.P. No. 9/2001, p.105.

The technical and scientific findings report was defined in criminalistic literature as an activity of immediate scientific interpretation and valorization of tracks, evidentiary means and of factual circumstances, carried out at the request of criminal prosecution bodies, in order to identify the perpetrator and the objects used to perpetrate the crime.³⁷ In terms of contents, this operative activity is more limited than expert appraisal and is ordered only in emergency cases.³⁸ *The judicial expert appraisal* is an activity of scientific research carried out at the request of judicial bodies, by persons with specialty knowledge,³⁹ with regard to persons, objects or tracks in order to clarify facts or circumstances or to identify objects that leave tracks.⁴⁰

The performance of technical and scientific findings reports and judicial expert appraisals is ordered to establish the circuit of acts, goods, payment methods, to establish the prejudice, in case of accounting expert appraisals, to identify a person based on his/her handwriting, through the examination of the spiritual contents, vocabulary and graphical characteristics of the person's handwriting and signature, in case of criminalistic expert appraisals of the handwriting, to establish the genuineness, in case of expert appraisals of bank notes, coins, credit notes, to establish the genuineness of the recordings, to identify a person based on his/her voice and talking, in case of audio criminalistic expert appraisals, etc.

8. Ordering of Telephone Tapping, Audio or Video Recordings

The recording on magnetic tape of calls, and image recordings are appreciated in specialty literature as investigation methods used by criminal prosecution bodies in order to discover the crimes, identify the perpetrators, and establish the facts during the criminal lawsuit.⁴¹

The ordering of the performance of audio and video recordings, and the capitalization of the recordings presented by the parties⁴² are also relevant in order to discover other crimes, identify perpetrators and their criminal

³⁷ N.Dan and collab., *Dicționar de criminalistică*, Ed. științifică și enciclopedică, Bucharest, 1984, p.45.

³⁸ I.Mircea, op.cit., p.314; C.Suciu, *Criminalistica*, Ed.didactică și pedagogică, Bucharest, 1972, p.568.

³⁹ A judicial expert (lat. expertus) is the person that has specialty knowledge in a field of art, science and technique, appointed by the judicial body according to law, to clarify certain factual situations or circumstances, necessary to establish the facts. N.Dan and collab., op. cit., p.67.

⁴⁰ I.Mircea, op.cit., p.312.

⁴¹ Gh.Mateuț, *În legătură cu noua reglementare privind înregistrările audio sau video în probațiunea penală*, in Dreptul No. 8/1997, p.70; G.Stefani, G.Levasseur, B.Bouloc, *Procédure pénale*, Dalloz, Paris, 1996, p.538.

⁴² See Aug.Lazăr, *Înregistrările audio sau video prezentate de părți, mijloc de probă în procesul penal.*, in Dreptul No.7/2003, p.153.

connections in various environments. The audio-video recording activities may be particularly useful if certain information is leaked to the perpetrator or if an inquiry is carried out in a modality that disturbs certain persons, generates reactions, declarations, incautious conducts evidencing a guilty conscience.⁴³

Romanian jurisprudence retained that an unauthorized video recording made by an informer that was not a party to the lawsuit and was heard as a witness may not constitute evidence; on the other hand, the recordings were made without any authorization, under clandestine conditions, which constitutes a breach of the provisions of Art. 26, para. 1 of the Constitution and of Art. 68, para. 2 of the Criminal Procedure Code or, according to law, the recordings presented by the parties may serve as evidentiary means only if such is not prohibited by law.⁴⁴

9. Hearing Persons

The tactics of hearing persons is a complex activity which consists in the use, according to law, during the hearing, of specific tactical methods and procedures for the capitalization of the evidentiary means, of other data regarding such means, and the circumstances under which the crime was perpetrated in order to find out the facts in the case.⁴⁵ It contains an ensemble of procedures regarding the organization of the hearing, the elaboration of the plan which is the basis for the performance of the hearing, the particular performance manner, the fixation manner of the reported facts, the verification and appreciation of declarations.⁴⁶ The *purpose* of the application of tactical hearing procedures is to obtain true, complete and fair declarations on all the circumstances under which business crimes were committed. Such procedures are the result of the scientific generalization of the experience accrued by judicial bodies and are based on the profound knowledge of the rules of criminal lawsuit regulating the hearing of persons, as well as of the psychology of various categories of heard persons.

