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The summary and the doctoral thesis can be consulted at the National Library of the Republic of Moldova, the General Library „Tudor Roșca" of the „Ștefan cel Mare" Academy of the Ministry of Internal Affairs of the Republic of Moldova, as well as on the website of the National Agency for Quality Assurance in Education and Research (www.cnaa.md) and on the website of the Doctoral School of Criminal Sciences and Public Law (https://academy.police.md/).

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CONCEPTUAL GUIDELINE OF RESEARCH

The relevance and importance of the addressed topic

In the second half of the 19th century, individual freedom became a prerogative of European states with democratic tendencies. The Universal Declaration of Human Rights and the European Convention on Human Rights laid the legal foundations for the right to human freedom, along with other fundamental rights, forming the necessary guarantees for its realization in society.

Thus, Article 5 of the European Convention on Human Rights, which enshrined the right to life and personal safety, states that everyone has the right to liberty and security. No one shall be deprived of their liberty except in the cases provided for by the Convention and in accordance with the law [19].

The provisions of the mentioned norm have had and continue to have a strong impact on the national legislation of the member countries of the European Convention on Human Rights, obliging them to align their institution of preventive measures restricting freedom with the conditions imposed by Article 5 of the Convention. In its jurisprudence, the European Court has emphasized the role of the Convention as a „constitutional instrument of European public order" in the field of human rights [25].

In this way, preventive measures restricting freedom remain a topic of ongoing relevance and importance, as the application of these procedural measures involves interference with a fundamental right – the right to freedom.

Limiting the right to freedom in criminal proceedings through coercive measures involving the arrest of a person is one of the relevant institutions in the field of criminal procedural law, ensuring the achievement of the purpose of criminal proceedings, the protection of individuals, society, and the state from presumed or committed crimes, as well as protecting individuals and society from the illegal actions of persons with responsibilities in their activities related to the investigation of alleged or committed crimes, so that any person who has committed a crime is punished according to their guilt, and no innocent person is held criminally responsible and convicted.

Today, it would be hard to conceive criminal prosecution or the adjudication of certain categories of offenses without the procedural possibility for prosecutors and judges to apply preventive detention or house arrest.

From another perspective, national and international judicial practice shows that these aforementioned preventive measures have been applied arbitrarily and abusively in recent years. This is the reason why the Republic of Moldova, as a rule of law and a member state of the European Convention on Human Rights and Fundamental Freedoms, had the obligation to improve its normative framework in this regard. Until the year 2016, it had not been adjusted to the standards set by the European Court's practice.

According to statistical data on the violation of Article 5 of the Convention, a judicial practice was formed from 1997-2020, where the Republic of Moldova was condemned in 87 cases, representing 14% of the total number of cases lost at the ECtHR [86].

In this context, the institution of detention underwent significant changes in 2016 through the Constitutional Court Decision No. 3 of 23.02.2016 regarding the unconstitutionality exception of paragraphs (3), (5), (8), and (9) of Article 186 of the Criminal Procedure Code (the term of preventive detention). This decision changed the essence of the term of detention throughout the

criminal proceedings, limiting it to 12 months, and any extension to a period not exceeding 30 days. The legislator, following this decision, was obligated to make changes to the institution of preventive measures restricting freedom in the Criminal Procedure Code, aligning them with the Constitution of the Republic of Moldova and the practice of the European Court [90].

Therefore, the modification of the provisions of the Criminal Procedure Code regarding preventive measures was influenced, among other factors, by a series of well-known decisions lost by the Republic of Moldova in front of the European Court of Human Rights. Among these, we can mention cases such as: *Ilaşcu and others v. Moldova and Russia [10], Becciev v. Moldova [3], Boicenco v. Moldova [4], David v. Moldova [7], Cebotari v. Moldova [5], Guțu v. Moldova [9], Danalachi v. Moldova [6], Tripăduș v. Moldova [17], etc.*

In most of the mentioned decisions, to which we will refer in this thesis, the European Court found violations of the principle of legality of detention, the lack of reasonable suspicion, but also the arbitrary and prolonged detention of individuals by the state.

Despite these legislative changes, the practice indicates that there are still inconveniences in the application of preventive detention and house arrest due to imperfections or omissions in national procedural legislation.

Description of the situation in the field of research and identification of research problems.

A remarkable contribution to the comprehensive research of the institution of detention in criminal proceedings, especially from a practical perspective, has been made by authors from both within and outside the country: Osoianu T., Odagiu I., Danileț C., Dolea I., Roman D., Ostavciuc D., Gribincea V., Kövesi L. C., Petrescu A. L., Theodoru Gr. Gr., Chiș I.-P., Țuculeanu A., Zarafiu A., etc.

Purpose and objectives of the thesis. The purpose of the doctoral thesis consists of the theoretical-practical examination of preventive measures, including detention, in order to elucidate interpretative regulations and practical difficulties in the process of application and extension of preventive measures restricting freedom. Thus, after synthesizing the arguments, in correlation with national judicial practice and the practice of the ECtHR, some scientifically-practical recommendations and legislative proposals will be proposed, contributing to the improvement of the normative framework.

Thus, in order to achieve the proposed goal, it is necessary to achieve the following objectives:

- Analysis and systematization of national judicial practice, as well as the case law of the European Court of Human Rights;
- Identification of legislative and practical issues existing in the process of application and extension of preventive measures involving detention in both phases of the criminal proceedings;
- Comparative study of the practice in other countries in the field, etc.

Research Methodology. The study focuses on highlighting the mechanism of application and extension of preventive measures restricting freedom, from both a legislative and practical perspective. In the context of this doctoral thesis, a synthesis of scientific works and judicial practices at both national and international levels related to the researched topic has been conducted.

To achieve the proposed goal and objectives, a series of methods were utilized:

Logical Method - for examining and interpreting the legal framework, synthesizing jurisprudence, and analyzing doctrinal materials.

Comparative Method - for conducting an analysis of legal provisions and national doctrine in relation to foreign ones.

The research was based on the legislation of the Republic of Moldova, the Criminal Procedure Code, decisions of the Constitutional Court, and the European Court of Human Rights. Additionally, an analysis of the legislation of other states was conducted through comparative study.

The conducted research relied on the study of at least 50 decisions regarding the application, extension, replacement, or revocation of preventive measures involving detention, including decisions on appeals, in criminal cases where the researcher participated as a prosecutor.

The synthetic analysis method contributed to formulating conclusions and proposals for the improvement of domestic legislation, which will undoubtedly help eliminate interpretations and cover segments of the institution of detention in criminal proceedings that currently lack legal coverage.

Scientific novelty and originality. The study represents a comprehensive research of the „detention" institution in criminal proceedings, both theoretically and practically, emphasizing decisions of the Constitutional Court of the Republic of Moldova, jurisprudence of the European Court of Human Rights, decisions of national courts, and elements of comparative law. The identification of these aspects, approaches, and reasoning has highlighted several imperfections in the existing normative framework related to the application, extension, revocation, replacement, cessation, and contestation of preventive measures restricting freedom. The analysis conducted allowed for the formulation of a series of recommendations aimed at avoiding dangerous judicial practices that have been used in recent times and standardizing good practices in line with international and national normative acts, without affecting the rights and freedoms of participants in criminal proceedings.

Theoretical significance of the work. It consists of the reevaluation of the procedural legislative mechanism in the field of preventive measures involving detention, both theoretically and practically, with the aim of improving and streamlining the existing normative framework.

Applicative value of the work. The work identifies omissions and normative imperfections in the procedure of application, extension, replacement, or revocation of preventive detention and house arrest, providing solutions to clarify these issues. The work is based on a vast number of scientific papers and empirical material, giving it both theoretical and practical value. The results can serve as a basis for amending procedural-legislative frameworks, training students, participants in criminal proceedings, and applying in practice by prosecutors, judges, lawyers, etc.

The main scientific results submitted for defense consist of: a comparative analysis of the institution of detention in the context of the legislation of other European states, to nuance certain explicit and predictable regulations that have proven to be functional from an applicative perspective. This led the author to formulate proposals for legislative improvement to enhance the framework and eliminate omissions.

Implementation of scientific results. The findings and conclusions of the study can be used in the training process of students in educational institutions, participants in the criminal justice system, both on the prosecution and defense sides, involved in the process of preventive measures, including detention. Practical recommendations will assist in the correct and uniform

application of procedural rules. Legislative proposals will contribute to adjusting the procedural-criminal normative framework in the field of preventive measures restricting freedom.

Approval of results. The research results have been discussed in numerous national and international scientific forums. The research also draws on practical activities as a prosecutor. Scientific articles on the addressed topic have been published in various scientific journals: the Journal of the National Institute of Justice, the Scientific Annals of the „Stefan cel Mare" Academy of the Ministry of Internal Affairs of the Republic of Moldova; Law and Life.

Thesis publications. Eight scientific papers related to the doctoral thesis have been published.

Keywords: preventive detention, house arrest, electronic monitoring, revocation, replacement, cessation of a preventive measure, procedural steps, decision, appeal, grounds, risks, reasonable suspicion, objective observer, investigating judge.

THE CONTENT OF THE THESIS

The current thesis is comprised of an introduction, three chapters divided into twelve paragraphs, general conclusions, recommendations, and a bibliography.

The introduction serves as the rationale and justification for the chosen research topic, encompassing the following sections: the relevance and importance of the investigated theme, the purpose and objectives proposed for achievement, the scientific novelty of the obtained results, the theoretical significance, and practical value of the work, and the method of approving the research results and conclusions.

Chapter I of the thesis, titled **„Analysis of the Situation in the Field of Detention in Criminal Proceedings,"** provides a brief introduction to preventive measures as they appear in the current legislative framework, both from a national and European perspective, with the latter gaining precedence over the former.

