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**Summary of the doctoral thesis in law**

# PROVIDING OF HUMAN RIGHTS WITHIN THE FRAMEWORK OF PREJUDICIAL STAGES: NATIONAL CRIMINAL PROCEDURAL REGULATION, EUROPEAN AND INTERNATIONAL PRACTICES

**Specialty 554.03 – CRIMINAL PROCEDURAL LAW**
**Summary of the doctoral thesis in law**

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

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## CONCEPTUAL MARKINGS OF THE RESEARCH

**The motivation of the choice of the topic.** The choice of theme was primarily influenced by personal aspects. Having experience as a criminal investigation officer, head of the criminal investigation body, lawyer and lecturer, the author was directly involved in various aspects of the criminal procedural activity. It has been an exploration from the study and detailed knowledge of the procedures, to their application in practice and the contribution to the training of future professionals of judicial bodies. This direct involvement reflects a deep passion for the legal field, with a special focus on the protection of human rights.

Furthermore, the Republic of Moldova is a candidate state for the European Union, which requires an alignment of the legal framework with European standards. Thus, the country undertook the responsibility to ensure respect for the rights and freedoms guaranteed by the Convention for all persons under its jurisdiction.

However, despite periodic legislative harmonization efforts, numerous human rights violations still persist. This deficiency has negative consequences on the consolidation of the rule of law, also confirmed by the numerous convictions at the European Court of Human Rights. The Republic of Moldova was forced to bear significant financial consequences, affecting the state budget.

Therefore, the issue of respecting human rights in the prejudicial stages of the criminal process remains a sensitive topic for the whole society. Researching this problem and solving the identified deficiencies would contribute to improving the quality of the judicial act, strengthening citizens' trust in state institutions, and would have a positive impact on the image of the Republic of Moldova at the European and international level.

**Actuality and importance of the topic addressed.** The Republic of Moldova orients its prospects towards European integration, assuming the fulfillment of the obligations that are imposed. One of the obligations of accession is the capacity of

internal justice to apply community creations, implicitly by respecting fundamental human rights and freedoms. As an alternative, by ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms, the Republic of Moldova undertook to ensure the observance of the rights and freedoms guaranteed by the Convention to all parties under its jurisdiction.

Despite periodic legislative harmonization, multiple violations of human rights are recorded, and this deficiency has a negative impact on the consolidation of the rule of law. This fact is also proven by the numerous convictions at the European Court of Human Rights, the Republic of Moldova being obliged to pay colossal amounts from the state budget. Thoroughly, that money could have been used for the development of the country, social protection, etc., instead, due to imperfect legislation, ineffective work of law enforcement authorities, corruption, those amounts were used to repair the harm to the people who were violated his rights and freedoms, especially in criminal proceedings. In addition to this, the Constitutional Court expressed itself on the unconstitutionality of several criminal procedure rules, including those applicable to pretrial stages, and the legislature is rather slow to come up with rigorous amendments and additions.

Along with the legal provisions that affect certain rights of the person, the COVID-19 pandemic also had a negative impact on the process of achieving justice, following the outbreak of which a series of restrictions were imposed by the authorities.

At the same time, it is worth mentioning the multiple changes to the Code of Criminal Procedure. Only this year the amendments and additions to the criminal procedural law came into force carried out by Law no. 316 of 17.11.2022 (in force from 09.01.2023)[1], Decision of the Constitutional Court no. 3 of

[1] Law No. 316 of 17-11-2022 for the modification of some normative acts (ensuring the rights of victims in the case of crimes related to sexual life and family violence). Published: 09.12.2022 in Monitorul Oficial No. 394-400 art. 737.

24.01.2023[2], Law no. 9 of 02.02.2023 (in force from 18.03.2023)[3], Law no. 52 of 16.03.2023 (in force from 24.03.2023)[4], Law no. 83 of 14.04.2023 (in force from 02.08.2023)[5], Law no. 245 of 31.07.2023 (in force from 22.08.2023)[6], Law no. 246 of 31.07.2023 (in force from 01.09.2023)[7].

Therefore, the issue of respecting human rights in the prejudicial stages of the criminal process remains a sensitive topic for the whole society, and its research, by solving the accumulated problems, will increase the quality of the justice act and the citizens' trust in the state institutions, as well as the image of the Republic Moldova at the European and international level.