9.1. Hearing injured parties and witnesses has as its purpose to establish the facts under which crimes were committed, to obtain data regarding the operation methods and means used by perpetrators, to establish their identity and contribution in the realization of fraudulent maneuvers, the place where the goods or values coming from the crime were hidden, to evidence the *mala fide* in the cases provided under the law, etc.

⁴³ Fr.Saverio Borrelli, op. cit., p.18.

⁴⁴ S.C.J., Criminal Division, The Law No. 1602/March 26, 2001, in *Dreptul* No. 5/2003, p.233.

⁴⁵ I.Sima and collab., op.cit., p.195.

⁴⁶ A.Ciopraga, op.cit., p.151.

9.2. *Hearing the defendant or the charged person.* The defendant or the charged person is considered in the specialty literature as the central person of the criminal lawsuit “around which is spiraled the entire activity of producing evidence, gradually ascending until the facts are finally established”.⁴⁷

In order to elucidate the criminal case, the investigator shall use with professionalism the evidentiary procedure of hearing the perpetrator, which is the person who carries the most information with respect to the perpetrated deed, obtained in a direct manner. However, also in the hypothesis that the defendant or charged person is not the perpetrator of the deed, hearing him/her is also relevant, since s/he may prove his/her innocence, being the party that is the most concerned with establishing the facts.⁴⁸

Given that the law grants the defendant or the charged person the option to declare or not to declare (*nemo tenetur edere contra se*),⁴⁹ the judicial body is obligated to proceed to the hearing,⁵⁰ except for the case the defendant or the charged person eludes the criminal lawsuit. In the exercise of its active role, the judicial body interested in realizing the communication for obtaining the data necessary to elucidate the case shall ensure the hearing tactics that is adequate to the factual situation and to the perpetrator’s personality.⁵¹

Hearing the defendant or the charged person shall allow the elucidation of the factual situation, in its entirety, obtaining the most information regarding the perpetrated deed, in a direct manner, from the holder, who is regularly its perpetrator. In this way, by hearing the defendant or the charged person, important information can be obtained with regard to the participants’ identity, *modus operandi*, means used by perpetrators, capitalization manner of the stolen goods, etc. In the field of the criminality of “white collars”, the *specific nature consists in the confrontation with the perpetrators’ high level of intelligence and training*, their capacity to transpose themselves into the investigator’s position, to anticipate his/her actions and questions, respectively to prepare a defense grounded on an appearance of *bona fide*, honesty and professional business ability, pleading “the science to make money”. It is recommended that “white collars” should be heard after taking objects and

⁴⁷ I.Mircea, op.cit., p.273.

⁴⁸ S.Kahane and collab., *Explicații teoretice ale Codului de procedură penală român, Partea generală*, General Part, vol. I, Ed. Academiei, Bucharest, 1975, p.185.

⁴⁹ N.Volonciu, op.cit., p.361.

⁵⁰ Failure to observe the obligation shall constitute a reason for the nullity of the decision, since the defendant was deprived of the possibility to exert his/her right to defense. Timiș Tribunal, c.l.No.399/1978, in RRD No.1/1979, p.57.

⁵¹ About personality types and their features, see in detail N.Mitrofan and collab., *Psihologie judiciară*, Publishing and Press House “ȘANSA” S.R.L., Bucharest, 2000, p.70.

writs, so that the judicial body could form an image regarding the illegal action subject to inquiry.

10. Taking Preventive Measures

In doctrine, preventive measures are defined as trial-related measures taken by criminal prosecution bodies and by the courts of law, during the performance of the criminal lawsuit, in order to ensure the achievement of its goal.⁵² The criminal lawsuit provisions provide the possibility to take four categories of preventive measures: retaining, obligation not to leave the locality, obligation not to leave the country and preventive arrest (Art.136 of the Criminal Procedure Code).⁵³

Taking preventive measure in the cases and under the conditions provided by law aims at the removal of the risk to hide defendants or charged persons, destroy or alter the crime tracks (accounting documents, records or messages recorded in computers' memory, forged banknotes or other values, etc.), eluding criminal prosecution, trial or penalty execution, upsetting the finding of facts by influencing witnesses or experts.