In this chapter, the notion of preventive measures and their evolution over time within the Criminal Procedure Code are extensively presented, highlighting major legislative changes from 2016. The basic principles with which the European Court operates in its practice are discussed, necessitating a comparative analysis of the jurisprudence of the Constitutional Court of the Republic of Moldova, the case law of the European Court of Human Rights (ECHR), and the legislation of countries such as Romania and Norway.

This chapter introduces essential reference concepts that will be utilized throughout the entire thesis, including legal relationship, offense, criminal procedure, individual freedom, presumption of innocence, jurisprudence, procedural measures, preventive measures, legal guarantees, judicial bodies, judicial acts, remedies, taking, replacement, revocation, termination, etc.

A survey conducted by researchers is cited, indicating that individuals accused are likely aware that compliance with house arrest and communication restrictions cannot be effectively monitored. Prosecutors generally lack confidence that accused individuals would genuinely adhere to the restrictions related to house arrest. This is cited as a reason why prosecutors do not typically request house arrest as a primary preventive measure. The inefficiency of monitoring house arrest and related restrictions in Moldova is confirmed by statements from an interviewed investigating judge, who mentioned that, in his practice, the prosecution has never filed a request to replace house arrest with preventive detention due to the alleged violation of restrictions on telephone conversations or internet use, although the law expressly provides for this possibility in Article 188 paragraph (7) of the Criminal Procedure Code.

The thesis also refers to the „Report on the Research on the Application of Pretrial Detention in the Republic of Moldova [139]," prepared by the representative of the Council of Europe, Erik Svanidze. This report extensively covers the judicial practices of the European Court of Human Rights (ECHR) and national judicial practices regarding the application and extension of preventive detention. It includes statistical data on the application of legislation by the courts, the motivation of decisions, and the shortcomings and stereotypes used in the content of decision-making documents.

One of the formulated conclusions in the report notes that the Committee of Ministers cannot overlook the findings of ECHR and cannot recognize new problems. The quality of legislation in the Republic of Moldova is not questioned; rather, it is the implementation practice

that is scrutinized. The Committee of Ministers acknowledged that some remaining legislative issues have been resolved, and new improvements have aimed at establishing good practices. However, concerns about the development of judicial practices in the Republic of Moldova, especially after the legislative changes in 2016, and issues regarding remedies, remain pending. In its latest evaluation, the Committee of Ministers reiterated these concerns and added that authorities must address some new elements, especially regarding:

• access to files on preventive detention;

• exercise of defense rights;

• appropriate evidentiary rules;

• duration of habeas corpus procedures; and improvement of Law no. 1545/1998 on remedies [32, p. 157].

In the Republic of Moldova, scientific researchers Tudor Osoianu Tudor and Victor Orîndaș are among the first authors to extensively analyze the phenomenon of preventive measures. In their monograph on Criminal Procedure, the authors dedicate a separate section to preventive measures. Despite significant changes to the institution of coercive measures since 2004, the relevance and timeliness of the work's content have not diminished. In this regard, the researchers commence their study with the following idea: „The theoretical foundation regarding the legal nature of preventive measures finds its basis in the interference manifested in any regulatory domain between the limits set by law and the possibilities of exercising subjective rights. These limits are determined by both the general requirements of societal development and the specific features of the field of relations to which they refer. Consequently, it should be noted that the limits imposed on the exercise of personal rights should not be viewed as a sacrifice, violation, or abandonment of these rights. These respective limits are provided for and strictly determined by law, have an exceptional nature, being instituted and should be used only in cases of extreme necessity, are proportionate to the needs created by the higher interest they serve, and are subject to restrictive interpretation" [31, p. 194].

Within this work, the authors address the dual constraint measure – preventive detention, elucidating primarily the negative aspects of its frequent and unjustified application by prosecutors and judges, from the perspective of restricting the rights and freedoms of an individual. Secondly, the authors demonstrate the positive aspects resulting from the application of this exceptional preventive measure concerning the accused, the defendant, referring to the smooth progress of criminal proceedings, the safety and protection of society, and the requirements of public opinion, etc.

A more concise yet robust analysis of detention in criminal proceedings is provided by the Romanian author Cristi Danileț in his work *„Detention (Guide for Practitioners)."* He explains, from a practical standpoint, the necessity of adhering to the principles that guide criminal proceedings and are essential when examining an arrest procedure or an appeal regarding the preventive measure. Among the most relevant principles underlying the application or extension of detention are: legality of criminal proceedings; principle of inviolability of the person; presumption of innocence; language of procedure and the right to interpretation; right to defense; respect for human dignity; and reasonable time. In this context, to highlight the importance of the mentioned principles, the author conducts a succinct analysis, specifying, in the case of the principle of respecting a reasonable time, that: „Criminal proceedings, as a whole, must unfold with celerity (promptness). The duration of a procedure, both at the level of an arrest procedure

and at the level of a trial procedure in substance on an accusation, is addressed by the European Court of Human Rights (ECHR) in Article 5, respectively Article 6 para. (1) and Article 6 para. (3) point (a)."

Regarding placement in pre-trial detention, the rules consecrating the reasonable term are as follows:

- Promptness in informing the arrested person (Art. 5 para. 2 ECHR): concerns the reasons for the arrest and the accusation brought against them; it is done in the shortest possible time;
- Promptness in the review of certain arrests (Art. 5 para. 4 ECHR): is done immediately and automatically; by a qualified judge or magistrate;
- Promptness to rule on the appeal in the legality control of any arrest or detention (Art. 5 para. 4 ECHR): is done in a short time;

Reasonable duration of detention (Art. 5 para. 3 ECHR): any arrested person has the right to be judged within a reasonable time or to be released during the procedure" [20, p. 11]. Empirical research on preventive measures of deprivation of liberty and their alternatives is conducted by authors Dolea Igor, Dumitru Roman, Vitalie Rusu, Oxana Ciudin, and Victor Munteanu, through the work „Preventive Detention Measures and Their Alternatives." Thus, the authors manage to elucidate some important aspects related to the procedure for applying detention measures, addressing the following subjects: conditions for applying preventive detention; procedural aspects in advancing the motion; examining the motion regarding the application of preventive detention; reasoning the decision to apply detention; extending the detention period; house arrest, etc. Regarding the nature of the offense for which the preventive measure is to be applied, the authors mentioned that, „[...] there is no express provision in the law indicating to the judge to take into account, when applying the arrest, the nature of the offense. Neither Art. 176 para. (3), which indicates the need to assess the individual circumstances of the case when applying any preventive measure, nor in Art. 185 para. (2), which indicates the criteria to be taken into account when applying arrest, contain provisions indicating the nature of the offense" [23, p.22]. The expressed view refers to the nature of the offense, i.e., the type of offense and the severity of the penalties for which the prosecutor requests the application of the preventive measure of deprivation of liberty. Researchers believe that applying arrest in the case of economic crimes is a disproportionate measure, especially if seizure has already been applied to assets as a security measure, and provisional release on bail could be applied as a preventive measure.

Chapter II, „Procedural Aspects of Preventive Detention Measures," includes a comprehensive analysis of the procedure for applying, extending, terminating, revoking, or replacing preventive detention measures, regulated by the code of criminal procedure from both a theoretical and practical perspective. At the same time, this chapter addresses the remedies against the rulings on the application and extension of preventive measures containing arrest. Due to the controversies existing in the segment of applying and extending preventive measures, as well as the severity of these measures, the risks reflected in the ECHR jurisprudence have been extensively researched: the risk of evasion; the risk of hindering the proper administration of justice; preventing the commission of a new offense by the person; the risk that the release of the person will cause public disorder.

At the same time, the general conditions for applying preventive measures have been subject to debate, such as: application only within the scope of the criminal investigation; the violated article prescribes a punishment of more than 3 years; other preventive measures are insufficient to eliminate the risks justifying the application of arrest, etc.

From the perspective of the European Court, the existence of reasonable suspicion as a sine qua non condition for a person's arrest includes the following criteria:

Prior criminal conduct exists before bringing the person before the judge;

Suspicion of committing the offense exists throughout the arrest;

The suspicion of law enforcement, to be a reasonable suspicion, must be based on the existence of facts or information of a nature to convince an objective observer that the person could have committed the offense, otherwise, the deprivation of liberty would be arbitrary;

Suspicion refers not to a general offense but to a specifically determined offense;

The credibility of the reasons is assessed in relation to the overall circumstances of each specific case;

The facts that gave rise to suspicion should not be of the same level as those necessary to justify a conviction or even an accusation, as at this moment the guilt of the person is not established, this being the final objective of the criminal process [20, p. 12].

At the same time, in the application or extension of preventive measures, the commission of a criminal act by the investigated person presupposes certain conditions, namely, the existence of a connection between the offense and the person investigated, assuming that they are involved in committing this act, and the suspicion does not necessarily have to be „authentic"; it is necessary to establish the existence of objective data that would lead even a third party to reach the same conclusion and not based on mere speculation.

In the same vein, „[w]ith regard to the reasons on which the placement in preventive detention was based, the Court recalls that for an arrest based on plausible suspicions to be justified from the perspective of Article 5 § 1 (c), it is not required for the police to have gathered sufficient evidence to bring charges, either at the time of the arrest or during the provisional detention (Brogan and Others v. the United Kingdom, judgment of 29 November 1988, Series A no. 145-B, p. 29-30, § 53). The requirement that suspicions must be based on plausible grounds is an essential element of the protection against arbitrary deprivations of liberty. The terms 'plausible grounds for suspicion' presuppose the existence of facts or information capable of convincing an objective observer that the individual in question may have committed the offense" [18].

