MOLDOVA STATE UNIVERSITY

In the form of a manuscript

C.Z.U.: 343.14 (043.2)

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EVALUATION OF THE EVIDENCE WHEN ADOPTING THE SOLUTION OF THE TRIAL COURT

SPECIALTY 554.03 - CRIMINAL PROCEDURAL LAW

Summary of the Doctoral Thesis in Law

CHISINAU, 2025

The thesis was developed within the Doctoral School of Legal and Economic Sciences,

Moldova State University

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The Doctoral Thesis and Summary can be consulted at the Library of Moldova State University and on the website of the National Agency for Quality Assurance in Education and Research.

The summary was sent on August 25, 2025.

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CONCEPTUAL LANDMARKS OF THE THESIS

Relevance and importance of the addressed topic. Over time, evidence and the evidentiary process in criminal proceedings have been subjects of extensive and complex debate, given their essential role in ensuring a fair trial. The evaluation of evidence during the trial phase constitutes a crucial moment in the criminal process, with a decisive impact on the final outcome. Thus, the evaluation of evidence in criminal proceedings represents the "central theme" that the parties engage with throughout the entire procedure. After analyzing and weighing the evidence, the judge issues a ruling based both on personal conviction and on compliance with legal norms and moral principles, while also ensuring the protection of the rights and interests of the parties involved in the proceedings.

This paper addresses a particularly important and constantly relevant topic within the field of criminal procedure. The contribution of the research lies in conducting a detailed analysis of the concept of *evidence evaluation* at the trial court level, based on a thorough understanding of criminal procedure in the investigated context, while taking into account comparative, doctrinal, and jurisprudential aspects. Furthermore, issues related to the evaluation of evidence have generated interest among both theorists and practitioners over time, being addressed in various monographic works and scientific publications. However, based on an analysis of the existing doctrine, it cannot be conclusively stated that the aspects within the complex field of evidence evaluation have been fully analyzed and clarified, especially in light of the evolution of criminal procedural legislation, including recent legislative amendments.

The contextualization of the topic within international issues. The Universal Declaration of Human Rights includes provisions regarding the equality of all before the law, the inviolability of the person, the presumption of innocence, and others. In accordance with Article 10 of the Declaration, „Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". Furthermore, Article 10 provides: „Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

The European Convention on Human Rights was incorporated into the national legal system starting September 12th, 1997, and guarantees the right to a fair trial. Thus, according to Article 6 of the ECHR, the right to a fair trial is ensured for resolving disputes related to an individual's civil rights and obligations or in connection with the validity of any criminal charge brought against them.

A procedural requirement derived from Article 6 of the Convention, established in the case

law of the European Court, is the obligation to provide reasons for the decisions made by the courts and for the administration of evidence. Thus, although national courts have the freedom to assess and admit evidence, they are required to justify the decisions they make. Regarding the administration of evidence, the case law of the European Court indicates that, although the Convention does not explicitly regulate the rules on evidence, the fairness of the procedure is assessed in the context of the entire process. In this regard, it must be ensured that the evidence is presented in a manner that guarantees the conduct of a fair trial. No less important is the fact that Article 6(1) of the ECHR also implies that national courts must carry out an effective and efficient examination of the evidence presented by the parties.

Thus, by ratifying the European Convention on Human Rights, our state has committed, on the one hand, to guarantee the rights and freedoms provided by the Convention to every person under its jurisdiction, and, on the other hand, to accept the exercise of international legal control through the European Court of Human Rights regarding how these rights are respected. Consequently, the Republic of Moldova has recognized the right to a fair trial as provided by the ECHR, as well as the binding case law of the European Court of Human Rights, applicable to both the judiciary and national public authorities.

Moreover, on the basis of the commitments undertaken by the Republic of Moldova upon its accession to the Council of Europe, as well as the obligations stemming from the constitutional provisions, the national legislative framework has been and continues to be subject to a process of constant improvement, which has also led to the implementation of legislative and institutional reforms in line with European standards.

Subsequently, on June 27th, 2014, in Brussels, the Association Agreement between the Republic of Moldova, on the one hand, and the European Union, the European Atomic Energy Community, and their member states, on the other hand, was signed. The Agreement was provisionally implemented starting September 01st, 2014, and entered into force on July 01st, 2016. The Agreement was ratified by the Parliament of the Republic of Moldova on July 02nd, 2014, and by the European Parliament on November 13th, 2014.

Thus, according to the Association Agenda, which serves as the main instrument for implementing the Association Agreement, the Republic of Moldova has committed to collaborating in the areas of judicial system independence, the prevention and combatting of fraud and corruption, asset recovery, as well as in matters concerning the police/law enforcement authorities and legal cooperation.

In particular, the aim is to strengthen the proper application of the concept of *judicial independence*, in order to prevent any unjustified external interference in individual cases. Additionally, the implementation of norms regarding the functional immunity of judges is considered, in line with European standards and best international practices. Another important objective is the continuous development of legal training as a type of multidisciplinary and practical education, complementary to legal education, with the goal of transmitting professional techniques and values, with a particular emphasis on the judiciary profession, among others.

***The contextualization of the topic within national and regional issues*.** In specialized doctrine, issues related to the evaluation of evidence in court have consistently been the focus of researchers, being addressed both in general and in detail, particularly by: I. Dolea, T. Vizdoaga, A. Airapetean, D. Roman, I. Sedletchi, T. Osoianu, S. Toncu ș.a. (Republic of Moldova); I. Neagu, M. Udroiu, A. Crișu, A. Negru, M. Damaschin, G. Theodoru, Gh. Mateut, E. Toma, Gh. Alecu, S. Barbu, V. Coman, C. Balan, C. Birsan, I. Butoi, V. Dongoroz, C. Ghigheci, N. Giurgiu, L. Lefterache ș.a. (Romania); Belkin A.R., Bikov V.M., Vilkova T.Iu., Nasonov S.A., Galusko A.F., Golovko L.V., Lazareva V.A., Ivanov V.V., Pivovarova A.A., Makeeva I. V., Pijuk A.V. ș.a. (Russian Federation), Antonov K. V., Sachko O. V., Tertishnik V. M., Uvarov V. G. ș.a. (Ukraine), Vincent M., Pradel J., Verges. E. etc. (France)

At the same time, the research conducted and the works published in the investigated field have not exhausted the relevance of analyzing the content and specifics of evidence evaluation by the trial court. This generally highlights the issue of evidence evaluation by the trial court, emphasizing the imperative need for improvements in criminal procedural legislation regarding the content, essence, and guarantees of implementing the free evaluation of evidence.

The purpose of the study. The present study aims to provide a detailed analysis of the institution of evidence evaluation in criminal cases, carried out by the court during the trial phase, with the objective of identifying relevant aspects that can contribute both to the improvement of criminal procedural legislation and to the deepening of the theoretical and practical knowledge of legal professionals.

The objectives of the research *are as follows*:

- Analysis of scientific materials related to the evaluation of evidence in the adjudication of criminal cases at the trial court level;
- Identification of the essence and content of the evidentiary process in criminal cases;
- Analysis of the concept of evidence and its importance in criminal proceedings;

- Research on the invalidation of illegally obtained evidence in criminal cases;
- Identification and determination of the factors influencing the evaluation of evidence and the mechanisms used by the court in evaluating evidence;
- Highlighting the concept of the judge's personal conviction in the evaluation of evidence in criminal cases;
- Research on national and international judicial practice in the field of evidence evaluation during the trial of criminal cases at first instance;
- Analysis of the particularities of evidence evaluation during the case preparation stage prior to trial;
- Highlighting the particularities of evidence evaluation during the judicial examination;
- Determining the final act of evidence evaluation by the trial court;
- Identifying shortcomings and gaps in the field of evidence evaluation, and formulating *de lege ferenda* proposals.

