Motorways and Archaeology: What does it mean to be a contractual archaeologist in Romania?

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Abstract
This paper aims to provide an overview of the current situation in Romania regarding infrastructure projects and constraints and obligations relating to the heritage protection. At present, the archaeological permits are source of frequent complaint among contractors in the road-construction sector. The challenges with preventive archaeological projects stem from three sources: lack of clarity in the legislation; capacity constraints among project promoters; and institutional incentives related to the financing of such work. These premises and a number of other factors, have made that, in the last years, in Romania, preventive archaeological research is seen rather as an obstacle to the implementation of infrastructural development and not as an extraordinary opportunity for research and capitalization of the heritage. At the same time, these premises generated a series of possible abuses or unprofessional attitudes from all the actors involved, with important consequences on the perception of the concept of archaeological heritage.

Keywords: *Romania, motorway archaeology, preventive archaeology, archaeological diagnostics, permits*

Rezumat
Actuala procedură de avizare, în cazul proiectelor de infrastructură, amână practic cercetarea arheologică preventivă până târziu, în faza de execuție a proiectului, deci după emiterea Acordului de Mediu. Suprapunerea cercetărilor arheologice cu etapa de execuție a lucrărilor de infrastructură a generat diverse probleme, unele dintre ele cu potențial de a afecta determinant absorbția de fonduri europene și programul național de dezvoltare a economiei. Aceste probleme pot avea, la rândul lor, o serie de efecte colaterale suplimentare dintre care amintim:

- *abordarea și execuția superficială a cercetării arheologice preventive, ce poate conduce la daune majore asupra patrimoniului arheologic protejat;*
- *o lipsă de înțelegere reciprocă și de colaborare între organismele guvernamentale responsabile, de obicei, Ministerul Culturii și Ministerul Transporturilor (acesta din urmă fiind principalul promotor de proiecte cu impact semnificativ asupra patrimoniului arheologic). Acest lucru, la rândul său, duce la acuzații reciproce legate de responsabilitatea întârzierilor proiectelor de interes național.*

In Romania, two the most complex permits required for development and preventive archaeology are the Environmental Impact Assessment (EIA) and the Archaeological Permit (AP). Both take months to be completed though they are normally carried out in parallel, and both are governed by complex and detailed legislation. The effective delays in the permit-granting process lead to a number of problems, one of them being the overlap of archaeological research and the execution of construction works that may cause various problems. These problems can, in turn, have additional knock-on effects:

- circumstances in which archaeology-related procedures are rushed potentially lead to severe harm being done to legally protected heritage, and
- lack of mutual understanding and collaboration between the responsible government bodies (e.g. the Ministry of Culture and Ministry of Transport, the latter frequently being the principal investor of projects with significant impact on archaeological heritage). This, in turn, leads to reciprocal accusations and mutual blame for delays.

In other words, the Ministry of Transport and Infrastructure, through its bodies, has the responsibility of ensuring safe and efficient road and railway infrastructure but the development of this communication network has a particular impact on archaeological heritage which should be otherwise considered as unrenewable national resource. The role of guarantor regarding compliance with all legal constraints regarding the heritage protection is given to the Ministry of Culture. These two ministries are, indeed, the main parties involved in a problem in which, for the last 25 years, we have all been striving to ensure a precarious equilibrium between large infrastructure development projects and greate opportunities for historical and archaeological research. Unfortunately, even upon a selective analysis of the facts, things still seem to have become stuck in a more or less unrealistic projecting phases in which the rules are made by the two parties which do not have even a minimal desire to listen to each other. The consequence of this pseudo-dialogue is a state of tension, along with institutional and professional frustrations, with dramatic effects on responsibilities assumed by the respective parties.

In theory, the granting of an EIA depends upon the resolution of all heritage-related problems and the extent to which archaeological heritage is affected, while the granting of all notices, including the permit to remove the archaeological heritage (e.g. excavations) is the task of the Ministry of Culture. Interventions that could affect the heritage are strictly forbidden without applying certain preliminary procedures advised and overseen by the Ministry of Culture. Romania ratified the La Valletta

Convention in 1997 and adopted the principle of 'integrated conservation'[1], and the Ministry of Culture was given the task of detailed examination of the possible impact of any development on the archaeological heritage.