However, reasonable suspicion implies a lower evidentiary threshold than that required for a conviction. As reaffirmed in the Lavrechov v. the Czech Republic case: „It should be noted that the applicant's acquittal does not mean that the criminal proceedings were illegal or otherwise flawed. Different evidentiary standards are required for a person to be convicted (usually described as a reasonable suspicion that the person has committed an offense). Thus, there can be cases of reasonable suspicion that do not result in a conviction pronounced in open court beyond reasonable doubt" [11].

Therefore, the fact that a person is taken off criminal investigation at a later stage or acquitted in court does not necessarily mean that the decision to request preventive detention was wrong. First and foremost, evidentiary standards are different. Secondly, at the initial stage of the criminal investigation, the evidence is incomplete. However, even if the evidentiary threshold is lower than that required for a conviction, the accused still benefits from the presumption of

innocence and must be considered innocent until proven guilty in court. The presumption is in favor of release.

The existence of plausible grounds justifying the suspicion that a person has committed the offense for which they are being pursued must be regarded as a general condition independent of the grounds for preventive detention.

However, the European Court has noted that the second condition incorporated into the concept of „reasonable suspicion" consists of the application of the criminal norm describing the criminal act. In other words, the allegedly illegal actions attributed to the person should be regulated by an incriminating norm in criminal law.

Thus, in the case of *Litschauer v. Moldova*, the European Court ruled that „[w]ith regard to deprivation of liberty, it is particularly important to respect the general principle of legal certainty. Therefore, it is essential that the conditions of deprivation of liberty under domestic law be clearly defined and that the law itself be predictable in its application, so as to meet the standard of 'legality' established by the Convention, a standard that requires all law to be sufficiently precise to allow the person—if necessary, with adequate advice—to foresee, to a reasonable extent in the circumstances, the consequences that a particular action may have [...]. The main defense argument of the applicant during the preventive detention procedure and subsequent criminal proceedings was that he could not be held accountable for pimping, as the video chat models, he used to be not engaged in prostitution. The main debate in the criminal proceedings, therefore, focused on whether the sale of erotic shows on the internet could be interpreted as prostitution within the meaning of Article 89 of the Contravention Code. The authorities leading the preventive detention procedure considered it unnecessary to express an opinion on this issue and remained silent on the applicant's argument" [12].

In these circumstances, the Court found a violation of Article 5 § 1 of the Convention, on the grounds that the charge against the applicant was not based on plausible grounds.

The reasons for depriving a person of liberty are logically interconnected with the risks found in the practice of the ECtHR and are transposed into national legislation; therefore, there are well-founded reasons for a person's arrest if, in a specific criminal case, at least one of the following risks is identified:

- *risk of flight;*
- *risk of obstructing the proper administration of justice;*
- *prevention of the person from committing a new offense;*
- *risk that the person's release will cause public disorder [15]*.

According to ECtHR practice, for a person to be detained or arrested, it is sufficient for the court examining the case to identify at least one of the above risks. However, each risk requires a separate approach based on its relevance.

In the reasoning of the European Court, there is a *presumption of release for persons under consideration* for preventive detention. National courts are primarily obliged to consider the possibility of applying a less severe preventive measure that would be reasonable and proportionate to the circumstances of the offense. Therefore, justifying the actions by state prosecutors represents a complicated task, involving serious efforts to succinctly address the essence of criminal cases and provide sufficient plausible grounds justifying preventive detention [15].

In the case of *Şarban v. Moldova*, the Court reminded that according to Article 5, paragraph 3 of the Convention: „[...] any person arrested on suspicion of having committed an offense must always be released pending trial unless the State can demonstrate the existence of 'relevant and sufficient' grounds to justify their continued detention.

Furthermore, national courts „must examine all facts in favor or against the existence of a pressing social need, which would justify, taking into account the principle of the presumption of innocence, a departure from the rule of respecting the individual freedom of the person, and they must indicate them in their decisions regarding release requests" [16].

Disregarding the specific details mentioned in the case, we believe that the prosecutor did not adhere to fundamental principles regarding the legality of provisional detention – proportionality and rationality of detention, presumption of investigating the person at liberty, only in the submission of the request for the application of the preventive measure – preventive arrest, regarding L. R. As for the 72-hour detention, we consider it legal, as within this period, the law enforcement body is to clarify several legal aspects of the case: the procedural position of the detained persons, avoiding the disclosure of data from the criminal file, preserving the objects seized during the search, and examining them in the presence of the suspect, etc.

In all cases, deprivation of liberty as a coercive measure must be based on at least one of the following risks:

Risk of flight.

In the case of *Becciev v. Moldova*, the European Court held: „The risk of the suspect's flight cannot be assessed solely based on the severity of the punishment he risks receiving. It must be established by reference to numerous other elements that can confirm the existence of the risk of flight or make it seem so insignificant as not to justify pre-trial detention [...]. The risk of flight must be considered in light of elements such as the person's character, personality, residence, occupation, assets, family ties, and any other connections to the country where they are being prosecuted. The risk of severe punishment and the weight of the evidence may be relevant but are not decisive, and the possibility of obtaining guarantees can be used to compensate. The Court also ruled that if the arrested person can provide sufficient guarantees that they will not flee, then they must be released [...]" [13].

In the case of *O. P. v. Moldova*, the Court established that the „'reasonableness' of the suspicion on which an arrest must be based is an essential part of the guarantee provided for in Article 5(1)(c). Having a reasonable suspicion presupposes the existence of facts or information that would satisfy an objective observer that the person in question could have committed the offense. However, what may be considered reasonable will depend on all the circumstances [...]" [15].

For example, in the case of *Moldoveanu v. Moldova*, the Court mentioned that „[...] it is not convinced that the material presented by the Prosecution and invoked by national courts for the applicant's detention and the extension of her detention was sufficient to convince an objective observer that the applicant could have committed the offense attributed to her. Therefore, it concludes that the applicant's detention between May 14 and June 23, 2015, was not based on a reasonable suspicion of having committed an offense, and thus, there was a violation of Article 5, paragraph 1 of the Convention" [13].

Regarding the reasonable suspicion that the applicant, Moldoveanu Nelli, committed the alleged offense, the prosecutor argued that it consisted of two elements: (a) the statements of

victims and witnesses and (b) the applicant's refusal to validate her signature on the receipt of February 2, 2014, which, in the opinion of the Court, are not sufficient to establish a reasonable suspicion.

Analyzing these circumstances is not always possible at the early stage of the criminal investigation. One of the benchmarks, for forming a view on the necessity of arrest, is information related to the person's criminal record.

In this context, the risk of flight must be proven by evidence, namely information about the violation of alternative preventive measures to arrest, attempts to escape from law enforcement or the court in other criminal cases, detaining persons involved in the offense as they leave the locality where they live or even the country. Statements of witnesses or other defendants, or as the case may be, accused persons, can also provide relevant information about the person who needs to be isolated from society for the normal course of criminal proceedings.

As with other risks, the argumentation is presented in all procedural acts, namely in the prosecutor's request for the application of the preventive measure when this initiative comes from the prosecutor. Accordingly, the argumentation or justification of the persistence of this risk must be made in the decision of the investigating judge at the pre-trial stage or by the judge hearing the case in substance, i.e., during the trial phase.

Therefore, the case prosecutor must attach conclusive evidence to demonstrate that the risk predominates at the stage of reviewing the case. These pieces of evidence may include minutes of witness hearings, on-site inspection reports, expert reports, etc. The analysis of this evidence must show that the accused or the defendant will evade the authorities once released or, in the case of applying an alternative coercive measure to preventive detention.

It is noteworthy that, before the court, other relevant documents or data that would convince the court that there is a risk of flight can be presented. Thus, information about the criminal past of the accused or defendant, convictions, characteristics of the place of residence or work, etc., can constitute persuasive information.

It should be mentioned that throughout the criminal proceedings, the principle of the intimate conviction of the prosecutor and the judge applies. In this way, each piece of evidence is assessed according to the intimate conviction.

In any case, the burden of proving reasonable suspicion and the need for the application or extension of preventive detention rests with the prosecutor or the prosecution. In judicial practice, the question arises for defense lawyers whether certain fragments of special measures, such as portions of transcripts with interceptions of verbal communications, surveillance images, etc., can be used and presented as relevant or conclusive material.

We believe that, based on the principle of equality of arms in a trial and the availability of the prosecution to attach evidence, documents, or materials that are relevant from its point of view, there should be no impediments to presenting some parts of special investigative measures, even if they have not been legalized by the investigating judge.

On the other hand, we are of the opinion that sequences from the results of special measures cannot be the sole materials to be attached to the request for the application or extension of preventive measures depriving liberty. These must be corroborated with other conclusive evidence that, overall, demonstrates the validity of the preventive measure requested by the prosecutor.

In this context, in addition to the list of reasonable evidence, the court is required to take into account certain circumstances regulated by the procedural law at Article 176 paragraph (3),

which states: *„(3) In resolving the issue of the necessity of applying the respective preventive measure, the prosecutor and the court will assess and motivate, mandatory, whether the preventive measure is proportional to the individual circumstances of the criminal case, including taking into account:*

- *the reasonable nature of the suspicion, the gravity, and harmfulness of the incriminated act, assessed in each individual case, without pronouncing on guilt;*
- *the personality and characterization of the suspect, defendant, or accused, including at the time of committing the incriminated acts;*
- *age and health status;*
- *occupation;*
- *family situation and the presence of dependents;*
- *financial situation, income, ownership of real estate, or other properties;*
- *having a permanent residence, holding a permanent or temporary job;*
- *other essential circumstances presented by the suspect, defendant, accused, or by the prosecutor, the law enforcement body" [20]*.

Thus, the court can form a clear picture of the personality of the accused or defendant and whether they are inclined to evade criminal prosecution or trial.