Research hypothesis. It is assumed that the process of evidence evaluation in criminal cases, carried out by trial courts, is not strictly mechanical or formal, but rather involves a complex interaction between the legal framework regulated by the Criminal Procedure Code and subjective elements related to the judge's perception and inner conviction. This conviction is formed following the evaluation of aspects such as the legality of evidence administration, the relevance and sufficiency of the evidence in relation to the subject matter of the case, as well as the coherence and credibility of the evidentiary material. At the same time, it is assumed that external factors—such as media, social, or even political pressure—may influence, even unconsciously, the way the court interprets and evaluates evidence. In this context, the invalidation or exclusion of evidence obtained in violation of the fundamental rights of the accused represents an essential mechanism for protecting the right to a fair trial. Thus, it is considered that a thorough understanding of all these factors could contribute to the improvement of the criminal procedural legal framework and to the promotion of a consistent and fair judicial practice.

Summary of research methodology and justification of research methods chosen. In this study, the applied research methodology is based on the use of a combination of scientific methods, both general and specific, to ensure a comprehensive and in-depth approach to the subject of evidence evaluation in the trial court. Thus, the general dialectical-scientific method was used, which allows for the understanding of the evidence evaluation process within the dynamic context of criminal procedural law. In addition, specific methods were also applied, such as the *historical method*, which

allowed for the analysis of the evolution of legal regulations in the field, identifying changes and trends in criminal procedural legislation; *logical-legal method*, used to clarify the logical reasoning and fundamental principles in the process of evidence evaluation; *comparative-legal method*, used to compare the regulations in the Republic of Moldova with those in other countries, highlighting the similarities and differences in the treatment of evidence in the courts; *grammatical method*, which facilitated the correct interpretation of terms and legal provisions; *systemic method*, which made it possible to analyze the entire system of criminal procedure, in which the evaluation of evidence is an essential component.

The conclusions and recommendations of the study are primarily based on the provisions of international human rights instruments, especially the European Convention on Human Rights, as well as the Constitution of the Republic of Moldova and the national criminal procedural legislation. Additionally, the decisions of the Constitutional Court and the explanatory rulings of the Plenary of the Supreme Court of Justice of the Republic of Moldova have been considered, in order to ensure the correct application of the norms in judicial practice.

The normative basis of the research includes the provisions of criminal procedural law, criminal law, and other branches of law relevant to the field of study. Additionally, the criminal procedural regulations of other countries have been analyzed to provide a comparative perspective on the evaluation of evidence in trial courts.

The theoretical basis of the research is composed of the works of legal scholars who have addressed, from different perspectives, the issue of evidence evaluation in trial courts, thus contributing to the theoretical foundation of the research.

The empirical basis of the research is composed of the jurisprudence of the European Court of Human Rights (especially the cases against the Republic of Moldova), as well as the judgments and decisions of national courts, which have been analyzed to understand the practical application of the rules regarding evidence evaluation in criminal proceedings.

Approval of results. The results of the investigations have been presented at national and international scientific conferences, including abroad, and reflected in scientific articles.

Publications on the thesis topic. 10 scientific papers have been published on the topic of the doctoral thesis.

Volume and structure of the thesis: 190 pages of main text comprising: introduction, four chapters, general conclusions and recommendations, bibliography of 171 titles; declaration of responsibility; author's CV.

Keywords: *evidence, evaluation, court, trial on the merits, judgment, deliberation.*

THESIS CONTENT

Chapter 1, entitled ***Analysis of the situation in the field of research on the institution of the evaluation of evidence in the trial court***, includes a detailed and in-depth analysis of the scientific materials dedicated to the evaluation of evidence in the trial court and published both in the Republic of Moldova (I. Dolea, T. Vizdoaga, D. Roman, I. Sedletchi, S. Toncu etc.), and in other countries: Romania (I. Neagu, M. Udroiu, A. Crisu, A. Negru, M. Damaschin, G. Theodoru, Gh. Mateut, E. Toma, Gh. Alecu, S. Barbu, V. Coman, C. Balan, C. Birsan), Russia (Belkin A.R., Bikov V.M., Vilkova T.Iu., Nasonov S.A., Galusko A.F., Golovko L.V., Lazareva V.A., Ivanov V.V., Pivovarova A.A., Makeeva I. V., Pijuk A.V. etc.), Ukraine (Antonov K. V., Sachko O. V., Tertishnik V. M., Uvarov V. G. etc.), France (Vincent M., Pradel J., Verges. E. etc.).

This study aims to provide an in-depth analysis of the institution of evidence evaluation in criminal proceedings, with a focus on trial courts, starting from a rigorous documentation process and a critical evaluation of the specialized literature. Based on this documentation, the current level of research in the field has been determined, as well as the relevant scientific contributions in shaping the conceptual and practical framework of the addressed topic.

Following this analysis, the scientific problem of major scientific importance was identified and formulated, outlining the main lines of analysis and the objectives pursued in order to achieve a coherent and comprehensive methodological approach.

An essential element of the work is the highlighting of the divergences of opinion existing in legal doctrine, in particular with regard to the nature, limits and criteria for the evaluation of evidence. These contradictory positions, captured in reference works - particularly recent ones reflecting legislative changes and the imperatives of a fair trial - have been exploited to provide a comprehensive and critical overview of the subject.

The rigorous selection of scientific sources, signed by authoritative authors in the field of criminal procedural law, underpins both the theoretical analysis and the practical approach to the particularities of the institution of evidence evaluation, while contributing to the formulation of a unique and original perspective in the research.

Chapter 2, entitled ***Criminal evidence: content and particularities***, is devoted to several important aspects, in particular the standard of proof beyond reasonable doubt, which is said to represent the highest level of certainty necessary to ensure maximum protection of the fundamental

rights of the accused. *Beyond reasonable doubt* is the standard of evidence used in criminal trials. It is the highest level of certainty necessary to ensure maximum protection of the fundamental rights of the accused. Thus, in accordance with the principle of presumption of innocence, any reasonable doubt must lead to the acquittal of the accused person.

In the doctrine, it is mentioned that "the process of proving the accusation in criminal matters, beyond any reasonable doubt, is a complex one, which requires the courts to conduct a careful and detailed analysis of the evidence presented in the case file, as well as the exclusion of evidence obtained illegally, a process that must be concluded by issuing a ruling"[1].

Professor Neagu states that the standard "beyond any reasonable doubt" is essential for ensuring a fair criminal trial and for protecting the fundamental rights of the individual. He emphasizes that this standard plays a crucial role in preventing judicial errors, explaining that "the prosecution must prove the defendant's guilt clearly, leaving no room for doubt." In this regard, the importance of this standard in ensuring fair justice is highlighted, which protects not only the rights of the victim but also the integrity and fundamental rights of the defendant"[2].

According to Judgment No. 18 from May 22nd, 2017 of the Constitutional Court, in the process of assessing evidence, the European Court's jurisprudence has developed the standard of "beyond reasonable doubt", which stipulates that, for a conviction to be pronounced, the accusation must be proven beyond any reasonable doubt. The existence of evidence beyond any reasonable doubt constitutes an essential component of the right to a fair trial and imposes on the prosecution the obligation to prove all elements of guilt in a manner capable of dispelling any doubt"[3].

It is argued that the principle of presumption of innocence is central to this standard, reinforcing the fact that anyone accused of a crime is presumed innocent until proven guilty.

In the context of analyzing the essence and content of evidence in criminal proceedings, it is reiterated that "the notion of *evidence* comes from the Latin word *probatorius* and has two meanings: either that of "gathering evidence" or that of "the totality of evidence collected and presented in a dispute"[4]. We align with the opinion of Professor I. Dolea, who argues that evidence can be defined

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[1] UDROIU, M. *Criminal procedure, general part*. Vol.I, 6th edition. Bucharest: Publishing House C. H. Beck, 2019. p. 418.
ISBN, 978-606-18-0897-7.

[2] NEAGU, I., DAMASCHIN, M. *Criminal Procedure Treaty: In the light of the New Code of Criminal Procedure. Special Part*. Vol.2, Bucharest: Universul Juridic, 2015. 676 p. ISBN 978-606-673-385-4.