But, in practice, the procedure of issuing an EIA runs parallel to, and, one might say, independently of the Ministry of Culture's permit-granting procedure. In this administrative 'vortex' (Fig. 1) archaeological activities are defined as part of research. If they would have been timely accomplished and not confused or replaced with the 'desktop evaluation', they would have produced benefits for both parties in terms of deadlines, costs, technical specifications and the quality of the research. In Romania, these activities are referred to as 'archaeological diagnostics'.

The problem of the Archaeological permit requires special attention for at least three distinct reasons:

1. The process of obtaining a permit is long and is a frequent cause of delays and financial problems. Over the course of time, this has generated a very large number of complaints by developers and, in equal measure, by heritage protection professionals.
2. Regarding the duration of the procedure and the long- and short-term effects, the Archaeological Permit is placed in the first two stages of the environmental impact procedures.
3. The permit-granting procedure becomes redundant due to collision with other permits needed for the development.

To obtain the permit of the Ministry of Culture, the developers must, therefore, comply with conditions laid down by a series of legislative acts.[2] While procedures linked to the archaeological heritage are as complex as those linked to the environmental issues, the associated legislation is not comparable from the point of view of coherence and interpretation. While the environmental legislation provides a consolidated institutional framework which clearly establishes the measures that must be undertaken by the developer, the archaeological heritage protection legislation often lacks similar clarity and concision. In practice, the developers frequently do not

1 The concept of integrated conservation first appears in the text of the 1985 Granada Convention for the Protection of the Architectural Heritage of Europe.

2 Government Order No 27/1992, Government Order No 68/1994 and Law No 11/1994, Law No 5/2000, Government Order No 43/2000, Law No 422/2001, Law No 378/2001, Law No 311/2003, Law No 462/2003 (introduces the notion and definition of preventive archaeological research), Law No 258/2006 (refers to the principle of integrated conservation, realising specific archaeological works within in the context of environmental impact evaluation), Order of the Minister of Culture and Cults No 2071/2000, Order of Minister of Culture and Cults No 2426/2005, Order of Minister of Culture and Cults No 2066/2007, Order of Minister of Culture and Cults No 2103/2007; Order of Minister of Culture and Cults No 2518/2007, Order of Minister of Culture and Cults No 2260/2008, etc.