In the next case, for example, the investigating judge, in the reasoning part of the decision regarding the extension of the preventive measure, pre-trial detention, disregarding the evidence presented by the prosecutor, makes some important findings that justify deprivation of liberty. The court emphasizes that „[...] in this case, it adheres to the jurisprudence of the European Court, which has indicated as a basic and accessible condition for detaining a person in pre-trial detention when they are suspected or accused of committing a crime, and when the risks provided by the ECHR persist.

National courts 'must examine all circumstances for and against the existence of a public interest necessity that would justify, taking into account the presumption of innocence, deviating from respecting individual freedom, these being considered in decisions regarding release requests.'

In this case, the court concludes that the deprivation of liberty and the extension of the preventive measure - pre-trial detention of the accused is justified, well-founded, and necessary because it aims to prevent the accused from undertaking actions capable of influencing witnesses who have not yet been heard due to the short time elapsed between the detention and the submission of this motion to extend pre-trial detention. The necessity of extending the preventive measure concerning the accused's pre-trial detention is explained by the fact that the accused's deprivation of liberty is provided by law, is necessary in a democratic society, and pursues a legal purpose" [30].

For example, in the case of *Burlacu v. Moldova*, the European Court did not find a violation of Article 5 paragraph 3 of the Convention on the grounds that the deprivation of the claimant's liberty under this aspect was justified, and the national courts justifiably considered the risk of evasion, even though the claimant argued that the application and extension of his detention were not based on relevant and sufficient grounds. According to him, the reasons given by the courts were stereotypical.

To counter the arguments presented by the claimant, the Court mentioned that, at the time of ordering and extending the detention of the claimant, domestic courts considered, among other

things, the risk of interference with the investigation. The fear of domestic courts regarding this risk seems to have been justified, as the claimant was accused of attempting to influence a witness to make false statements in another criminal case, knowing that justifications considered „relevant" and „sufficient" in the Court's case law included, among other things, the risk of exerting pressure on witnesses. In such circumstances, the Court considers that the preventive detention of the claimant seems to have been justified. In addition, it cannot be said that the courts did not act diligently enough, and the detention of the claimant was excessively long.

If there is a risk that the accused or the defendant will exert pressure on witnesses, destroy or damage evidence, or otherwise obstruct the establishment of the truth in criminal proceedings.

Similarly, as in the case of the risk discussed above, this risk is commonly encountered in judicial practice. The freedom of the person to whom the preventive measure restricting liberty is to be applied will be detrimental to the entire body of evidence accumulated in the criminal case or to be administered.

Witness statements in criminal cases are of particular importance, especially when these statements form the basis of the accusation or represent a key piece of evidence. Statements of eyewitnesses are difficult to refute if they are truthful. However, in practice, due to the influence or pressure that the accused or defendant exerts on witnesses, they may change their statements, thereby radically altering the course of criminal proceedings. Influences can be diverse, including money, protection, favors, benefits, and even threats. Therefore, some witnesses, despite being warned about the responsibility under Article 312 of the Criminal Code for giving false statements, may agree to face criminal charges in their favor for making false statements. Especially when there is evidence that the parties in the process are in friendly relations or can be manipulated with the help of money.

In this regard, this information must be brought to the attention of the court to justify this risk. At the same time, it is necessary to argue that the application of other preventive measures, such as house arrest or judicial control, will not ensure the normal course of criminal proceedings.

The destruction or deterioration of evidence can be achieved in various ways. For example, while at liberty, the accused or defendant may conceal objects that have been used to commit the crime (drugs, counterfeit money, weapons, ammunition, etc.).

For example, in the present case, the investigating judge, when examining the prosecutor's motion for the application of the preventive measure, pre-trial detention, noted in the reasoning part of the decision the presence of the risk of the accused influencing other persons with whom he acted in complicity.

In this regard, the court noted the following: „The risk of interference with the normal course of justice is, in the opinion of the current court, actual and proven. The data presented earlier attest to the complexity of the circumstances that need to be investigated in the case, requiring the hearing of several individuals in various capacities. The criminal investigation is in the initial stage of actively investigating the circumstances. The statements of the accused and other persons will need to be assessed for their veracity, corroborated with other evidence. There is a risk that the accused, already familiar with the circumstances of the case, may contact persons involved in it to adopt a common position, including through modern means of communication such as the internet, which cannot be verified. Thus, the prosecutor's argument that the risk cannot be eliminated by other measures is well-founded. This risk also arises from the dangers that a possible conviction in this case represents for the accused. The court also notes that the already administered data

indicates that the accused attempted to influence another suspect – C. B., addressing a request to the prosecutor in this regard" [32].

In the end, the court applied 20 days of pre-trial detention to the accused. After 10 days of pre-trial detention in Penitentiary No. 13 in Chisinau, the accused filed a request for additional hearing and revocation of the preventive measure – pre-trial detention. After being heard again, the accused admitted to the alleged criminal acts, describing in detail the criminal scheme in which he was involved, the individuals who contributed to the commission of the crime, the role of each criminal subject. This allowed for the accumulation of additional, relevant, and useful evidence for the investigation. For actively contributing to the discovery of the crime, collaborating with the investigation, and facilitating the truth-finding in the criminal case, the prosecutor found that there were no longer grounds to keep the person in pre-trial detention. In accordance with Article 195 paragraph (3) of the Code of Criminal Procedure, an order was issued revoking the preventive measure of pre-trial detention applied to the accused G. F., releasing him from custody due to the lack of grounds to further deprive him of liberty. Simultaneously, it was decided to apply to the accused the preventive measure of a travel ban for a period of 60 days.

In another case, the court found that release on bail is a proportionate preventive measure in relation to the risks described in the motion submitted by the prosecutor, who requested pre-trial detention for the accused, who was otherwise charged with complicity in a serious offense related to corruption. Specifically, C. M. was involved in providing services in the interest of a legal entity, whose activity was entirely funded by an organized criminal group from illicit funds. The accused knew about the origin of the money and was remunerated monthly with the sum of 30,000 lei, in cash, for the performed activity. C. M. was caught red-handed shortly after receiving an unofficial sum of 82,500 lei. In this case, the prosecutor submitted a motion requesting pre-trial detention for the accused, but by the decision of the Chisinau Court (Ciocana headquarters) dated November 5, 2022, partially admitted the prosecutor's motion regarding the application of the preventive measure of pre-trial detention, applying an alternative preventive measure - release on bail under judicial control for a period of 30 days, with the restrictions imposed by Article 191 paragraph (2) of the Code of Criminal Procedure.

One of the arguments underlying the reasoning of the decision is as follows: *„[...] the social danger from the accused is minimal, and it is possible to apply a non-deprivative preventive measure; therefore, at the present time, the preventive measure in the form of release on bail under judicial control can positively influence the course of the criminal investigation and the process of obtaining evidence in the objective investigation of all the circumstances of the respective criminal case [...]" [32]*.

In our opinion, the argument put forth by the court cannot be sustained in the situation of examining the issue of applying the preventive measure - pre-trial detention, given that the accused was apprehended shortly after committing the offense. After the apprehension in flagrante delicto of the perpetrator, the law enforcement agency is required to undertake a series of rigorous criminal investigation actions to accumulate evidence in the case. Placing the accused under a different preventive measure, such as house arrest, would allow the accused to influence other witnesses or accomplices who are yet to be heard in the case or obstruct the objective progress of the investigation. The accused may communicate with other accomplices through modern communication or social networking techniques that cannot be traced by law enforcement.

Therefore, at the initial stage, when the evidence is justified by the very notion of flagrante delicto, the court must take into account various aspects, such as the behavior of the parties before and after the commission of the offense, the quantity of goods seized during searches, the number of persons detained, statements made by the accused after apprehension, family situation, social position, held position, role, and degree of involvement in the criminal scheme, etc.

In another case, the investigating judge deemed the prosecutor's arguments described in the motion for applying the preventive measure - pre-trial detention, as well as supported by the latter during the actual examination of the motion, to be plausible.

In this context, the court ruled as follows: *„[...] the court takes into consideration the nature of the imputed act justifying pre-trial detention, which is substantiated by the attached evidence. Therefore, the court will not admit the reason invoked by the accused and the defense, claiming the lack of any evidence, as the law enforcement agency has already taken procedural actions, demonstrating the plausible nature of reasonable suspicion and to avoid jeopardizing and disrupting the normal course of evidence collection, pre-trial detention is necessary. Likewise, in applying the preventive measure, the court considers the nature and the fact that the accused may come into contact with persons who are aware of important circumstances for the given case and may advise them on hiding from law enforcement or distorting the quality of evidence that would demonstrate guilt in the alleged offenses, thus distorting the truth yet to be established in the course of evidence administration" [115]*.

In our view, the court correctly assessed the factual circumstances in relation to the evidence presented by the prosecution and in correlation with the existing risks in the case. This court approach was based, including, on the apprehension of the accused in flagrante delicto at the time of committing the criminal act. Although the accused refrained from making statements about the case and explaining at least some aspects disclosed in the act of indictment, he also refused to explain the origin and destination of the cash found in his car while he was traveling, etc. Here, a clear distinction must be made between the right not to make statements (the right to remain silent) of the accused, which also represents a fundamental guarantee under Article 6.2 of the European Convention on Human Rights, and the behavior of the person, according to Article 176 paragraph (3) point 2) of the Criminal Procedure Code – the personality and characterization of the suspect, accused, or defendant, including at the time of committing the incriminated acts.

Regarding the right to remain silent in the procedure for applying or extending preventive measures that involve detention, the Constitutional Court of the Republic of Moldova has stated that „*However, in no state is the application of detention conditioned by the fact that the person has admitted guilt for the committed offense"* [89].