[3] Judgment No. 18 from May 22nd, 2017 of the Constitutional Court on the exception of unconstitutionality of certain provisions of the Criminal Procedure Code (judge's intimate conviction). [online]. [cited: 20.10.24]. Available at: https://www.constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=617

[4] DOLEA, I, et al. *Criminal procedural law. General Part*. Vol. I. / 2nd edition. Chisinau, 2005. p.194. ISBN: 9975793436.

in several ways, which do not exclude each other, but may have individual significance: "evidence is a process of establishing the truth; evidence is the process of parties invoking evidence to support their position; evidence, like the entire criminal process, represents a system of legal relations whose subjects participate as holders of certain rights and obligations"[5].

According to T. Vilkova and S. Nasonov, "the evidentiary process is an activity regulated by criminal procedural law, aimed at establishing and documenting all the relevant circumstances of the case, on the basis of which the issue of criminal liability is to be determined"[6]. As stated by A. Belkin, "the evidentiary process is the activity of establishing, understanding, and substantiating the truth within criminal proceedings. Its essence lies in the collection, examination, use, and evaluation of evidence. From a procedural perspective, it is both a cognitive process and a process of legal validation"[7].

According to the author T. Reabinina, "the evidentiary process is the procedure of establishing all facts and circumstances through evidence that are relevant for resolving the criminal case. It consists of both pre-trial and trial activities, during which evidentiary methods are employed to obtain means of evidence from which actual proof is derived"[8].

According to the researcher Anca Ioana Negru, "the term evidence (proba) finds its semantic origin in the Latin verb *probo, -avi, -atum, -are*, which means "to prove", while *probatio* means "proof". Over time, the concept of *evidence in criminal proceedings* has been attributed various meanings. Primarily, as also reflected in its legal definition, evidence refers to factual elements that possess an informative or documentary character. At the same time, the term has been used to designate the means of evidence, the evidentiary procedure, and the result of the evidentiary process. The term *evidence* was also attributed the meaning of "an element capable of convincing the judge," thereby emphasizing the purpose of evidence—namely, its capacity to form the judge's conviction regarding the facts and circumstances relevant to the criminal proceedings"[9].

It has been concluded that the term *evidentiary process* is used within criminal procedure in two distinct senses: *primo*, to guarantee the establishment of judicial truth in a specific criminal case;

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[5] DOLEA, I. *Personal rights in criminal evidence: the concept of promoting the private element*. Chisinau: Cartea Juridică, 2009, p. 82. ISBN 978-9975-9927-7-0.
[6] VILKOVA, T. Y., NASONOV, S. A. *Principle of participation of citizens in the implementation of justice in criminal proceedings*. Moscow: Yurait, 2021, p.93. ISBN 978-5-534-04947-3
[7] BELKIN, A. R. *Theory of evidence in criminal proceedings*. Moscow: Norm, 2005. p.4. ISBN: ISBN 5-89123-323-1. [online]. Available at: https://library.nlu.edu.ua/POLN_TEXT/UP/BELKIN_1999.pdf.
[8] REABININA, T.K. *Activities of the court in appointing and preparing a criminal case for trial in the mechanism of the exercise of judicial power*. Moscow: Yurlitinform, 2021, p.53. ISBN 5439621474.
[9] NEGRU, A. I. *Administration and evaluation of evidence in criminal proceedings*. Bucharest: Universul Juridic., 2022. p. 17. ISBN 978-606-39-0827-9.

and *secondo*, to ensure the protection of the fundamental rights of the participants in the proceedings. The second meaning of the evidentiary process is closely tied to the principles of equality of arms and adversarial proceedings. Respect for the principle of equality of arms forms the foundation for a proper understanding of the concept, purpose, and essence of criminal evidence, thereby ensuring a fair trial in which the rights of all parties are protected and upheld.

With regard to the concept of evidence, it has been observed that its semantic origin lies in the Latin verb *probo, -avi, -atum, -are*, which means "to prove", while *probatio* means "proof". Over time, the concept of evidence in criminal proceedings has been attributed various meanings. Primarily, as reflected in its legal definition, it refers to factual elements that possess an informative or documentary character. At the same time, the term has been used to designate the "means of evidence", the "evidentiary procedure", and the "result of the evidentiary process". Furthermore, the term "evidence" was also assigned the meaning of "an element capable of convincing the judge", meaning that it also refers to the final purpose of evidence, namely, its ability to form the judge's conviction regarding the facts and circumstances relevant to the criminal proceedings".[10]

It has been established that the polysemous nature of the In Italy, for example, the term "*prova* („evidence") can have at least 4 meanings: *fonte de prova* („source of evidence"), *mezzo di prova* („means of evidence"), *elemento di prova* („element of evidence", which, according to the doctrinal understanding, can be equated to a factual element) and *risultato probatorio* („evidentiary result")"[11]. The term *evidence* has at least three meanings in France. Most commonly, it is used to refer to the operation of *faire la preuve* (proving the facts). The term is also attributed the meaning of means of evidence (*moyen*), when it is used within the process to obtain evidence (*apporter une preuve*). Additionally, the term evidence is used in connection with the result of the evidentiary process (*résultat*)[12]. In American law, where evidence is treated as a "distinct matter (evidence), a definition of evidence has been provided, in the sense of "means of proof" and "element of fact": Any matter, verbal or material, which may be used to prove a *factual proposition*"[13].

Following a thorough analysis of the quality of evidence, several requirements regarding the admissibility of evidence in criminal proceedings have been identified: 1) the administration of evidence by a processual subject competent to do so; 2) the exclusive use of means of evidence provided by Article 93 of the Criminal Procedure Code; 3) compliance with the provisions of Article

[10] POP, T. *Criminal Procedure Law, General Part*. Vol. III. Cluj: Ed. National Typography JSC, 1946, p. 158-159. ISBN: 978-606-673-118-8.
[11] NEGRU, A. I. *Administration and evaluation of evidence in criminal proceedings*. Op.cit., p. 18.
[12] *Ibidem*, p. 18.
[13] *Ibidem*, p. 19.

97 of the Criminal Procedure Code, which require that evidence be obtained from concrete and legal sources; 4) the collection of evidence in strict accordance with the procedure established for each procedural action; 5) the inadmissibility of evidence containing data of unknown or uncertain origin; 6) the prohibition of using information not formally recorded as evidence in the case (e.g., situations where the court relied solely on operational information that was not officially recorded); 7) the cumulative fulfillment of the requirements for relevance, conclusiveness, utility, and truthfulness of the evidence.

It has been concluded that the issue of the admissibility of evidence is not a concern of the European Court of Human Rights (ECtHR), as it does not rule on errors of fact or law alleged to have been made by the courts of a state party to the European Convention on Human Rights, except in cases where such errors may have violated the rights and freedoms guaranteed by the Convention.

The court is required to base its decision solely on those pieces of evidence to which all parties have had equal access during the examination, and to provide reasoning in its ruling regarding the admissibility or inadmissibility of all the evidence presented. Given the court's obligation to evaluate all the evidence examined during the trial, it must not only highlight the evidence on which a conviction is based but also justify its decision regarding why certain evidence cannot be considered, having been declared inadmissible.

Chapter 3, entitled ***Factors influencing the evaluation of evidence by the court***, discusses the main factors identified that condition the court's evaluation of evidence, particularly: the evaluation of evidence based on the law, the evaluation of evidence within an adversarial process, and the judge's intimate conviction.

The evaluation of evidence in criminal proceedings represents "the main subject that the participants in the criminal process develop throughout its course, and ultimately, the judge delivers a ruling based on their personal conviction, formed after examining all the evidence presented, while respecting the rights and interests of the parties involved"[14].

In some recent doctrinal sources, it is argued that "there is no completely free evaluation of evidence. The main arguments focus on the fact that the court is bound by certain facts and events that do not require proof, such as generally known rules, legal presumptions, and facts that are notorious, recognized by all, and universally accepted in society"[15].

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[14] **LUPASCO, L.** Evaluation of Evidence in the Issuance of Decisions to Bring the Criminal Case to Trial. In: Journal of the National Institute of Justice, 2021, no. 3(58), pp. 35-40. ISSN 1857-2405.