Preventive measures shall only be taken after making a founded analysis of the factual situation and accurately evaluating their appropriateness as compared to a substantial probation produced in the case, and not in view of producing evidence.

11. Taking Preventative Measures Regarding Civil Remedies

The perpetration of crimes against the National Cultural Heritage often immediately results in causing damages. Such damages shall be remedied according to civil procedures, either in kind, by restituting the object⁵⁴ (a propriety modality in case of heritage objects) by re-establishing the situation prior to the perpetration of the crime, by the total or partial annulment of a writ and by any other means of repair, or by payment of pecuniary damages, if the in-kind remedy is not possible.⁵⁵ Preventative measures are measures taken in

⁵² V.Dongoroz and collab., op. cit., p.312.

⁵³ The measure of obligation not to leave the country was introduced under Law No. 281/2003 regarding the amendment and supplement of the Criminal Procedure Code and of certain special laws, published in *Monitorul Oficial* No. 468/July 1, 2003, such provisions being applicable as of January 1, 2004.

⁵⁴ See T.Joița, *Repararea în natură prin restituirea lucrului*, in R.D.P. No.4/1996, p.77; V.Stoica, *Corelarea art. 14 din Codul de procedură penală cu prevederile art. 1909 - 1910 din Codul civil*, in R.R.D. No. 10/1988, p.27; V.Dabu, T.Enoiu Boboc, *Ridicarea de obiecte și înscrișuri*, in R.D.P. No. 3/1998, p.116; V.Pop, *Măsura ridicării de obiecte și măsura asiguratorie a sechestrului. Prezentare comparativă*, in R.D.P. No.1/1995, p.61.

⁵⁵ S.Kahane and collab., *Explicații teoretice ale Codului de procedură penală român, Partea generală, General Part*, vol. I, p.336.

the criminal lawsuit⁵⁶ in order to guarantee the effective realization of the repair of the damage caused by the crime or to execute the penalty by fine.⁵⁷ These lawsuit measures aim at providing protection to the civil party against the risk to provoke the insolvency of the defendant (or of the party whose civil liability is entailed) during the criminal lawsuit and guarantees the possibility to realize the civil action, by preventing the disposal of goods from its assets. Preventative measures connected with civil repairs are taken by the application upon the goods made unavailable, of the criminal distraint, taking the mortgage inscription or by garnishment, in compliance with the tactical rules recommended by the criminal prosecution literature and practice.

12. Presenting the Criminal Prosecution Material

Presenting the criminal prosecution material is the tactical activity during which the competent prosecution body, when it deems that all the evidence necessary to find the facts were collected, and the defendant or charged person is to be referred for trial, creates to the defendant or charged person, and to the defender chosen by him/her, or *ex officio*, the possibility to study effectively, entirely and with no time limitation the evidentiary material and the procedural evidence deposited in the file.⁵⁸

The importance of presenting the criminal prosecution material, as a guarantee for the right to defense, consists in the verification of the value of the evidence produced, in the creation of conditions necessary for the defendant, who has the most knowledge of the criminal activity, to be able to request that new evidence be produced or to make additional declarations, that may contribute in the clarification of all the aspects of the case and in its fair settlement.⁵⁹

The tactical moment of presenting the criminal prosecution material is set by the judicial body after having formed its conviction that *all the evidence were produced*, and that the case was clarified with respect to the conditions related to the place, time and circumstances under which the crimes were perpetrated; the trial-related measures required for the normal performance of the criminal lawsuit were taken, it is *necessary to refer* the defendant to judgment and it is *possible to contact* of the criminal prosecution body with the defendant. The presentation of the criminal prosecution material does not proceed when the defendant is missing or eludes the prosecution, which circumstance must unequivocally result from the acts in the file.

⁵⁶ Taking into account their nature of trial-related measures of constraint, preventative measures cannot be taken in the stage of preceding acts. See in this respect, Gh. Mateuț, op.cit., Special Part, vol. I, p.79.

⁵⁷ N.Volonciu, op. cit. General Part, Ed. Paideia, vol.I, p.441.

⁵⁸ Gh.Mateuț, op. cit., Special Part, vol. I, p.183.