Therefore, aspects related to the behavior of the person (suspect/accused) before, during, and after the commission of the offense play an important role in the process of applying the preventive measure. The court is obliged to take these subtleties into account, as at the examination of the motion for applying or extending the preventive measure, the court is presented with the minutes of the questioning of the suspect and the accused.

In this line of thought, the court makes a relevant observation, stating that the accused may contact persons who are aware of certain circumstances related to the crime, may give them advice to hide evidence or distort their quality, leading to delaying the process of evidence collection, discovering the truth in the case, and proving guilt.

On this point, it is relevant to mention that not in all cases examined by the ECtHR regarding the violation of Article 5 by the Republic of Moldova does the Court find a violation in this regard.

For example, in the case of *Grîu v. Moldova*, the European Court noted that „[...] at the time of ordering and extending the applicant's detention, domestic courts considered, inter alia, the risk of interference in the investigation. The fear of domestic courts regarding this risk seems to have been justified, as the applicant was accused of attempting to influence a witness to make false statements in another criminal case, knowing that justifications considered as „relevant" and „sufficient" in the Court's case law included, among other things, the risk of exerting pressure on witnesses [...]. In such circumstances, the Court considers that the pre-trial detention of the applicant seems to have been justified. Moreover, it cannot be said that the courts did not act with sufficient diligence and that the detention of the applicant was excessively long" [13].

3. Risk of committing other offenses.

Usually, this risk is considered when the detained person, despite knowing their procedural status as a suspect, accused, or defendant in another criminal case, resorts to committing a new offense. This aspect certainly needs to be taken into account when applying or extending preventive measures, including detention.

Another relevant aspect that can serve as evidence in applying or extending coercive measures is the probationary period in which the convicted person finds themselves. In other words, this is the case when a person has been sentenced under Article 90 of the Criminal Code, meaning the accused has been convicted with a suspended sentence of imprisonment, and the court has set a probationary period ranging from 1 to 5 years.

This probationary period is conditioned by certain restrictions imposed by the court (indicated in Article 90 (6) of the Criminal Code), including the prohibition for the convicted person, during the probationary period, to commit other offenses.

The mechanism provided by the Criminal Code in Article 90 (10) and (11), according to which: *In the event that the person sentenced with the conditional suspension of the execution of the sentence commits a new intentional offense during the probationary period or, as the case may be, the probationary term, the court shall impose a sentence under the conditions of Article 85, if, as the case may be, the provisions of paragraph (11) of this article are not applicable. (11) In case the person sentenced with the conditional suspension of the execution of the sentence commits, during the probationary period or, as the case may be, the probationary term, a less serious intentional or negligent offense, the issue of canceling or maintaining the conditional suspension of the execution of the sentence is resolved by the court*, is not always functional in itself. The request for the annulment of the conditional suspension of the sentence must come from the probation office in the territorial jurisdiction of the convicted person.

In this regard, the risk of committing other offenses can be argued in practice, especially when a person resorts to committing a new offense, knowing that they are accused, charged, or convicted in other criminal cases. It is relevant to emphasize that, in the case of persons convicted of other penalties (fines, unpaid community work, etc.), both the prosecution and the court must have information about the offense for which the person was convicted, whether or not they have a criminal record, etc. This data is necessary to argue the need for the application or extension of the preventive measure of deprivation of liberty.

In some cases, during court hearings, the parties discuss the issue of the status of the detained person in other criminal cases, whether as a suspect or accused. The defense refers to the presumption of innocence, stating that it cannot be argued that the accused is involved in other criminal cases where they have the status of a suspect or accused, on the grounds that there is no final conviction decision.

However, we consider that it is not a violation of this principle if there is confirmatory information that the accused or defendant is involved in other criminal cases. This aspect serves as a guidance indicator for the court on the severity of the preventive measure to be applied. Additionally, it helps establish that the person subject to the preventive measure of deprivation of liberty is characterized negatively, exhibits antisocial behavior, and alternative repressive measures to detention would be insufficient to ensure that the individual will not resort to committing new offenses.

At the same time, the extension of the coercive measure does not nullify the presumption of innocence that hovers over the accused from the moment of acknowledgment of this status until the adoption of a final decision. However, in that specific case, maintaining a repressive measure is dictated by the principle of equality in criminal proceedings, allowing the law enforcement agency to determine the circumstances of the offense without being influenced by external factors.

We believe that in the following case from judicial practice, the investigating judge unjustifiably decided to partially admit the prosecutor's motion for applying pre-trial detention for a period of 30 days concerning the accused, even though it was unequivocally demonstrated that the accused, being under a different measure than pre-trial detention, would continue to commit the offense.

Although the prosecutor argued during the court hearing that *„[...] Searches have been carried out at her residence before, and she did not stop her activity despite that. She is accused of complicity, and her health condition did not prevent her from committing illegal acts" [31], the court decided to partially admit the motion and apply house arrest to the accused for a term of 30 days.*

The court justified its position as follows: „In the court's opinion, at this stage of the process, by applying a less restrictive preventive measure, such as house arrest, it is possible to ensure the proper conduct of the criminal proceedings. This measure can provide the necessary balance between public and accused interests. The restrictions and obligations that can be imposed in this case are capable of ensuring the accused's presence at the summoned hearings, isolating the accused from other participants in the process, and allowing the accused to carry out necessary activities to ensure continued livelihood. It also enables the law enforcement agency to accumulate the respective evidence safely. In this regard, the court considered as relevant to the process the circumstances indicating that the accused is ill and requires continuous treatment" [31].

It is noteworthy that in this case, the prosecutor attached to the motion for applying the preventive measure sufficient evidence justifying the need to isolate the accused from society, including results of special investigative measures – communication interception, statements from two co-accused who committed the offense together with the accused T. D. Moreover, the law enforcement agency managed to document the accused after conducting a search at her residence in another criminal case, proving that regardless of previous searches, she immediately returned to criminal activities. All these pieces of evidence could not convince the investigating judge that the accused would not continue her criminal activity if placed under house arrest.

Despite these circumstances, the defense contested the decision of the investigating judge through an appeal, and by the decision of the Criminal Collegium of the Court of Appeal in Chișinău, the lawyer's appeal was accepted, and the decision of the Chișinău District Court, Ciocana headquarters, dated February 20, 2023, was annulled. The Court of Appeal rendered a new decision, applying, in the case of the accused T. D., the preventive measure of release on bail under judicial control for a period of 30 days, with the release of the judicial mandate and the imposition of obligations provided by Article 191 (3) of the Criminal Procedure Code, namely: not to leave the locality where the accused resides, except under the conditions set by the investigating judge or, if applicable, by the court; to notify the law enforcement agency or, if applicable, the court of any change of residence; to appear before the law enforcement agency or, if applicable, the court whenever summoned; not to contact persons involved in the criminal case; not to take actions that could hinder the discovery of the truth in the criminal proceedings; to surrender the passport to the investigating judge [68].

Therefore, we consider that the decisions of both courts are unfounded, as the motion for applying the preventive measure, pre-trial detention, demonstrated through plausible evidence the necessity of isolating the accused from society. The first instance did not justify its position through the evidence presented by the prosecutor, making no reference in the pronounced decision, operating merely with some general and abstract expressions, without countering the arguments from the motion.

4. Risk that the accused or defendant will cause public disorder.

This risk is not without reason the last of the 4 fundamental risks provided both by the case law of the European Court of Human Rights (ECtHR) and the domestic legal framework. One of the factors is that this risk can be the basis for a preventive measure involving deprivation of liberty when the accused or defendant is investigated for offenses that threaten state security and public order (for example: terrorism, hostage-taking, public disorder, treason, espionage, sabotage, etc.).

Therefore, this risk is addressed only when there are strong indicators that the person is criminally investigated for the aforementioned offenses, is part of a criminal group, and there is evidence supported by proof that the person has engaged in espionage activities within the state, etc.

Public disorder is a somewhat ambiguous criterion in terms of its social manifestation. The criminal procedure code does not provide a specific definition of public disorder, including an explanation of its nature, level, or threshold that must be reached to be classified as public disorder.

Any serious, especially grave or exceptionally grave offense is susceptible to causing certain social disruptions. These disruptions can be observed, for example, on social networks and in the media, especially as information technology roles advance rapidly. Despite this, as mentioned, the gravity of the offense itself does not justify detention. It is important to note that the Prosecutor's Office and the judicial system are not participants in a popularity contest, as some defendants and accused individuals in high-profile criminal cases attempt to involve these institutions.

On the other hand, satisfying the public (including political figures, the media, international organizations, opinion formers, etc.) does not constitute a legal reason for applying any coercive measures. „Public disorder” - as an alternative - refers to cases where the offense, due to its gravity, has disturbed the public, and the release of the person will make citizens feel unsafe and reduce trust in authorities and the sense of justice. It is also relevant whether the person's release could

cause riots and insecurity or create groups with a sense of justice. Protecting the accused from the public alone is not a sufficient reason for detention. Police protection cannot take the form of pre-trial detention.

To demonstrate the existence of such a risk, the law enforcement agency will have to collect information about societal trends, such as media articles and statements from people directly affected by the crime. Demonstrating an imminent risk of social disruption with reference to concrete facts can be challenging, as the signs of such a possibility may be less tangible compared to other relevant risks.

Chapter 3, entitled **„Practices of other countries in ensuring the enforcement of preventive measures involving deprivation of liberty,"** is dedicated to a comparative analysis in the field of ensuring the enforcement of preventive measures by state authorities. This chapter will highlight the legal measures taken by other European states to ensure unimpeded enforcement of preventive measures by competent authorities. Since the supervision of arrested individuals is directly related to the normal conduct of criminal proceedings, the electronic monitoring institution in cases of house arrest will also be examined, in correlation with the assurance of the measure by the police.