[15] CRISU, A. *Criminal procedural law. General part according to the new Criminal Procedure Code*. 2nd edition, revised and updated. Bucharest: Hamangiu, 2017. p. 342, ISBN 978-606-27-0783-5.

We share this viewpoint, as the judge exercises a certain degree of discretion in evaluating the evidence; however, this margin is strictly defined by the applicable legal framework. The mentioned limitation is also reflected in the need to correlate legal provisions that require adherence to clear principles and rules, intended to rigorously guide the process of evidence evaluation.

Article 27 of the Criminal Procedure Code stipulates that "the judge evaluates the evidence in accordance with their own conviction, formed after examining all the evidence presented", while Article 98, paragraph (1) of the Criminal Procedure Code establishes that "facts and circumstances that do not need to be proven are those that are *universally acknowledged*, as well as those arising from the natural progression of circumstances during the examination of criminal cases". The process of *evaluating evidence at the trial stage* is central to the entire activity of the court. We believe that the result of the intense activity carried out by the criminal prosecution body in the process of gathering evidence is reflected in the decision made by the court, which is essentially based on the evaluation of evidence during deliberation. The evaluation of evidence is crucial for resolving the case, both in the criminal and civil aspects, and is carried out in accordance with the principle of free evaluation of evidence and the principle of discovering the truth. Thus, during the deliberative process, the court must identify, through an analytical and synthetic approach, the factual elements derived from each piece of evidence, confront them with one another, and, ultimately, base its decision only on those pieces of evidence that corroborate, excluding the others.

The concept of *adversarial proceedings* and its positioning within the context of the right to a fair trial, viewed through the lens of the right to defense, has been addressed. A significant aspect was the study of the roles of the prosecution and the defense within the criminal process, highlighting the duties of each party within this process. The main focus of the research was on the role of the court in the adversarial criminal process and how it evaluates evidence.

Finally, the regulations and doctrinal opinions regarding the influence of the judge's inner conviction in the process of evaluating evidence and in adopting the verdict were analyzed.

The procedural-criminal framework contains a series of rules that highlight the essence of the concepts of *free evaluation of evidence* and the *judge's intimate conviction*. These principles are derived from the content of Article 26 of the Criminal Procedure Code, which establishes that "in the administration of justice in criminal cases, judges are independent, subject only to the law, and judge the materials and criminal cases in accordance with the law and their own conviction, based on the evidence examined during the judicial procedure. The judge must not be predisposed to accept the conclusions made by the criminal investigation body to the detriment of the defendant or to start the

judgment with the preconceived idea that the defendant has committed the offense that is the subject of the accusation". Article 27 of the Criminal Procedure Code stipulates that "the judge evaluates the evidence in accordance with their own conviction, formed after examining all the evidence presented", while the provision of Article 100, paragraph (4) Criminal Procedure Code states that "the evidence presented in the criminal case shall be verified from all aspects, completely and objectively". Additionally, the legislator has regulated that "the verification of evidence consists of analyzing the evidence presented, corroborating it with other evidence, presenting new evidence, and verifying the source from which the evidence originates".

The most relevant moment for the evaluation of evidence is manifested "during the final deliberation, when the court must form its own opinion on the body of evidence presented throughout the criminal trial. It is essential that, at this point, the court bases its conclusions on an objective and thorough evaluation of the evidence, taking into account not only its formal aspects but also the specific context in which it was presented"[16]. Since "the sentence pronounced can radically affect the lives of individuals, the judge must have full knowledge of the reality of all the circumstances of the criminal case, so that they can be certain the sentence they will pronounce is a just one"[17].

The judge must be independent when assessing evidence.

At international level, there are a number of legal instruments that have enshrined and developed guarantees of the independence of judges, which is an important prerequisite to support the process of weighing evidence according to their own conviction.

According to the Bangalore Principles, "the judge must exercise his or her judicial function independently, on the basis of his or her own judgment of the facts and in accordance with the spirit of the law, free from outside influence, suggestion, pressure, threat or any interference, direct or indirect, from whomsoever and by whatever motive"[18].

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[16] **LUPAȘCO, L.** The concept of "free appraisal of the evidence" versus the concept of "the judge's intimate conviction". In: *National Law Journal*, 2020, no. 10-12(240-242), pp. 81-91. ISSN 1811-0770, p. 83. [online]. Available at: https://ibn.idsi.md/sites/default/files/imag_file/81-91_4.pdf

[17] *Ibidem*, p. 83 – 84.

[18] The draft Bangalore Code of Judicial Conduct 2001, adopted by the Judicial Group for Strengthening the Integrity of Justice, as revised at the Round Table of Chief Justices of the Supreme Courts held at the Peace Palace, The Hague, November 25th – 26th, 2002. [online]. Available at: https://www.unodc.org/res/ji/import/international_standards/bangalore_principles/bangalore_principles_romanian.pdf

In the Recommendation of the Committee of Ministers of the Council of Europe to member states on judges, it was stated that "all persons connected with a case, including public bodies or their representatives, must be subject to the authority of the judge"[19].

At the same time, the evaluation of evidence according to the judge's personal conviction must not be confused with evaluation based on impression, which is the result of emotional perceptions. Likewise, the free evaluation of evidence does not mean arbitrariness, but rather the freedom to assess the evidence reasonably and impartially. The results of the evaluation are presented by the court in procedural acts, which must be objectively and thoroughly reasoned in accordance with the law. Such reasoning is reflected in the obligation of the judge to state the factual and legal grounds for admitting some evidence and rejecting others.

The question of the *judge's own conviction* has also been considered by the judges of the European Court of Justice. Thus, in *Demicoli v. Malta* [20], the ECtHR noted with reference to fair trial guarantees: „The European Court has established that a judge's impartiality is assessed both according to a subjective approach, which takes into account the judge's *personal convictions* or interests in a case, and according to an objective test, which determines whether the judge has provided sufficient guarantees to exclude any reasonable doubt on this point. *Subjective impartiality* is presumed until proven otherwise, whereas objective impartiality consists in analyzing whether certain verifiable circumstances give rise to suspicions of lack of impartiality. Judges must also have unfettered freedom to decide cases impartially, in accordance with the law and their *own appraisal of the facts*".

The Venice Commission stated that "a judge *is free to state his opinion, to establish the facts* and to apply the law in all matters according to *his own conviction*, and is not obliged to justify himself to anyone, not even to other judges and/or the chairman of the court, for the way he has understood the law and established the facts"[21].

Analyzing all of the above, we can conclude that the phrase "the judge's intimate conviction" must always be treated from the point of view of two sides: the subjective and the objective. The first is an amalgam of human factors: psychology, emotion, character; while the objective side is the legal

[19] Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities. [online]. Available at: https://juridicemoldova.md/wp-content/uploads/2019/12/RecomandareaCMRec2010.pdf.

[20] ECtHR judgment in Demicoli v. Malta of August 27th, 1991. [online]. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57682%22]}

[21] Amicus Curiae Opinion for the Constitutional Court of the Republic of Moldova on the criminal liability of judges, adopted by the Venice Commission at its 110th Plenary Session (Venice, March 10th - 11th, 2017). [online]. Available at: https://www.constcourt.md/public/files/file/comisia_venetia/Amicus_Curiae_raspunderea_judectorilor_2017_CDL-AD2017002-e_rom_002.pdf [citat 23.11.2020].

vector. These two components are interdependent. However, in shaping a correct decision, the law will be the basis of the judge's subjective judgment[22].

Chapter 4, entitled ***Procedural form and outcome of the evaluation of evidence by the trial court***, analyzes the process of evaluation of evidence at different stages of the trial on the merits of criminal cases in the general procedure and in certain special procedures.

The trial phase is considered the main stage of the criminal process, being essential due to the mandatory and adversarial examination of the evidence presented by the parties, conducted by the court. During this phase, the court resolves the criminal law dispute by determining the guilt of the individual and applying a criminal sanction, or, if guilt is not established, by rehabilitating the person through the pronouncement of an acquittal.

It is important to note that at the pre-trial stage of the criminal case, the court will only comment on the relevance of the evidence submitted by the parties and will decide which evidence to present at the trial. It is at the pre-trial hearing that the court will decide on the relevance of the evidence presented and decide which evidence should be admitted in the case on the merits[23].