The research project is determined by the lack of publicity and the non-contradictory nature of the prejudicial stages, which does not offer the possibility for society to carry out a control over the activities carried out, thus potential abuses and excesses in the sphere of respecting the rights of the person are not excluded. For this reason, the research project aims at the review and analysis of some guarantees that the parties benefit from, as

[2] DCC no. 3 of 24.01.2023 regarding the exception of unconstitutionality of article 321 paragraph (2) point 3) and paragraph (4) of the Code of Criminal Procedure *(the defendant's renunciation of the right to be present at the court hearing) (notification no. 129g/2022).* Published: 03.02.2023 in Monitorul Oficial No. 31-34 art. 14.

[3] Law No. 9 of 02.02.2023 for the modification of some normative acts. Published: 18.02.2023 in Monitorul Oficial No. 53-56 art. 98.

[4] Law No. 52 of 16.03.2023 for the implementation of the considerations of some decisions of the Constitutional Court. Published: 24.03.2023 in Monitorul Oficial No. 97-99 art. 150.

[5] Law No. 83 din 14.04.2023 for the modification of some normative acts. Published: 02.05.2023 in Monitorul Oficial No. 154 art. 240.

[6] Law No. 245 of 31.07.2023 for the modification of some normative acts (amendment of the Code of Criminal Procedure and Contravention Code). Published: 22.08.2023 in Monitorul Oficial No. 325-327 art. 579.

[7] Law No. 246 of 31.07.2023 for the modification of some normative acts (modification of the normative framework related to the reform of the Supreme Court of Justice). Published: 18.08.2023 in Monitorul Oficial No. 318-321 art. 570.

well as the assessment of their applicability by the competent state bodies.

The postdoctoral research project focuses on the realization of a complex research, both theoretically and practically, by systematizing national and international judicial practice in order to identify some legislative omissions that lead to violations of the person's rights in the prejudicial stage, as well as doctrinal analysis in order to highlight the key concepts of the subject.

Based on the research, proposals for a *lege ferenda* were submitted in order to improve the related normative framework, as well as there were identified solutions regarding the removal of vicious law enforcement practices, with the aim of strengthening the regime for ensuring human rights, on the one hand, and increasing the capacity of law enforcement, on the other hand, taking into account the demands of justice in a state of law.

Simultaneously, the study comes with rigorous proposals and arguments regarding the use of legal mechanisms to ensure and guarantee the rights of the parties in the process in relation to criminal investigations and the proportionality of the restriction of certain rights and freedoms, by pursuing a legitimate goal, ensuring a balance between the limitation of rights and freedoms with the legitimate aim pursued.

The guarantee of human rights is one of the basic tasks of a democratic society that tends to develop. The restriction of certain rights and freedoms can only take place if there is a legitimate purpose. The conviction of the Republic of Moldova at the ECtHR, the unconstitutional declaration of some procedural-criminal norms, the non-unitary application by the national courts of the same norms, the non-existence of a uniform judicial practice, the competition and the ambiguous interpretation of the procedural norms by different procedural subjects, etc., highlights the importance and necessity of an extensive investigation of the subject of human rights in the criminal process, especially at the preliminary stages. On the contrary, the respective stages

are determined by the lack of publicity and the limited quality of the adversarial nature, which does not offer the possibility for society to discharge control over the activities carried out as it happens during the trial phase of criminal cases.

The importance and necessity of respecting human rights at the prejudicial stages of the criminal process is also dictated by the opportunity to identify and eliminate the cases of conviction of the Republic of Moldova at the ECtHR, and to come up with effective proposals to anticipate new convictions, the erroneous non-application by state institutions of different approaches and interpretations of the procedural-criminal norms, the elimination of flawed evidence administration procedures, which would endanger the principle of trial fairness at the early stages of the process.

Not in the last resort, the importance and opportunity of researching the subject is determined by the need to identify legislative gaps that affect the guarantee of the rights and freedoms of the parties, as well as the need to develop effective tools to eliminate abuses by the people who carry out and lead the criminal investigation.