Analyzing the legislation of European countries in terms of the duration of pre-trial detention, it is relevant to mention the regulations of Romania's criminal procedural law. In this regard, Article 239 of Chapter I, Section 6 of the Romanian Criminal Procedure Code has the following content: „(1) During the trial in the first instance, the total duration of the defendant's pre-trial detention cannot exceed a reasonable period and cannot be more than half of the special maximum provided by law for the offense subject to the court's consideration. In all cases, the duration of pre-trial detention in the first instance cannot exceed 5 years. (2) The deadlines provided in paragraph (1) run from the date the court is seized, in case the defendant is in pre-trial detention, and, respectively, from the date of the enforcement of the measure, when pre-trial detention has been ordered in the preliminary chamber procedure or during the trial or in absentia. (3) Upon expiration of the deadlines provided in paragraph (1), the court may order the imposition of another preventive measure, under the conditions of the law" [34].

From the provisions of the article, it can be inferred that the Romanian legislator has established a reasonable period for keeping a person in pre-trial detention. It is relevant that this period applies only to the defendant, in other words, if the case is pending before the first instance. It is observed that the duration of pre-trial detention in this case is directly linked to the sanction for the offense for which the defendant is accused.

At the same time, the Romanian legislator, through Emergency Ordinance no. 18 of May 18, 2016, narrowed down the spectrum of offenses for which pre-trial detention can be requested. Thus, through Article 223 paragraph (2) of the Criminal Procedure Code, it was regulated that, „the preventive arrest measure of the defendant can be taken even if there is reasonable suspicion based on evidence that they committed an intentional offense against life, an offense causing bodily harm or death to a person, an offense against national security provided by the Criminal Code and other special laws, a drug trafficking offense, illegal operations with precursors or other products likely to have psychoactive effects, an offense regarding the violation of the regime of weapons, ammunition, nuclear materials, and explosives, human trafficking and exploitation, acts of terrorism, money laundering, counterfeiting of coins, stamps, or other valuables, blackmail,

rape, illegal deprivation of liberty, tax evasion, outrage, judicial outrage, corruption offense, offense committed through computer systems or means of electronic communication [...]" [34].

For other types of offenses, Romanian legislation has provided for the possibility of applying pre-trial detention only if the prison sentence is 5 years or more. In each case, the gravity of the act, the manner and circumstances of its commission, the environment and background from which the accused comes, the criminal record, and other circumstances related to his person are evaluated. It is determined that depriving him of liberty is necessary to eliminate a state of danger to public order [34].

The procedural criminal policy on this dimension seems very well articulated and easily applicable in practice. The categorization of offenses for which pre-trial detention can be used without any limit on the prison sentence could be a useful example for the Moldovan legislator.

However, in the criminal law of the Republic of Moldova, there is a series of offenses that, although they can cause significant harm to the injured party, fall into the category of minor or less serious offenses, which hinders the application of pre-trial detention. Some economic offenses from Chapter X of the Criminal Code could serve as an example.

In comparative law, a different approach to the term „reasonable suspicion" has emerged, which is an imperative element in measures of constraint that involve detention. Starting from national legislation, Article 43 of the Criminal Procedure Code defines the term „reasonable suspicion" as „[...] suspicion arising from the existence of facts and/or information that would convince an objective observer that a punishable offense has been or is being committed by a specific person or persons and that there are no other facts and/or information that remove the criminal nature of the act or prove the non-involvement of the person" [56].

This term was inspired by the rich practice of the European Court of Human Rights, which, at Article 5, paragraph 1(c) of the Convention, provides that in the case of deprivation of liberty, a sine qua non condition is the existence of reasonable suspicion that the person has committed an offense. This term is also a basic component of deprivation of liberty, complemented by the risks we will discuss further.

The same article of the ECHR provides that „[...] the grounds for suspicion must be objectively justified. Therefore, it is not enough for the police or law enforcement authorities to suspect a person. The fact that a subjective suspicion is not sufficient, according to the requirements of Article 5, paragraph 1(c) of the ECHR, implies the necessity of the existence of factual circumstances that can be objectively analyzed by an independent person not connected with the case" [24].

From this perspective, the reasoning of the European Court of Human Rights outlines a series of guidelines regarding reasonable suspicion that are not in line with national procedural rules in the relevant chapter. Therefore, on the one hand, by stipulating the necessary presence of reasonable grounds to believe that the person deprived of liberty has committed an offense, Article 5(1)(c) guarantees the validity of this measure and its non-arbitrary nature. On the other hand, in the Murray v. the United Kingdom decision, the Court emphasized that if the sincerity and validity of a suspicion were indispensable elements of its reasonableness, this suspicion could only be considered reasonable if it was based on facts or information establishing an objective connection between the suspect and the alleged offense. Therefore, there should be evidence of actions, documents, or forensic data directly implicating the person concerned. Consequently, deprivation of liberty cannot be based on impressions, intuition, a simple association of ideas, or prejudices

(ethnic, religious, or of another nature), regardless of their value, as an indication of a person's involvement in committing an offense [38].

In European countries, the procedure for pre-trial detention is regulated by criminal procedure codes or special laws. As is natural, pre-trial detention is recognized as an exceptional measure, governed by the presumption of liberty, subject to judicial control, and characterized by legally limited terms.

The basis for pre-trial detention in the Norwegian system is found in the Criminal Procedure Code of Norway. The regulations in the code are somewhat exhaustive, and the Supreme Court establishes, through its decisions in specific cases, rules that serve as mandatory regulations for the uniform interpretation and application of the law. In the Norwegian system, detention is applied when the probability that a person committed the act corresponds to the criterion „rather yes than no," meaning a probability greater than 50%. The law clearly stipulates the severity of offenses for which pre-trial detention can be applied, with the criterion being the minimum legal sentence. Depending on the offense pursued, the evidence justifying the suspicion may vary. For example, in rape cases, the victim's statements can generally serve as a basis for detention, given that the victim bears responsibility for a deliberately false complaint and the actions of the victim after the alleged incident can be taken into account, either reinforcing or not reinforcing their statements [25].

In the Netherlands, a person can be detained when there are reasonable suspicions that they have committed an offense. It is worth mentioning that the Netherlands is among the few European states where there is no limitation regarding the severity of the sentence. Arrests are generally carried out by the police. A suspect can be stopped for identity checks or when caught in the act. Non-flagrant arrests require prior authorization from the prosecutor. The sole purpose of detention is to continue investigations in the event of the commission of a crime. The need for additional investigations on the case is a condition for extending detention after the first 6 hours of detention.

As a result of police custody, the maintenance of provisional detention can be ordered by the examining magistrate for a maximum period of 14 days, followed by provisional detention by a court order for a maximum period of 90 days. Within 90 days, the first court hearing on the merits of the case must take place. The court may suspend the trial for an indefinite period. During this period, pre-trial detention remains in effect for up to 60 days after the pronouncement of the judgment [1, p. 5].

It is worth mentioning that in Romanian legislation, electronic monitoring has been extended to other preventive measures, such as judicial control and judicial control with bail. Therefore, such a provision is welcomed and aims to prevent the accused from evading criminal prosecution or the defendant from facing trial.

Thus, it is observed that electronic monitoring has become a more frequently applied procedural measure in practice, especially considering its effectiveness for certain categories of individuals for whom pretrial detention is not appropriate.

From another perspective, in the case of the application of alternative preventive measures to detention by the investigating judge or the court, their enforcement is carried out by the police in the territorial jurisdiction where the accused/defendant resides. It is noteworthy that there is not strict surveillance of alternative preventive measures to detention by the police in practice, and therefore, there is a risk that individuals subjected to non-custodial measures may evade criminal prosecution or the trial process.

In light of these considerations, electronic monitoring in the case of house arrest is an effective obligation in relation to the guarantees enshrined in Article 25 of the Constitution of the Republic of Moldova, which protects individual freedom and safety.

By prioritizing house arrest with electronic monitoring for the accused/defendant, when this measure is well-justified, several advantages can be highlighted, such as: reducing the application of pretrial detention; decreasing the population in temporary detention facilities; efficient monitoring of individuals subject to house arrest; preventing the commission of new offenses (especially when the offense was committed using an official position); streamlining criminal justice for individuals committing minor or less serious offenses; ensuring a reasonable timeframe for criminal proceedings, eliminating the risk of the accused/defendant evading law enforcement authorities.

Based on the analysis in this scientific endeavor, we can conclude that electronic monitoring is seen as an additional measure to ensure compliance with the other restrictions established by Article 188(3) of the Code of Criminal Procedure. It is noteworthy that this measure has a positive impact on the entire criminal process; however, its regulation in the procedural law is somewhat ambiguous compared to the provisions in Romanian legislation. Therefore, there is a current need to adjust the legal framework regarding electronic monitoring, expanding its scope to include other preventive measures, such as release under judicial control or bail.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

As a result of the conducted study, we can firmly draw some conclusions and recommendations that will undoubtedly contribute to improving the practice of applying, extending, terminating, revoking, or replacing preventive measures involving detention as an exceptional measure, both doctrinally and normatively. At the same time, we are aware that the institution of preventive detention may give rise to other studies and discussions that have not been addressed in this work. Therefore, this study will also serve as a starting point for researchers entering the noble scientific field of preventive detention.