It was concluded that the purpose of the preliminary hearing is to resolve, with the participation of the parties, the issues related to the opening of the case, without going into the merits of the case.

During the judicial investigation, an objective evaluation of all the evidence is carried out, including that presented by both the prosecution and the defense, as well as any evidence that may impact the aggravation or mitigation of the defendant's liability. Thus, the purpose of this stage is to conduct a thorough and comprehensive examination of the evidence submitted by the parties, in order to allow the judge to form an intimate conviction regarding the essential aspects of the case to be resolved.

Article 314 paragraph (1) of the Criminal Procedure Code obliges the court that, "during the trial of the case, it must directly and thoroughly examine the evidence presented by the parties or administered at their request, including hearing the defendants, injured parties, and witnesses; examining physical evidence; reading judicial expert reports, minutes, and other documents; as well as reviewing other evidence provided for in this code".

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[22]**LUPASCO**, **L.** Free appraisal of evidence - the area of manifestation of the principles of independence and impartiality of the judge. In: *Realities and perspectives of national legal education:* The collection of communications, October 1st-2nd, 2019, Chisinau: CEP MSU, 2019, Vol.2, p. 604. ISBN 978-9975-149-88-4.

[23] **LUPASCO, L**. The evaluation of evidence in adopting decisions to bring the criminal case to trial. In: *Journal of the National Institute of Justice*, 2021, no. 3(58), p. 40. ISSN 1857-2405.

In the case of *Škaro v. Croatia*[24], paragraph 23-24, the ECtHR has noted that "the principle of immediacy represents an important safeguard in criminal proceedings, in which the observations made by the court regarding a witness's behavior and credibility may have significant consequences for the defendant. Furthermore, the Court held that, according to the principle of immediacy, in a criminal trial, the judgment must be delivered by the judges who were present during the proceedings and the taking of evidence. However, it cannot be considered that this constitutes a prohibition on changing the composition of the panel of judges during a trial. There may be very evident administrative or procedural factors that make it impossible for a judge to continue participating in a case. Moreover, measures can be taken to ensure that the judges who continue to hear the case have properly understood the evidence and arguments, such as by ensuring the availability of witness statements in written form, provided the credibility of the witnesses in question is not disputed, or by conducting new hearings of relevant arguments or key witnesses before the newly formed panel".

During the deliberation, the judge drafts the sentence through a complex set of analytical actions, and at the stage of adopting the sentence, the judge gives the sentence the form provided by the criminal procedural norm[25]. The adoption of the sentence in the name of the law increases the authority of this act, as well as the judge's responsibility regarding the pronouncement of an unfounded decision. In this regard, it has been noted that the sentence issued in the name of the law is, in fact, similar to the law in terms of its obligatoriness for the individuals it targets.

The evaluation of the evidence that forms the basis for the pronouncement of a sentence is an essential dimension of judicial activity, involving a rigorous analytical approach grounded in the fundamental principles of criminal procedure. This process requires an objective, integrative, and thorough evaluation of the entire body of evidence, ensuring the effective protection of the rights and legitimate interests of the parties involved in the case.

The court is obligated to explicitly and thoroughly justify the reasons for accepting or rejecting evidence, regardless of whether it was presented by the prosecution or the defense. The evaluation of evidence must encompass both the means of proof administered during the investigation phase and those obtained during the trial. This must be done within a framework of legality and procedural equality between the parties, ensuring the formation of a conviction that aligns with the legal requirements.

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[24] ECtHR judgment in *Škaro v. Croatia* of December 6th, 2016. [online]. Available at: http://hudoc.echr.coe.int/eng#%7B%22itemid%22:%22001-158431%22%7D

[25] **LUPASCO, L.** The court judgment - the final act of weighing the evidence. In: *Offense - Criminal liability - Punishment. Law and Criminology*. 1st edition, March 25th – 26th, 2021, Chisinau: CEP USM, 2021, p. 682. ISBN 978-9975-158-12-1.

When adopting the sentence, the court shall resolve a number of issues in the consecutive order provided for by Article 385 of the Criminal Procedure Code.

When analyzing the issue of whether the act the defendant is accused of committing actually took place, the court is obligated to determine whether the act that was the subject of the criminal investigation and judicial inquiry truly occurred. A negative answer to this question renders the examination of the other matters provided for in Article 385 of the Criminal Procedure Code unnecessary. If the court concludes that the act did not occur, it must issue a judgment of acquittal.

In deciding whether the act was committed by the defendant, authors emphasize that "it is absolutely necessary for the evidence presented in court and assessed by it to confirm with certainty that it was indeed the defendant who committed the act (action or omission) of which they are accused, and that this act is the result of their active or passive conduct. Doubts are not admissible in this case, and if any exist, then, in accordance with the presumption of innocence, they must be interpreted in favor of the defendant. If the answer to this issue is negative, the court must issue a judgment of acquittal with respect to the defendant"[26].

When deliberating on the defendant's guilt regarding the alleged criminal offense, the court must mandatorily establish the existence of guilt as a constitutive element of the criminal act. In this regard, it is necessary to determine the form of guilt—intent or negligence—and to exclude the existence of a fortuitous event. In the absence of guilt, which is an essential characteristic of criminal liability, the court is obliged to acquit the defendant, in accordance with the principle of the presumption of innocence and the provisions of Article 8 of the Criminal Procedure Code.

Thus, in order to reach a verdict, the court performs a final evaluation of the evidence presented. The judge's personal conviction, which is reflected in the court ruling, is not formed exclusively in the deliberation chamber at the moment the questions set by the legislator under Article 385 of the Criminal Procedure Code are answered, but rather takes shape progressively throughout the entire court hearing.

The process of evaluating evidence is continuous and dynamic, culminating in the formation of the judge's personal conviction, as reflected in the final decision. The essential part of the judgment is the descriptive and reasoning section, in which the court not only presents the factual circumstances of the case but also rigorously analyzes each piece of evidence submitted, basing its conclusions on

[26] DOLEA, I., ROMAN, D., SEDLETCHI, I., VIZDOAGA T. et al. *Criminal Procedural Law*. 3rd edition, revised and completed. Chisinau: Cartea Juridică, 2009. p. 222, ISBN 978-9975-78-833-5.

all matters requiring resolution. This detailed reasoning essentially reflects the core of the court's activity and expresses the rationale behind the final decision.

The paper addresses relevant issues identified in judicial practice, offering a detailed analysis and concrete proposals for remedy. Numerous case studies from jurisprudence are presented, illustrating the inconsistent application of procedural criminal law provisions in the area analyzed, thereby highlighting the need for doctrinal clarification and uniform application of legal norms.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The scientific results obtained from the research conducted within the doctoral thesis entitled *Evaluation of the evidence when adopting the solutions of the trial court* are appropriately reflected in the following aspects: the theoretical approach to the notion of *evidentiary process* and the adaptation of its essence to judicial practice (47, pp. 57–66); definition of the notion of *evidence* and the description of the importance of its classifications directly within the process of evidence evaluation by the authorized subjects, especially by the court, in the trial of the criminal case on the merits (48, pp. 66–91); identification of cases involving the invalidation of illegally obtained evidence (40, pp. 91–115); correlation of the principles of legality and adversarial proceedings with the process of evidence evaluation, along with a detailed analysis of national judicial practice and that of the ECtHR (41, pp. 119–131; 131–143); revealing the essence of the concept of the judge's *intimate conviction* and highlighting its direct and immediate influence on the process of evidence evaluation, describing the limits of the judge's inner conviction in the process of evidence evaluation (42, pp. 142–154); identification of the particularities of evidence evaluation during the examination of the case in substance (43-45, pp. 158-204); evaluation of evidence in simplified procedures, evaluation of evidence in general procedures, identifying cases that generate duplicative solutions regarding the type of sentence adopted (pp. 154-204); development of proposals and recommendations for amending and completing the legislation in the field of evidence evaluation (pp. 184-190).