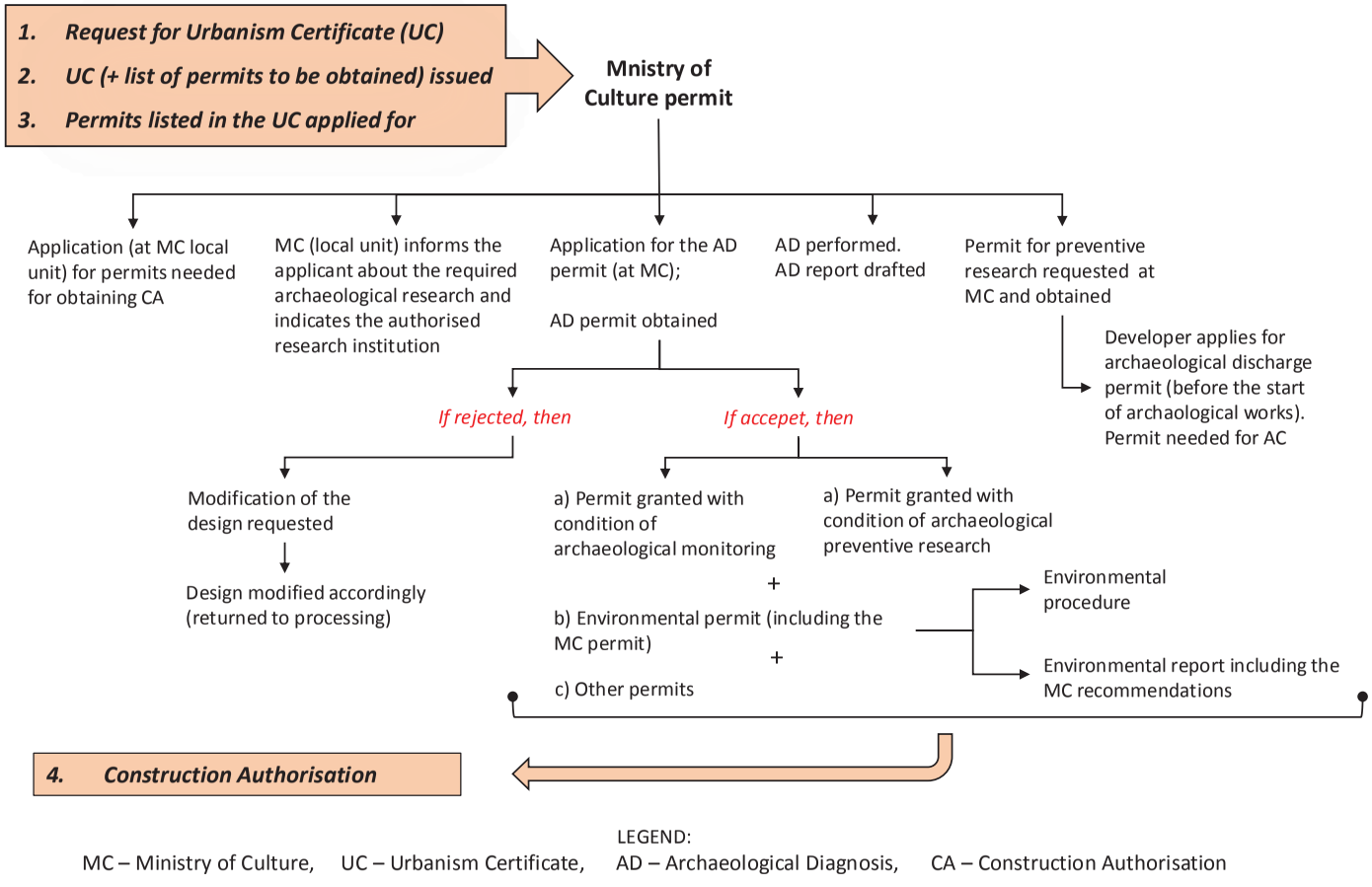

Fig. 1. Procedures diagram in process of obtaining permits for development and preventive archaeological research.

follow the procedures for obtaining Ministry of Culture permits in the feasibility study phases, even if the legislation is sufficiently clear.

In the feasibility study phase, the developer receives a 'Principle Agreement' from the Ministry of Culture only if the Ministry of Culture permit is solicited through the Urban Planning Certificate. This usually consists of a simple declaration by which the Ministry of Culture signals that it will not oppose the project if all statutory archaeological research procedures are performed. This permit is sometimes based on a desktop study which includes preliminary archaeological observations, but it can be issued also without it. However, the 'Principle Agreement' can be used by the developer to obtain the environmental approval, and, consequently, also the Construction Authorisation. The Principle Agreement is, therefore, *de facto* considered as an equivalent to the final permit issued by the Ministry of Culture. As a result of this procedural outlet, once the Construction Authorisation is issued, the Ministry of Culture can still (and frequently does) modify, extend, and even change the initial permit completely.

The permit-granting process delays the final decision until the execution phase of the development project, i.e. after the Environmental Agreement, so that activities linked to the heritage protection (i.e. archaeological diagnostics and preventive research) end up being carried out in parallel with the construction works. This has generated various problems, some of which have the potential to decisively affect the absorption of the European funds for the national development programme. This perpetuates a lack of mutual collaboration between the two ministries and ends in one side accusing the other of delaying the projects.

Therefore, the desktop evaluations in the feasibility study phases are frequently placed in protected zones in which there is no real archaeological potential, and which were frequently designated as such only on the basis of archaeological information from literature, without proper georeferencing and control in the field. In some cases, such designations were based on archaeological finds in secondary deposits. Based on such data alone, the correct diagnostic becomes impossible and it does not allow adequate planning of the time, logistics, requirements for specialist staff personnel, and, obviously, the costs. There were also cases of the disparity between the data used for obtaining the 'Principle Agreement' and the real situation in the field (Fig. 2).

It is clear that the lack of adequate archaeological diagnostics in the feasibility study phase, or at least in the project-planning phase, raises a series of problems regarding the archaeological preventive research:

- the costs of archaeological works are not adequately calculated and are not properly considered neither in the cost-benefit analysis nor in the final budget of the development project. In some cases, these costs may significantly affect the total budget and the project timetable and may generate a series of other problems in reimbursement