In this regard, disregarding what has been examined in this doctoral thesis, the following conclusions are outlined:

1. We note that the legislation in the field has gone through a transitional period during which preventive measures could be ordered more easily, without emphasizing the provision of serious and sufficient safeguards against the arbitrary actions and abuses of state authorities. This period evolved gradually, introducing such guarantees through repeated legislative changes, following numerous convictions of the Republic of Moldova by the European Court of Human Rights. The evolution led to compliance with the standards imposed by the European Court, and presently, attention is primarily drawn to safeguards in favor of the individual, surpassing the ECHR standards. From this perspective, to address these deficiencies, the regulation of the pretrial detention in criminal proceedings and the maintenance of the functionality and applicability of this procedural legal institution, which is of particular importance in the implementation of criminal justice, should be based on a solid judicial doctrine scientifically. There is an obligation to seek to identify, explain, and conceive solutions to issues related to the implementation of procedural penal norms.
2. The problem of overcrowding in places of detention and the issue of poor detention conditions have become a serious obstacle in the criminal process when applying the preventive measure of pretrial detention. Moldova continues to be condemned by the ECtHR under Article 3 of the Convention due to inhumane detention conditions. In this regard, it is necessary to orient at the conceptual, legal, methodical, and procedural tactics level of law enforcement agencies, prosecutors, and judges to implement, depending on circumstances, the rule imposed by the ECtHR practice - investigating the individual at liberty. Here, we do not refer to the definitive release of the person but, primarily, to the widespread use of house arrest, release under judicial control, release on bail, etc., as alternatives to pretrial detention.
3. The promotion within criminal proceedings of EU Directives on electronic surveillance in the context of house arrest. At present, electronic surveillance is not used as often in criminal proceedings due to various factors, such as the lack of technical resources and deficiencies in the express regulation in criminal procedural legislation of the application mechanism, which ultimately creates obstacles and interpretations in practice. Thus, to eliminate these ambiguities, it is necessary to introduce regulations in the criminal procedure code regarding the mechanism for the application of electronic monitoring, so that this complementary measure to house arrest becomes effective and applicable primarily in the criminal justice system. At the same time, it is necessary to implement instructions or provisions at the institutional level to familiarize the judiciary involved in the process of applying and extending preventive measures depriving of liberty so that, depending on the circumstances of the case, they predominantly verify the

possibility of applying the preventive measure of house arrest, accompanied by electronic surveillance of the accused or defendant.

Given the importance and impact of preventive measures in the current socio-political context of our country, increasingly marked by pretrial detention and/or conviction of significant individuals in the public sphere, involved in the exercise of state authority, whether in the legislative, executive, or judicial branches, we observe that various legislative amendment projects have been initiated regarding such measures.

While some of these projects aim to rectify errors or oversights of the legislator or bring legal provisions into harmony to resolve inherent contradictions, others target substantial changes to the conditions under which preventive measures, particularly detention, can be applied. These changes may aim to either enhance guarantees in favor of the individual, as stated in the explanatory memorandum, or pursue an „illicit" and concealed objective to hinder the activities of state authorities tasked with implementing justice.

Therefore, with the goal of improving the existing regulatory framework in the field of preventive measures, including detention, and to address certain interpretations that have arisen in judicial practice, we propose some legislative suggestions for the criminal procedure code:

1. The provision of Article 186(4) of the Criminal Procedure Code is ambiguous and needs to be supplemented with the phrase „...there is new evidence...". After amendment, it should outline the following content: The detention term can only be extended when there is new evidence, and other non-custodial preventive measures are insufficient to eliminate the risks justifying pretrial detention, while the conditions and criteria stipulated in Articles 175, 176, and 185 remain relevant.

2. The responsibility for ensuring the presence of parties during the examination of the motion regarding the application of preventive measures, exclusively falls on the prosecutor, according to the interpretation of Article 308(4) of the Criminal Procedure Code.Therefore, it is presumed that when extending the preventive measure, the responsibility for summoning the parties to the court session lies with the court, on the grounds that the suspect will already have the status of an „arrested person".

Accordingly, in such circumstances, it is necessary to amend Article 311(3) of the Criminal Procedure Code, including the phrase „...and the suspect". After this amendment, the norm should have the following content: *The court that issued the ruling, upon receiving the appeal, within 24 hours, forwards it, attaching certified copies of the documents examined for the contested ruling, to the appellate court, setting the date for the appeal's resolution and informing the prosecutor, defense counsel, and the suspect. The appellate court, upon receiving the appeal, requests certified copies of the documents from the prosecutor and the defense that confirm or deny the necessity of applying the respective preventive measure or extending its duration. After reviewing the appeal, the accumulated materials are appended to the respective criminal case.*

3. Adding a sentence to Article 308(7) of the Criminal Procedure Code: *„The home arrest warrant is immediately sent for execution to the police authority in the territorial area where the suspect resides."* After this amendment, the paragraph will have the following content: Following the examination of the motion, the investigating judge or, as the case may be, the court issues a reasoned ruling regarding the acceptance or rejection of the motion and, if applicable, orders the application, extension, revocation, or replacement of the preventive measure of detention or house arrest for the suspect. The ruling is handed over to the prosecutor and the suspect. Based on the

ruling, the investigating judge or the court issues a warrant for arrest, extension, replacement, or revocation of preventive detention or house arrest, which is immediately handed over (one copy each) to the prosecutor, the suspect, and the administration of the place of detention. ***The home arrest warrant is immediately sent for execution to the police authority in the territorial area where the suspect resides.***

4.Amending Article 195(3) of the Criminal Procedure Code, which states: *„...and, within up to 5 hours of revocation, informs the investigating judge who applied or, as the case may be, extended the preventive detention or house arrest measure...,"* by extending the term for informing the investigating judge about the revocation of the preventive measure. The amended paragraph should read: *„The preventive measure in the form of preventive detention, house arrest, release under judicial control, and release on bail is replaced or, as the case may be, revoked by the investigating judge or, as the case may be, by the court. If, during the pre-trial stage, before the case is sent to the court for examination, the prosecutor in charge or, as the case may be, conducting the criminal investigation considers that preventive detention or house arrest is no longer justified, and the grounds for its application or extension have lapsed, they promptly revoke the preventive detention or house arrest, releasing the person or, as the case may be, applying, within their competence, another preventive measure. Within up to 24 hours of revocation, they inform the investigating judge who applied or, as the case may be, extended the preventive detention or house arrest measure. In the case of the extension of detention under the conditions of Article 186(101), upon revocation, the higher-ranking prosecutor or, as the case may be, the Prosecutor General or their deputy must also be informed."*

5.Considering that the Criminal Procedure Code does not provide for the procedure for examining arrest warrants issued in the absence of the suspect, it is necessary to add Article 3081 to the Criminal Procedure Code, titled „Examination of Motions Regarding Preventive Detention in the Absence of the Suspect," with the following content:

(1) Within 48 hours of the suspect's detention based on an arrest warrant, the prosecutor submits a motion to the investigating judge requesting notification of the warrant. The motion includes the materials and evidence that formed the basis for applying preventive detention.

(2) Following the examination of the motion, the investigating judge, after informing the suspect of the reasons for issuing the arrest warrant in absentia in the presence of their lawyer, their rights and obligations, reviews the requests and motions, hears the prosecutor's conclusions, and in the context of the presented evidence and the reasons retained for taking the measure, issues a reasoned ruling confirming preventive detention and the execution of the warrant or, as the case may be, under the conditions provided by law, revokes preventive detention or replaces the preventive measure if the suspect is not arrested in another case.

(3) The ruling of the investigating judge is contested in accordance with the provisions of Article 311 of the Criminal Procedure Code if it has not been contested after the issuance of the warrant for preventive detention in the absence of the suspect.

6.In the procedural legislation of France, house arrest can only be applied with electronic surveillance of the person. Thus, this mechanism is already in place and is provided for in Article 137 of the French Code of Criminal Procedure, which stipulates that any person accused, *presumed innocent, remains free.*

However, due to the needs of the investigation or as a security measure, they may be subject to one or more judicial control obligations, and if these prove insufficient, they may be placed under house arrest with electronic surveillance.

Exceptionally, if judicial control obligations or house arrest with electronic surveillance do not achieve these objectives, they may be placed in pre-trial detention.

Therefore, adopting such a provision in the procedural legislation of the Republic of Moldova is welcome and will contribute to refining the normative framework. Similarly, this adjustment will reduce the responsibilities of the police, which, as noted above, are not sufficiently effective in ensuring house arrest.

In this regard, to clarify these aspects, it is necessary to amend Article 188(1) of the Criminal Procedure Code, which currently reads: *„House arrest consists of isolating the suspect, defendant from society in their residence, with certain restrictions..."* After amending this paragraph, the provision should read: *„House arrest consists of isolating the suspect, defendant from society in their residence, with* ***electronic surveillance*** *and certain restrictions."*

In such regulation, electronic surveillance will be mandatory, allowing for more rigorous monitoring of the suspect or defendant placed under house arrest.

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- National Scientific Conference titled „The Criminal Procedure Code of the Republic of Moldova – 20 Years Since Its Entry into Force.” Chișinău, Moldova, 09 November 2023, scientific report titled: „The Grounds for Applying Preventive Detention in Criminal Proceedings.”

ADNOTARE

Ghennadi Epure, Arestul în procesul penal. Teză de doctor în drept. Chişinău 2024.

Structura tezei: introducere, trei capitole, concluzii generale şi recomandări bibliografie din 141 titluri, 150 pagini de text de bază. Rezultatele obţinute sunt publicate în 8 lucrări ştiinţifice.

Cuvinte-cheie: *arest preventiv, arest la domiciliu, monitorizare electronică, revocare, înlocuire, încetare de drept a măsurii preventive, demers, încheiere, recurs*.

Scopul lucrării constă în examinarea teoretico-practică a măsurilor preventive care includ arestul, în vederea elucidării reglementărilor interpretative şi dificultăților practice în procesul de aplicare și prelungire a măsurilor preventive privative de liberate, precum şi înaintarea unor recomandări de ordin ştiinţifico-practic și propuneri de *lege ferenda* de perfectare a cadrului normativ naţional.