This scientific endeavor has contributed to solving the ***major scientific issue*** that lies in the conceptualization of the institution of evidence evaluation when adopting decisions in the court of first instance. This process has led to clarifying, for both theorists and practitioners in the relevant field, the conditions for assessing evidence in the court of first instance, with the aim of rationalizing the procedural law doctrine in this area, through the formulation and argumentation of recommendations and proposals for future legislation.

The major scientific issue was highlighted through the ***conclusions*** formulated based on the research hypothesis, as follows:

1. After the ratification of the European Convention on Human Rights and Fundamental Freedoms by the Republic of Moldova on July 24, 1997, the entire spectrum of fundamental rights and freedoms of the litigant in criminal proceedings underwent significant development, particularly through the lens of guaranteeing the right to a fair trial. This evolution was driven by the need to adapt the national legal system to European standards concerning criminal justice and to complement the procedural-criminal regulatory framework with the guarantees stipulated in Article 6 of the ECHR (Chapter 2, Subchapter 2.2.);
2. The evaluation of evidence in the trial phase of a criminal case is carried out based on the law and the judge's intimate conviction. The court has the obligation to verify all the evidence presented by the parties, in order to determine their admissibility, relevance, conclusiveness, and usefulness. For the evidence to be admitted, it must comply with the law (admissibility); be related to the object of the criminal case (relevance); present value for resolving the criminal case (conclusiveness); and be necessary for the administration of the evidence (usefulness). Another attribute of evidence evaluation is the criterion of veracity, which, in our opinion, refers to authenticity and the degree to which the evidence corresponds to the truth, to reality (Chapter 2, Subchapter 2.1.);
3. The realization of criminal justice requires that judges base their decisions not on probabilities, but on certainties obtained on the basis of evidence capable of reflecting the objective reality of the criminal act charged. The legislator imposes on the court the obligation to adopt the sentence exclusively on the basis of the evidence examined during the trial, weighing in corroboration both the prosecution and defense evidence (Chapter 2, Subchapter 2.2.);
4. From the point of view of the classification of evidence, a criterion of practical relevance in application consists in distinguishing between direct and indirect evidence. In assessing the evidence, the court is obliged to apply this criterion, having regard to the credibility, objectivity and persuasiveness of each piece of evidence. It is important to emphasize that direct evidence can, on its own, form the basis of a conviction, whereas indirect evidence can only be applied in conjunction with other factual elements relevant to the case (Chapter 2 Subchapter 2.3.);
5. The evaluation of the evidence when the trial court reaches its decision must be carried out *beyond reasonable doubt*, this requirement being a fundamental component of the right to a fair trial. That standard, which is an integral part of the right to a fair trial and of the onus on

the prosecution to prove all the elements of guilt in a way that removes all doubt, can only be fully understood by reference to the principle *in dubio pro reo*, which is an essential guarantee of the presumption of innocence (Chapter 2, Subchapter 2.1.);

6. The following procedural-criminal sanctions are distinguished for obtaining evidence unlawfully: *nullity* - which invalidates the procedural acts drawn up without complying with the legal provisions; *inadmissibility* - which ensures compliance with the legality by excluding actions not permitted by law and *exclusion*. If at the stage of the criminal prosecution, the exclusion of evidence takes place with the physical removal of the evidence from the case file, at the stage of the trial, the physical exclusion of evidence is impossible, and the court will disregard it. Moreover, the impossibility of the physical exclusion of evidence from the case file by the court does not lead to a violation of the right of the accused to be presumed innocent (Chapter 2, Subchapter 2.4.);
7. The contradictory nature of the court's evaluation of evidence refers to the analysis of contradictory positions on the same factual circumstances. In the case of contradictory statements made by the defendant during different stages of the criminal proceedings, the court has a clearer situation, as it is obliged to evaluate them and give priority to those that are supported by other evidence in the case file. A more complex problem arises, however, when two or more forensic expert reports with different conclusions are carried out on the same fact. In this situation, the court has to assess all the expert reports, and the difficulty lies in the fact that these conclusions are based on the specialized knowledge of the expert. Thus, assessing the veracity of the information and conclusions of the report requires advanced professional skills on the part of the judges. In case of doubt, in order to adopt a correct and well-founded solution, the court will resort to expert hearings or repeated expert opinions in order to clarify contradictory positions (Chapter 3, Subchapter 3.2.);
8. The principles governing the court's evaluation of evidence must be in accordance with the law, and the court, as the authority responsible for upholding the principle of legality in the evaluation of evidence, is obliged to adopt solutions that reflect the fairness and equity of the justice process. In this respect, the court must ensure that justice is perceived as such, so that every person who has had contact with the justice system is convinced that justice has been truly done (Chapter 3, Subchapter 3.1.);
9. The defendant's admission of guilt can form the basis of a conviction only to the extent that it is corroborated by other evidence given and assessed by the court (Chapter 3, Subchapter 3.1.);

10. The process of evaluating evidence must respect certain fundamental principles, such as legality, adversarial proceedings, and equality of arms in the trial. These principles ensure the objectivity of the evidence evaluation. At the same time, the law allows evidence to be evaluated based on the judge's intimate conviction, an element that introduces a certain degree of subjectivity in each individual case. However, the judge's intimate conviction is limited by legal norms, and exceeding these limits may lead to sanctions against the judge (Chapter 3, Subchapter 3.3.);
11. The court is obliged to base its judgment exclusively on evidence to which all parties have had equal access and to provide reasoning in the judgment for the admissibility or inadmissibility of each piece of evidence presented. The adversarial nature of the evidence evaluation process is clearly manifested when the court assesses the prosecution's evidence in relation to that of the defense (Chapter 3, Subchapter 3.1.);
12. The free evaluation of evidence does not imply arbitrariness but entails the freedom to assess the evidence in a reasonable and impartial manner. The results of this evaluation are presented by the court in procedural documents, generally referred to as *judgments*, which must be objectively reasoned in all aspects, in accordance with legal provisions (Chapter 3, Subchapter 3.3.);
13. During the preliminary hearing, the court must decide, after hearing the parties' opinions, on the relevance of the proposed evidence and determine which of these will be presented during the trial. The decision regarding the relevance of the evidence is limited to establishing, based on the submitted list of evidence, which items are related to the criminal case under examination. Thus, according to the legal framework, the court does not rule on the admissibility of the evidence or on requests to declare certain pieces of evidence null and void during the preliminary hearing, as these matters exceed the court's competence at this stage of the proceedings (Chapter 4, Subchapter 4.1.);
14. The court's evaluation of the evidence during the judicial investigation stage is made from the perspective of the parties concerning its sufficiency. The evaluation of the sufficiency of evidence involves both a quantitative and qualitative analysis of the evidence presented. The evidence is considered sufficient when, viewed as a whole, it enables the court to form a clear opinion or conviction regarding the circumstances of the case, the defendant's guilt, and other relevant aspects of the case (Chapter 4, Subchapter 4.2.);
15. Until the conclusion of the judicial investigation, the parties may request the administration of

new evidence if the judicial investigation reveals the existence of additional means of proof that could contribute to establishing or verifying relevant circumstances in the criminal case. After hearing the opinions of the parties involved, the court shall decide, through a reasoned ruling, either to continue the trial or to postpone it in order to administer the new evidence. When considering such a request or application, the court may reject the request for new evidence in the following situations: a) the evidence is irrelevant; b) it has been established that sufficient evidence has been adduced for the facts and circumstances to be proved; c) the evidence is not necessary, as the fact is common knowledge; d) the evidence is unobtainable; e) the taking of the evidence is contrary to law (Chapter 4, Subchapter 4.2.);

16. The judgment is the final act of the trial, which must be legal, well-founded and reasoned. It shall be considered *lawful* when it is pronounced and drafted in strict compliance with the law of criminal procedure and criminal law. It is *well-founded*, when the solution correctly reflects the circumstances of the criminal case. It is *reasoned*, when it sets out the factual and legal circumstances of the criminal case, evaluates the evidence and formulates the court's conclusions (Chapter 4, Subchapter 4.3.);
17. The court's evaluation of the evidence manifests itself, depending on the case, in the form of convictions, acquittals or termination of criminal proceedings, each of which is the result of a detailed evaluation of the evidence adduced in the judicial proceedings (Chapter 4, Subchapter 4.3.).