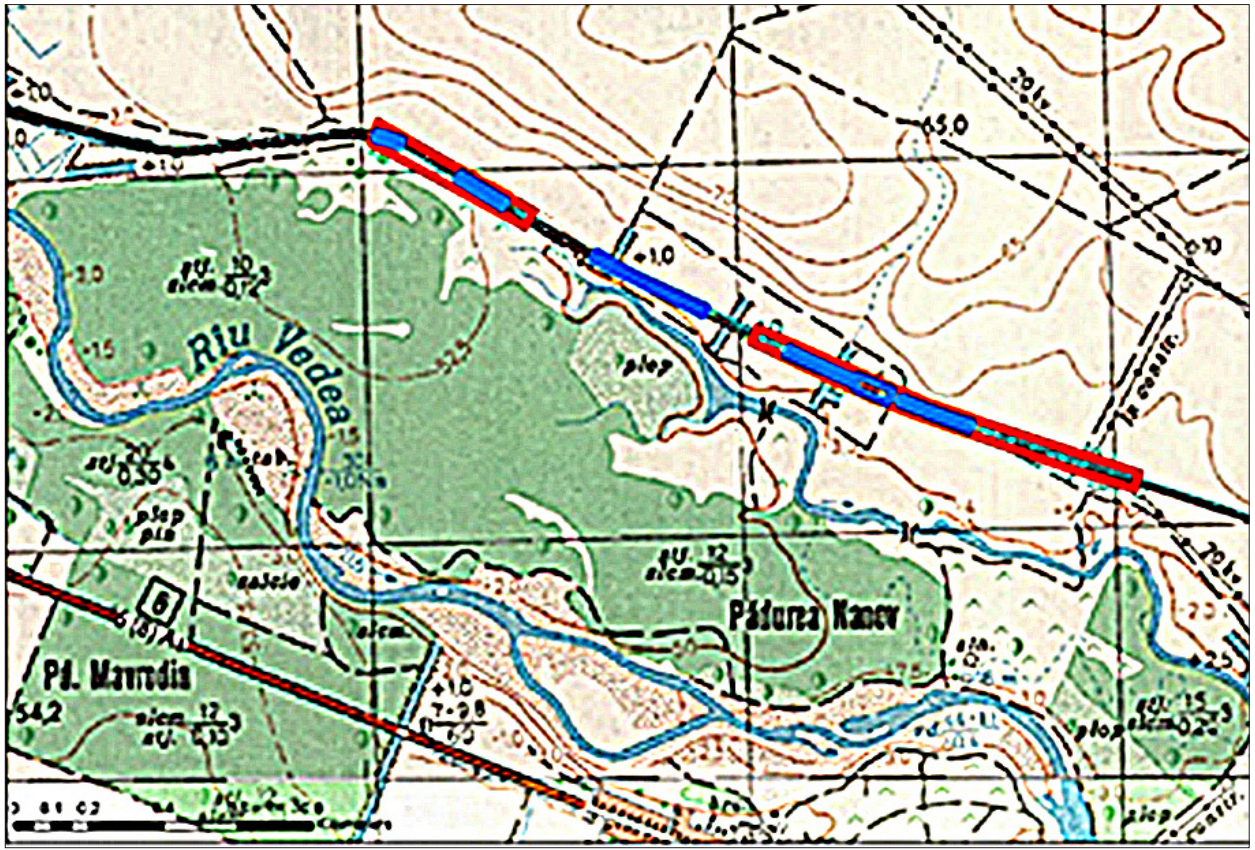

Fig. 2. Alexandria Bypass, an examples of inconsistencies between the archaeological potential reported through theoretical evaluation and the real situation ascertained through archaeological diagnose in the field (GIS – Florela Vasilescu). Red – theoretical evaluation, blue – real situation after archaeological diagnose.

- inadequate management of archaeological works by the developers whose priorities and interests lie not in preserving archaeological heritage but in respecting the contractual agreements, deadlines, and turning a profit
- the demands of preventive archaeological research might cause significant changes to the initial project. In some cases, due to previously unspecified clauses in the contract, this may considerably complicate the financial agreements between the parties involved

Compared to other European countries, Romania has, indeed, strange interpretation of the 'developer pays' principle. While one would expect that archaeological preventive research would be financed by the project investors (e.g. Ministry of Transport, National Motorways Company or CNADNR), this is not the case. One would also expect that the state would be the party interested in preserving the heritage but, on the contrary, when financing the development, the state considers the heritage more as a problem and seeks to avoid or ignore it. The state (as an investor), indeed, shifts the financial responsibility to the contractor of construction works. This creates a situation where contractors which have won a tender to construct certain infrastructural objects are then faced with different reality and conditions, to additionally finance from their own funds the works about which they have not been properly informed in advance (e.g. in tenders). In fact, tenders normally include only very short and general phrase - *technical archaeological assistance* - which stipulates that the enterprise must:

1. Respect the norms of Government Order No 43/2000.
2. Provide 'technical archaeological assistance'.
3. Undertake all measures required to obtain a certificate to relieve the archaeological burden, should this certificate be needed.
4. Ensure, that archaeological sites are protected, where required.