Obiectivele cercetării. Constau în fundamentarea cercetărilor pe analiza comparativă a instituției arestului prin prisma legislației altor state europene, pentru a nuanța unele reglementări explicite și previzibile, care s-au dovedit a fi funcționale din punct de vederi aplicativ. Fapt ce determină autorul la formularea propunerilor de *lege ferenda*, îmbunătățirea cadrului normativ existent, dar și formularea unor opinii cu caracter practic în vederea elucidării interpretărilor extensive în rândul justițiarilor și justițiabililor.

Noutatea şi originalitatea ştiințifică. Studiul reprezintă o cercetare complexă a instituției „arestului" în cadrul procesului penal, din optica teoretico-practică, cu aducerea în prim plan a hotărârilor Curții Constituționale a Republicii Moldova, jurisprudenței Curții Europene a Drepturilor Omului, hotărârilor instanțelor naționale, dar și a elementelor de drept comparat. Fuzionarea acestor aspecte, abordări și raționamente a scos în evidență un șir de imperfecțiuni ale cadrului normativ existent legate de aplicarea, prelungirea, revocarea, înlocuirea, încetarea și contestarea măsurilor preventive privative de libertate. Analiza efectuată a permis formularea unui șir de recomandări cu scopul de a evita practica judiciară periculoasă care se folosește în ultima perioadă la capitoul dat și uniformizarea unei practici bune, raliată la standardele actelor normative internaționale și naționale, ce nu va afecta drepturile și libertățile participanților la procesul penal.

Problema ştiințifică consistă în formularea unor concepte argumentate, bazate pe cazuri practice, în coroborare cu cadrul normativ existent, în vederea îmbunătățirii acestuia cu norme procesuale noi, cum ar fi: art. 308^1 din Codul de procedură penală – „Examinarea demersurilor privind aplicarea arestării preventive în lipsa învinuitului"; completarea art. 188 alin. (1) din Codul de procedură penală, cu introducere obligatorie a supravegherii electronice în cazul arestului la domiciliu etc.

Semnificația teoretică. Prin faptul că studiul este bine sistematizat şi documentat cu utilizarea unui număr mare de hotărâri ale Curții Europene a Drepturilor Omului, dar și a cazurilor din practica judecătorească a Republicii Moldova, ce a permis reflectarea practicii neuniforme, imperfecțiunea cadrului normativ și propunerea unor soluții argumentate de soluționare a carențelor legislative și practice.

Valoarea aplicativă constă în fuzionarea cazurilor practice, cazuisticii CtEDO și a cadrului normativ în vigoare, în vederea oferirii unor recomandări justificate în procesul de aplicare a măsurilor preventive privative de libertate, în procesul penal.

Implementarea rezultatelor ştiinţifice. Constatările şi concluziile studiului pot fi utilizate în procesul de instruire a studenților instituțiilor de învățământ, audienților din cadrul Institutului Național al Justiției și de participanții la procesul penal, atât de partea acuzării, cât și din partea apărării, implicați în procesul măsurilor preventive, care includ arestul. Recomandările de ordin practic vor ajuta la aplicarea corectă și uniformă a normelor procesuale. Propunerile de *lege ferenda* vor contribui la ajustarea cadrului normativ procesual penal în domeniul măsurilor preventive privative de libertate.

ANNOTATION

Ghennadi Epure, Detention in Criminal Proceedings. Doctoral Thesis in Law. Chisinau, 2024.

Thesis structure: introduction, three chapters, general conclusions and recommendations, bibliography with 141 titles, 150 pages of main text. The obtained results are published in eight scientific papers.

Keywords: *pretrial detention, house arrest, electronic monitoring, revocation, replacement, cessation of the preventive measure, procedural step, ruling, appeal.*

The aim of the thesis is to theoretically and practically examine preventive measures including detention, aiming to clarify interpretative regulations and practical difficulties in the application and extension of liberty-depriving preventive measures. It also seeks to propose scientific and practical recommendations and legislative proposals to improve the national normative framework.

Research objectives focus on a comparative analysis of detention as an institution in the legislation of other European states, to emphasise explicit and predictable regulations proven to be functional in application. This drives the author to formulate legislative proposals, enhance the existing normative framework and offer practical opinions to clarify extensive interpretations among legal professionals and litigants.

The scientific novelty and originality lie in the comprehensive study of detention within criminal proceedings, considering both theoretical and practical aspects, highlighting decisions from the Constitutional Court of Moldova, jurisprudence of the European Court of Human Rights, national court rulings, and elements of comparative law. This scrutiny revealed imperfections in the existing normative framework concerning the application, extension, revocation, replacement, cessation and contestation of liberty-depriving preventive measures. The analysis led to a series of recommendations aimed at avoiding dangerous judicial practices and standardizing good practices aligned with international and national normative standards, without affecting the rights and freedoms of participants in criminal proceedings.

The scientific problem involves formulating reasoned concepts based on practical cases and in correlation with the existing normative framework to improve new procedural norms, such as Article 308^1 of the Criminal Procedure Code – 'Examination of Procedures regarding the Application of Preventive Detention in the Absence of the Accused'; supplementing Article 188 paragraph (1) of the Criminal Procedure Code with the mandatory introduction of electronic monitoring in cases of house arrest, etc.

The theoretical significance: The study is well-structured and documented, utilizing a large number of judgments from the European Court of Human Rights and cases from the judicial practice of the Republic of Moldova. This facilitated the reflection of inconsistent practices, imperfections in the normative framework, and proposing reasoned solutions to address legislative and practical shortcomings.

The practical value consists of merging practical cases, European Court of Human Rights case law, and the current normative framework to provide justified recommendations in the application of liberty-depriving preventive measures in criminal proceedings.

The implementation of scientific results: The findings and conclusions of the study can be used in the training process of students in educational institutions, trainees at the National Institute of Justice, and participants in criminal proceedings, both on the prosecution and defense sides, involved in preventive measures including detention. Practical recommendations will assist in the correct and uniform application of procedural norms. Proposals of *lex ferenda* will contribute to adjusting the procedural normative framework in the field of liberty-depriving preventive measures in criminal proceedings.

Аннотация

Геннади Епуре. Арест в уголовном процессе. Диссертация доктора права. Кишинев, 2024

Структура диссертации: введение, три главы, общие выводы и рекомендации библиография из 141 названий, 150 страниц основного текста. Полученные результаты опубликованы в 8 научных статьях.

Ключевые слова: *превентивный арест, домашний арест, электронный мониторинг, отзыв, замена, прямое прекращение превентивной меры, ходатайство, заключение, апелляция.*

Цель работы состоит в теоретико-практическом рассмотрении превентивных мер, которые включают арест, с целью выяснения толковательных правил и практических трудностей в процессе применения и продления превентивных мер, лишенных свободы, а также представления научно-практических рекомендаций и предложений по совершенствованию национальной нормативно-правовой базы.

Задачи работы: сосредоточение в ходе исследований на сравнительном анализе учреждения ареста через призму законодательства других европейских государств, чтобы выявить некоторые явные и предсказуемые правила, которые оказались функциональными с точки зрения применения. Факт, который побуждает автора к формулированию предложений закона *de lege ferenda*, улучшению существующей нормативной базы, а также формулированию практических взглядов с целью разъяснения обширных интерпретаций среди судей и судей.

Научная новизна и оригинальность исследования. Исследование представляет собой сложное исследование Института „ареста” в рамках уголовного процесса, с теоретико-практической точки зрения, выдвигая на первый план решения Конституционного суда Республики Молдова, практику Европейского суда по правам человека, решения национальных судов, а также элементы сравнительного правоведения. Оперирование этими аспектами, подходами и рассуждениями позволило выявить ряд несовершенств существующей нормативно-правовой базы, связанной с применением, продлением, отменой, заменой, прекращением и констатацией мер пресечения в виде лишения свободы. Проведенный анализ позволил сформулировать ряд рекомендаций с целью избежать опасной судебной практики, сложившейся в последнее время в данной сфере, и стандартизировать надлежащую практику, соответствующую стандартам международных и национальных нормативных актов, которая не будет затрагивать права и свободы участников уголовного процесса.

Решённая научная проблема заключается в формулировании аргументированных сенцептов, основанных на практических случаях, в сочетании с существующими нормативными рамками с целью улучшения его новые процессуальные нормы, такие как: ст. 308^1 Уголовно – процессуального кодекса - *„рассмотрение ходатайств о применении превентивного ареста при отсутствии обвиняемого”*; заполнение ст. 188 пункт. (1) Уголовно-процессуального кодекса, с обязательным введением электронного надзора в случае домашнего ареста и т. д.

Теоретическая значимость. То, что исследование хорошо систематизировано и документировано с использованием большого количества постановлений Европейского суда по правам человека, а также дел из судебной практики Республики Молдова, позволило отразить неравномерность практики, несовершенство нормативной базы и предложить аргументированные решения законодательных и практических недостатков.

Практическое значение исследования заключается в объединении практических дел, прецедентов Европейского Суда по правам человека и действующей нормативной базы

с целью выработки обоснованных рекомендаций в процессе применения мер пресечения в виде заключения под стражу в уголовном процессе.

Внедрение научных результатов. Результаты и выводы исследования могут быть использованы в учебном процессе при подготовке студентов образовательных учреждений, аудиторов Национального института правосудия и участников уголовного процесса, как со стороны обвинения, так и со стороны защиты, вовлеченных в процесс применения мер пресечения, к которым относится арест. Практические рекомендации помогут обеспечить правильное и единообразное применение процессуальных норм. Предложения по закону будут способствовать корректировке уголовно-процессуальной законодательной базы в сфере досудебных мер пресечения в виде заключения под стражу.

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