Description of personal contributions, emphasizing their theoretical significance and practical value. The essence of evidence evaluation, evidentiary process, the limits of the judge's intimate conviction, the procedural form, and the outcome of evidence evaluation are subjects of a multifaceted and complex analysis. The concept of the *judge's intimate conviction*, essential in rendering a decision at the court of first instance, is based on both national and international doctrinal provisions, as well as on national judicial practice, the case law of the European Court of Human Rights, and judicial practice from the Chisinau Court, Buiucani seat, the Court of Appeal – Central sector, and the Supreme Court of Justice. The conclusions drawn are supported by these sources and reflect a detailed approach to the process of evidence evaluation in criminal justice. The doctoral thesis presents conclusions and recommendations of clear scientific novelty and originality, with a significant impact on improving the understanding and application of issues related to the evaluation of evidence, as well as on the improvement of criminal procedural regulations in the context of the evaluation of evidence in the decision of the trial court. The proposals of *lege ferenda* have been duly

substantiated, reflecting the result of own research and conclusions, contributing to the theoretical development of the field. The thesis also includes valuable suggestions for the improvement of procedural-criminal work. Within the thesis, pertinent arguments are presented, which support the opinions of researchers in the field, while other aspects have been subjected to critical analysis and debate.

The novelty and scientific originality of the work also lies in the fact that the theoretical and practical-scientific aspects of the evaluation of evidence in the adoption of the solutions by the court of first instance have been examined. The examination of the essence and of all aspects of this relevant subject, which has so far been relatively little studied, allowed the formulation of conclusions, which, to a large extent, are characterized by novelty and originality, having a significant importance for the improvement of the practical work of judicial bodies, as well as for the development of criminal procedural legislation. Thus, the research meets the requirements of scientific novelty and originality.

The legal and empirical basis of the study is made up of the following sources: a) national criminal procedural law, which regulates the procedures for the evaluation of evidence at the trial on the merits of the case; b) judgments and decisions of the Constitutional Court, which contribute to the correct interpretation and application of constitutional rules in the context of criminal proceedings; c) national judicial practice in the field of the evaluation of evidence at sentencing in the trial court, which reflects the application of legal rules in concrete cases; d) criminal procedural rules in the legislation of foreign states, which provide a comparative perspective on the evaluation of evidence in international legal systems; e) the case law of the European Court of Human Rights, which ensures European standards in the field of fundamental rights, thus influencing national judicial practice on the evaluation of evidence.

The scientific basis consists of the works of national authors, as well as research and publications of authors from other countries, such as Romania, the Russian Federation, Ukraine and others, which address relevant issues related to the evaluation of evidence in criminal proceedings, the theory and practice of criminal procedure law, as well as international regulations in the field. These works form the theoretical foundation of the research and are used to analyze and compare national and international approaches to the issues studied.

The theoretical significance of the thesis lies in the fact that the results obtained are theoretically relevant in terms of identifying the particularities of the evaluation of evidence in the sentencing of the trial court, the importance of the freedom of appreciation of evidence in the decision of the case. The investigated topics are presented in a multiaspectual and detailed manner, reflecting

their content from a legal-organizational, theoretical and methodological point of view; the doctoral thesis expands and amplifies the knowledge in the science of criminal procedure regarding the evaluation of evidence in the sentencing in the trial court, the results of which can be used in further research in the field of evaluation of evidence.

Practical value of the thesis: the doctoral thesis is a complex research dedicated to the evaluation of evidence in the trial court. The proposals formulated in the thesis are intended to contribute to the improvement of the criminal procedural legislation, and the practical recommendations, supported by sound arguments, will be useful to practitioners in order to correctly apply the legal norms and to standardize judicial practice. In addition, the content of the doctoral thesis can be used as teaching material in the initial and in-service training of law specialists, providing a solid basis for deepening knowledge in this area of criminal procedural law.

Data on results approval. The scientific results of the doctoral thesis were disseminated in scientific articles, presentations at conferences and other forums, as well as in the work as a judge in the Chisinau Court, Buiucani seat.

Indication of the limits of the results obtained, with the identification of outstanding issues. The limitations of the results obtained are summarized in the research on the subject of the evaluation of evidence in the adoption of solutions by the appellate and cassation courts.

Recommendations:

In order to improve the criminal procedural legislation in this field, as well as to standardize judicial practice, we submit the following recommendations *de lege ferenda*:

The modification of the content of Article 251^2 paragraph (2) of the Criminal Procedure Code of the Republic of Moldova (CPP RM), so that it allows the court to invoke relative nullity ex officio:

„Relative nullity can be invoked by the prosecutor, the suspect, the accused, the defendant, or other parties, if they have a personal procedural interest in the observance of the violated legal provision, ***or ex officio, by the court****."*

This amendment aims to grant the court the possibility to identify and invoke relative nullity, even in the absence of an explicit request from the parties involved, in order to ensure and protect the fundamental rights of individuals involved in the criminal process.

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10. **LUPASCO, L.** Procedural issues in criminal cases involving minors. In: *The superior interest of the child: socio-cultural, normative and jurisprudential approach*. Volume I, September 30th - October 1st, 2022, Chisinau: CEP MSU, 2022, Volume I, pp. 357-369. ISBN 978-9975-62-504-3. https://doi.org/10.5281/zenodo.7643385.

ADNOTARE

LUPAȘCO Lilia, „Aprecierea probelor la adoptarea soluțiilor instanței de fond”, teză de doctor în drept la specialitatea: 554.03 - Drept procesual penal. Chișinău, 2025

Structura tezei: introducere, patru capitole, 190 pagini text de bază, concluzii generale și recomandări, bibliografia din 171 de titluri. Rezultatele obținute sunt publicate în 10 lucrări științifice.

Cuvinte-cheie: *probe, apreciere, instanță de judecată, judecare în fond, sentință, deliberare.*

Scopul lucrării: Studiul de față își propune o analiză detaliată a instituției aprecierii probelor în cauzele penale, realizată de instanța de judecată în faza judecării în fond, având ca obiectiv identificarea aspectelor relevante ce pot contribui atât la perfecționarea legislației procesual-penale, cât și la aprofundarea cunoștințelor teoretice și practice ale specialiștilor din domeniul juridic.

Obiectivele cercetării: analiza materialelor științifice referitoare la aprecierea probelor la judecarea cauzelor penale în fond; identificarea esenței și conținutului probatoriului în cauzele penale; determinarea importanței probelor și a conceptului general; cercetarea invalidării probelor obținute în mod nelegal în cauzele penale; identificarea și determinarea factorilor care influențează aprecierea probelor și a mecanismelor de apreciere a probelor de către instanța de judecată; relevarea conceptului propriei convingeri a judecătorului la aprecierea probelor în cauzele penale; cercetarea practicii judiciare naționale și internaționale în domeniul aprecierii probelor la judecarea cauzelor penale în fond; analiza particularităților de apreciere a probelor la etapa de pregătire a cauzei spre judecare; relevarea particularităților de apreciere a probelor la cercetarea judecătorească; determinarea actului final al aprecierii probelor în instanța de fond; identificarea carențelor și lacunelor în domeniul ce vizează aprecierea probelor și formularea propunerilor *de lege ferenda*.

Noutatea și originalitatea științifică a lucrării constă în faptul că au fost examinate aspectele teoretice și științifico-practice ale aprecierii probelor la adoptarea soluțiilor de către instanța de fond. Examinarea esenței și a tuturor aspectelor acestui subiect pertinent, deocamdată relativ puțin studiat, a permis formularea unor concluzii, care, în mare măsură, sunt caracterizate de noutate și originalitate, având o importanță semnificativă pentru îmbunătățirea activității practice a organelor judiciare, precum și pentru dezvoltarea legislației procesual penale. Astfel, cercetarea realizată răspunde cerințelor de noutate și originalitate științifică.