Enterprises have little experience in estimating the costs of archaeological research, and by 'technical archaeological assistance' they frequently consider only 'archaeological monitoring of construction works. This means that in practice the costs of archaeology are *always* underestimated and that there are large discrepancies between the sum assigned in the contract and the real costs to be paid. Contractors simply consider this profoundly unfair from the state to pass its own obligation on to them and tend to avoid or minimize archaeological works.

One of the reasons for removing archaeological diagnostics from the feasibility study stage and moving it to the execution stage is also a difficult access to the areas on which the archaeological assessment is to take place. Government Decision No 53/2011 (Guidelines for applying Law No 255/2010) and Government Order No

43/2000 include norms regarding a landowner's obligation to allow access to archaeological research, with adequate financial compensation. However, there is no detailed procedure for the project developers to follow.

Attempts to minimize the costs of preventive archaeology 'exploit' the following:

- Archaeological research is not recognized as a specific category of works in the general estimate of investments framework as approved by Government Decision No 28/2008, where there is only a brief reference to the costs of 'other permits and authorisations'.
- Even though the law clearly stipulates the integration of archaeological preventive procedures in the framework of the environmental permit system, there are no clearly defined institutional responsibilities for doing so. Hence, the granting of permits for archaeology is distinct and separate.
- There are no consolidated procedures for issuing permits. As a consequence, similar permits issued by different agencies of the Ministry of Culture (i.e. Regional Directorates for Culture) may vary significantly in form and content.
- There is no clear, coherent or detailed description of the procedure that must be followed by a developer, from the release of the urban-planning certificate to the release of the final notice allowing them to perform construction work.
- Developers are not very familiar with the legislation protecting the heritage, and also tend to ignore it. A similar lack of knowledge and willingness to ignore the legislation can also be found in the institutions that perform preventive archaeological research work. Commissioned feasibility studies frequently do not include requirements related to the heritage protection at all (or include merely an ambiguous reference to it), and often do not include adequate financial allocations.
- There are no general cost standards for archaeological research in line with good practices elsewhere in Europe.
- Order of the Minister of Culture No 2562/2010 (which establishes the territorial competences of local museums) drastically limits the number of entities with legal authorization to perform such preventive research. This order, combined with the lack of cost standards, makes control of costs almost impossible as well as the quality of research. The developers are facing local monopolies which dictate their own prices. According to Order of the Minister of Culture No 2562/2010, a project developer is obliged to contract the local museum for all archaeological activities. In cases where local museums do not have enough personnel to carry out the works or they lack the managerial capacity for large projects, this may lead to prolonged field investigations and an extreme increase of costs.
- A significant lack of available archaeological personnel. Archaeologists from the museums which perform field investigations are not remunerated from the project budget, and in any case, their remuneration, as employees of the museums, is

far from attractive. Though, there are more than 800 archaeologists listed in the Archaeologists' National Register,[3] there is still a significant lack of staff capable of performing fieldwork.

- There are no standard templates for contracts for preventive archaeological research. Other European countries have such templates serving the developer's interests and those of the archaeological research. In Romania, every preventive archaeological research project is obliged to 'reinvent the wheel' and develop all the contractual terms from scratch.
- The recording and delimitations of protected archaeological sites (RAN and LMI)[4] are not always complete, correct or in line with reality. This sometimes leads to significant expenses for preventive research in areas with very small archaeological potential or even without any, and where the invested resources can hardly be justified, creating so unfavorable general opinion about archaeology.

Compared to other European countries, where large infrastructural development programs have ended or are almost at an end, Romania is still stuck at the beginning. For Romanian archaeology, this can present another chance to reinforce itself and reaffirm its status as a public service. For heritage, the following paradox applies: *this important national resource may be better known only through its partial damage by infrastructural projects*. This implies serious efforts and a coherent, strategic and structured institutional dialogue between the main actors. However, at this moment, the coherent and consistent approach to heritage management in line with legislation in many European countries still remains an ideal rather than reality.

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