⁵⁹ Al.Olaru and collab., *Tactica criminalistică*, M.I., Bucharest, 1989, p.240.

CONCLUSIONS

Criminality against the National Cultural Heritage, a field of “white collars” criminality, represent an expanding criminal phenomenon favored by the globalization of economy and the transition to market economy in the Eastern Europe. In the states of *South-Eastern Europe*, including Romania, an important influence is exerted by elite of the networks of traffickers from the Central European and former Yugoslav judicial space, coming from the symbiosis of former power structures with the information services and groups of organized crime which elaborate and coordinate the application of scenarios and criminal strategies in the field of interest. A note must also be made of the influences of the criminal networks from the Near East, and of the Italian mafia operating in the sphere of the traffic in heritage objects and of economic and financial frauds, capitalizing the opportunities offered by the transition period.

Criminality against the National Cultural Heritage also proved to be, *endemic for the States that have an ancient heritage and a developed art market* (archaeological poaching, illegal traffic in cultural goods, etc.), an inherent pathological component of the global trade in art objects. Frequently remarked as an *articulation of the power*, this kind of criminality adjusts its conduct and extent to the responses of the public administration and judicial authorities of each State, as well as of the EU institutions.

After evaluating the data characterizing the criminal phenomenon, and the response capacity of judicial bodies, the research effort outlined, as a practical solution of riposte, a rigorous *methodology for the investigation of crimes specific to the business environment*, which entails the resort to *specialized task forces* and *team action method* led by a prosecutor, *counsel* by specialists in the field of interest and the orientation of investigation according to the following *methodological directions*:

1. *knowledge of the modus operandi* which entails the examination of the types of illegal conduct used by perpetrators in the field of cultural heritage and the establishment of the factual, particular situation;

2. *knowledge of the regulatory framework* in the field of cultural heritage, respectively the knowledge of the specific nature of the activity in the sphere of interest and of the legal provisions that incriminate illegal maneuvers;

3. *performance of the acts preceding criminal prosecution* through the organization of the informational flow, of the investigative activities meant to verify the information and to ensure the evidentiary means;

4. *use of the procedures to find and take the material evidentiary documents and means* (taking objects and writs, searching), in accordance with the *operative guide for investigation* outlined during the inquiry, with the

reference system regarding the documentation possibilities provided by each of the indicated sources and by the data that result from *consulting the specialists* in the field;

5. *use of the technical procedures for investigation* (technical and scientific findings reports and expert appraisals) in order to examine the circuit of acts, goods, payment methods, and to establish the prejudice;

6. *ordering that interceptions, audio-video recordings be made*, capitalization of the records presented by the parties in order to find the crimes, identify the perpetrators and their criminal connections in various environments, highlight incautious conducts evidencing a guilty conscience;

7. *hearing persons* (injured parties, witnesses, charged persons or defendants), using the special tactics, adequate to establish the circumstances under which the deed was perpetrated, the operation methods, the perpetrators' identity and contribution to the performance of illegal maneuvers, the hiding places for the goods, etc.;

8. *taking preventative measures regarding civil remedies*, in order to protect the rights of the civil party and to guarantee the effective realization of the civil action;

9. *taking preventive measures* in the cases and under the conditions provided by law, in order to remove the risk of hiding defendants or charged persons, destroying or altering the crime tracks, eluding the criminal prosecution, trial or penalty, upsetting the finding of the truth;

10. *presenting the criminal prosecution material* in order to verify the value of the produced evidence, create the conditions necessary for the charged person (defendant) to be able to examine it and to contribute in the clarification of the case under all aspects in view of its fair settlement.

The imperatives of the fight against the evolved forms of criminality in the field of the National Cultural Heritage require the application in the criminal prosecution practice of this research methodology, and the achievement of the following *strategic objectives*:

1. Educating and raising the public awareness with reference to the danger represented by the crimes against the National Cultural Heritage, including the corruption crimes related to such deeds.

2. Increasing the effectiveness of the measures meant to prevent and control criminal activities in the field of the National Cultural Heritage (archaeological poaching, thefts from museums, frauds, money laundering, etc.); application of preventive measures with an administrative nature (withdrawal of license, professional or commercial authorization, creation of databases regarding persons and business companies that carry out certain illicit activities, etc.).