Rezultatele obținute care contribuie la soluționarea unei probleme științifice importante rezidă în conceptualizarea instituției aprecierii probelor la adoptarea soluțiilor în instanța de fond, fapt care a condus la precizarea pentru teoreticienii și practicienii din domeniu a condițiilor de apreciere a probelor în instanța de fond, în vederea raționalizării doctrinei procesual-penale privind acest subiect prin formularea și argumentarea recomandărilor și a propunerilor *de lege ferenda.*

Semnificaţia teoretică se manifestă în faptul că prezenta lucrare de doctorat constituie o cercetare monografică, consacrată aprecieii probelor în instanța de fond.

Valoarea aplicativă: propunerile formulate de autor sunt menite să contribuie la perfecționarea legislației procesual-penale, iar recomandările practice, susținute prin argumente temeinice, vor fi de folos practicienilor, în vederea aplicării corecte a normelor legale și în scopul uniformizării practicii judiciare. În plus, conținutul tezei de doctorat poate fi utilizat ca material didactic în cadrul procesului de formare inițială și continuă a specialiștilor din domeniul dreptului, oferind o bază solidă pentru aprofundarea cunoștințelor în acest sector al dreptului procesual penal.

Implementarea rezultatelor ştiinţifice: Rezultatele științifice ale tezei de doctorat au fost diseminate în articole științifice, comunicări în cadrul conferințelor și al altor foruri, precum și în activitatea de judecător în cadrul Judecătoriei Chișinău, sediul Buiucani.

АННОТАЦИЯ

ЛУПАШКО Лилия, «Оценка доказательств при принятии решений суда первой инстанции», Кишинев, 2025 г.

Структура диссертации: *доказательства, оценка, судебная инстанция, рассмотрение по существу, приговор, обсуждение.*

Цель работы: заключается в детальном анализе института оценки доказательств в уголовных делах, проводимой судом на стадии рассмотрения дела по существу, с целью выявления актуальных аспектов, которые могут способствовать совершенствованию процессуально-уголовного законодательства и углублению теоретических и практических знаний специалистов в этой области.

Задачи исследования: включают анализ научных материалов, касающихся оценки доказательств при рассмотрении уголовных дел по существу; выявление сущности и содержания доказательств в уголовных делах; определение значимости доказательств и общего понятия; исследование недопустимости доказательств, полученных незаконным путем, в уголовных делах; выявление и определение факторов, влияющих на оценку доказательств, а также механизмов оценки доказательств судом; раскрытие концепции личного убеждения судьи при оценке доказательств в уголовных делах; исследование судебной практики как на национальном, так и на международном уровне в области оценки доказательств при рассмотрении уголовных дел по существу; анализ особенностей оценки доказательств на этапе подготовки дела к рассмотрению; выявление особенностей оценки доказательств на судебном разбирательстве; определение окончательного акта оценки доказательств на первой инстанции; выявление недостатков и пробелов в области оценки доказательств и выработка предложений по усовершенствованию законодательства.

Новизна и научная оригинальность работы: заключаются в том, что были изучены теоретические и научно-практические аспекты оценки доказательств при принятии решений судом первой инстанции. Исследование сущности и всех аспектов этой темы, которая, на наш взгляд, еще недостаточно изучена, позволило сделать выводы, которые, в значительной степени, характеризуются новизной и оригинальностью и имеют большое значение для улучшения практической работы судебных органов, а также для развития процессуально-уголовного законодательства. Таким образом, проведенное исследование отвечает требованиям научной новизны и оригинальности.

Полученные результаты, которые способствуют решению важной научной проблемы: заключаются в концептуализации института оценки доказательств при принятии решений судом первой инстанции, что привело к уточнению для теоретиков и практиков области условий оценки доказательств в суде первой инстанции, с целью рационализации процессуальной доктрины в этой области через формулировку и аргументацию рекомендаций и предложений по улучшению законодательства.

Теоретическое значение: диссертация представляет собой уникальное исследование, посвященное оценке доказательств в суде первой инстанции.

Практическая ценность: предложения автора направлены на совершенствование процессуально-уголовного законодательства, а практические рекомендации, обоснованные твердыми аргументами, будут полезны практикам для правильного применения юридических норм и унификации судебной практики. Кроме того, содержание диссертации может быть использовано как учебный материал в процессе первоначальной и непрерывной подготовки специалистов в области права, обеспечивая прочную основу для углубления знаний в этой сфере процессуального уголовного права.

Реализация научных результатов: Научные результаты диссертации были распространены в виде научных статей, докладов на конференциях и других форумах, а также в деятельности судьи в рамках Чишиневского суда, Буюканского района.

ANNOTATION

LUPASCO Lilia, "Evaluation of the evidence when adopting the solutions of the trial court", Doctor of Law thesis, Specialization: 554.03 - Criminal Procedural Law. Chisinau, 2025

Thesis structure: introduction, four chapters, 190 pages of main text, general conclusions and recommendations, bibliography consisting of 171 titles. The results obtained are published in 10 scientific papers.

Keywords: *evidence, evaluation, court, trial on the merits, judgment, deliberation.*

Purpose of the work: is to analyze in detail the institution of evidence evaluation in criminal cases, carried out by the court at the trial on the merits stage, with the aim of identifying relevant aspects that can contribute to the improvement of procedural-criminal legislation and the deepening of theoretical and practical knowledge of specialists in the field.

Research objectives: consist of analyzing scientific materials regarding the evaluation of evidence in criminal cases during the trial on the merits; identifying the essence and content of evidence in criminal cases; determining the importance of evidence and the general concept; researching the inadmissibility of evidence obtained illegally in criminal cases; identifying and determining the factors influencing evidence evaluation and the mechanisms of evidence evaluation by the court; highlighting the concept of the judge's personal conviction in evaluating evidence in criminal cases; examining national and international judicial practice in the field of evidence evaluation in criminal cases during the trial on the merits; analyzing the peculiarities of evidence evaluation at the stage of case preparation for trial; highlighting the peculiarities of evidence evaluation at the judicial investigation stage; determining the final act of evidence evaluation at the trial court level; identifying deficiencies and gaps in the field of evidence evaluation and formulating proposals for legislative improvements.

Scientific novelty and originality of the work: consists in the fact that both the theoretical and scientific-practical aspects of evidence evaluation in decision-making by the trial court have been examined. The examination of the essence and all aspects of this topic, which is still relatively under-researched, allowed for the formulation of conclusions that, to a large extent, are characterized by novelty and originality and have significant importance for improving the practical activity of judicial bodies, as well as for the development of procedural-criminal legislation. Thus, the research conducted meets the requirements for scientific novelty and originality.

The results obtained, which contribute to solving an important scientific problem: lie in the conceptualization of the institution of evidence evaluation in decision-making by the trial court, which led to the clarification for theorists and practitioners in the field of the conditions for evaluating evidence in the trial court, with the aim of rationalizing the procedural-criminal doctrine in this area through the formulation and argumentation of recommendations and proposals for legislative improvements.

Theoretical significance: the doctoral thesis represents a unique research dedicated to evidence evaluation in the trial court.

Practical value: the proposals made by the author are intended to contribute to the improvement of procedural-criminal legislation, and the practical recommendations, supported by solid arguments, will be useful for practitioners in correctly applying legal norms and for the unification of judicial practice. Furthermore, the content of the doctoral thesis can be used as teaching material in the process of initial and continuous training of legal professionals, providing a solid foundation for deepening knowledge in this area of procedural criminal law.

Implementation of scientific results: The scientific results of the doctoral thesis have been disseminated through scientific articles, presentations at conferences and other forums, as well as in the judge's activity within the Chișinău Court, Buiucani headquarters.

LUPASCO LILIA

EVALUATION OF THE EVIDENCE WHEN ADOPTING THE SOLUTION OF THE TRIAL COURT

Specialty 554.03 - Criminal Procedural Law

Summary of the Doctoral Thesis in Law

Approved for printing: _____2025 Format 60×84 1/16

Offset paper. Offset printing. Print-run 40 copies.

Printer sheets: 2,0. Order No. ___.

Editorial and Printing Center of MSU

60 A. Mateevici Street, Chisinau, MD 2009