3. Protecting the participants vulnerable to criminal lawsuit.

4. Modernizing the investigation means in the repressive field (strengthening of the new specialized structures of the Judicial Police, specialization of magistrates in the investigation of these crimes, etc.).

5. Evaluating the effectiveness of investigative structures, stimulating the cooperation of institutions that participate in combating the criminality against the National Cultural Heritage: the Public Ministry, the Romanian Police, the Border Police, the Customs.

Attainment of the mentioned objectives shall also entail *the strengthening of the teams of magistrates, police officers, public servants* by means of a massive recruitment of professionally well-trained young people, motivated for attractive and well-compensated public careers.

This strategy needs to be incessantly supported by a firm *rule of law*, able to ensure Romania's judicial accession at an European level and to defeat the negative forecast regarding the continuously ascending tendency of the rate of criminality against the National Cultural Heritage

Looking to the future, in the context of the evolution of European integration, several fields are outlined to be subject to the reflection of researchers: organization of specialized structures, strengthening of interinstitutional cooperation, elaboration of specific, uniform procedures for investigation and trial, of unconventional strategies for prevention and control. Also, note must be made of several *tendencies of the evolution of crimes against the National Cultural Heritage* at a continental level.

The phenomenon of progressive globalization of economy sets a *rate for the unification and growth of the degree of interdependence of criminal markets and perpetrators* that operate within their territory.

The adjustment capacity and mobility specific to criminal organizations determine the *relocation of criminal activities* from the space of Western Europe, where the qualified pressure of judicial institutions is exerted, to the space of Eastern Europe where new opportunities for illegal business emerged (archaeological poaching, smuggling, money laundering, etc.), while relevant investigative experience and logistic means of authorities are lower. Under such circumstances, the annihilation of the new manifestations of criminal groups in the field of the National Cultural Heritage, including that of corruption and organized crime "laboratories" created in the space of Eastern Europe (*e.g.* Transnistria) is possible through the *cooperation of investigative structures, mutual transfer of expertise within European programs*, support of judicial bodies of the Eastern Europe in their action for emancipation from under the suffocating pressure of the networks of economic and political interests, concerned with the satisfaction of their own interests with respect to fast capital accrual.

Our research revealed that as the integration into the common European market grows, the free movement of goods, persons, and services

develops, conditions are created that favor the realization of *specialized networks at the European level*, characterized by a sophisticated and occult *modus operandi*, integrated into traditional economic circuits, by means of complex schemes and by their involvement in an international chain of intermediaries. The investigation of these criminal networks requires an acceleration of concerns for the creation of *a judicial European space*, of the European Criminal Code (*Corpus Juris*), of the European judicial network (*Eurojust*) composed of prosecutors, judges, police officers with equivalent competences delegated by each Member State according to its legal system, of the *European Public Ministry*, and of the institution of the *European Prosecutor for the protection of the financial interests* of the Community.

It is necessary that European investigators should be able to use in an operative manner, in the field of criminality against the National Cultural Heritage, *pro-active or special investigation techniques*, respectively *anti-delictum and special investigations*, such as: infiltrations of under cover agents, “screen” companies that supply services to criminal networks, informers, interceptions, audio or video recordings, use of new technologies for the access to information systems and for the analysis of the information, surveillance of bank accounts, legal measures for decreasing the penalty for the criminals that cooperate with judicial authorities, etc., which proved their efficacy in the application of “surgical” *coups* to criminal organizations.

Such investigative techniques shall be used by specialized structures, only within a legal framework, exclusive of the arbitrary, with the magistrate’s approval and only for judicial purposes, respectively for the purpose of collecting evidence in cases of organized criminality.

Given the globalization of business criminality, when the criminals that live in one country often meet in another country and organize the perpetration of their crimes in a third country, and hide or invest the outcome of their crimes in a fourth country, European investigative structures must have at least the same degree of mobility, must communicate their information in real time, must be capable to find in other countries evidence admissible in the country where trial is to be carried out. The dynamics of the organization and specialization of criminal networks, the adoption of a more and more evolved *modus operandi* impose similar dynamics in the organization and specialization of investigative structures, use of special techniques for operative surveillance and research that are adequate to new operation methods and may be applied throughout the European judicial space.

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