**Description of the situation in the research field and identification of research problems.** The field of human rights in the preliminary stage lacks domestic doctrinal research that would perfect and improve this segment of the entire criminal procedural activity. The rule of the *fruit of the poisonous tree* as a criminal procedural rule provides that the evidence is recognized as inadmissible if it was obtained on the basis of another evidence administered in violation of the legal provisions (art. 94 paragraph 5 of the Code of Criminal Procedure). Based on the previously mentioned, we support the opinion that in order to have probative value, the element of fact, ascertained through the means of proof provided by art. 93 paragraph (2) of the Code of Criminal Procedure must be administered with respect for the fundamental rights of the parties, otherwise the procedural sanc-

tion provided for in art. 94 and 251 of the Code of Criminal Procedure.

**Important scientific research problem** consists in the development of the framework of the concept regarding the protection of fundamental rights and freedoms within the prejudicial stages of the criminal process, a fact that allowed arguing the adjustment of the rules of criminal procedure to international and regional standards in the context of the European integration process. In this sense, *lege ferenda* recommendations were theoretically substantiated, as well as proposals for the establishment of good practices for the interpretation and application of criminal procedural guarantees regarding the respect of fundamental rights.

**The purpose and objectives of the work. The aim** of the thesis is the complex research of the international and national guarantors in the field of ensuring human rights in the prejudicial stages of the criminal process in order to assess the needs for improving the legislation and promoting good practices.

In order to achieve the goal, both theoretically and practically, the following **objectives** were drawn:

1. Identification of the causes of the conviction of the Republic of Moldova at the European Court of Human Rights for non-respect of the rights and freedoms of the participants in the trial, until the criminal file is submitted to the court.
2. Assessing the opportunity to change the vicious practices of interpretation and arbitrary application of criminal procedure rules contrary to international standards in respect of fundamental rights and freedoms.
3. Finding the circumstances that determine the erroneous, arbitrary or different application by the state institutions of the procedural-criminal rules that guarantee or limit human rights and freedoms at the prejudicial stage of the process;
4. The foundation of a consistent mechanism in order to ensure the proportionality between the limitation of human rights and freedoms and the legitimate aim pursued within the

criminal prosecution.

5. Elaboration of the concept of ensuring and guaranteeing the rights and freedoms of the participants in the preliminary stage of the criminal process, by identifying new grounds for applying the nullity of the legal act.

6. Evaluation of the opportunity to intervene with *lege ferenda* proposals in order to harmonize and streamline the activity of law enforcement bodies, with reference to the prejudicial stages of the criminal process.

**Research hypothesis**. The criminal procedural legislation in the Republic of Moldova, which ensures respect for fundamental rights and freedoms during the criminal investigation phase, must be in accordance with international treaties on human rights, the Constitution of the Republic of Moldova and Romania, the Decisions of the European Court of Human Rights and the Constitutional Court, which stimulated us to evaluate the quality of the procedural rules, starting from the reiteration and analysis of the standards in the respective field.

The research takes a holistic approach to human rights to solve the range of problems existing in the prejudicial stages of the criminal process, aiming to achieve the expected results in the National Program in the fields of research and innovation for the years 2020-2023 (GD no. 381/2019), Strategic priority IV. Societal challenges, point 29 sub-point 1), letter b) *evaluation of the legal act by testing the satisfaction of the beneficiaries – individuals and legal entities*, as well as letter h) *strengthening the mechanisms for the protection of human rights and the functioning capacities of the institutions of state power in the context of the needs for modernization through development and democratization*.

Clearly, the research provides synergy with relevant actions in the Strategy on ensuring the independence and integrity of the justice sector 2021-2024.

Therefore, emerging from the objectives outlined in this research, it will have a positive impact on the activity of the

criminal investigation bodies, prosecutors, as well as the courts that will contribute to:

- Training law students in the spirit of respect for human rights in pretrial stages;
- Organization of training courses for criminal prosecution officers, prosecutors and judges, who will be introduced to judicial practice in the field of respect for human rights during the courses;
- Organization of courses for representatives of NGOs, with the aim of informing about the latest changes in legislation and judicial practice in the field of respect for human rights in the preliminary stage;
- Improvement of teaching staff from higher education institutions in the field of respect for human rights;
- Training of lawyers, whose direct aim is to respect the rights of the person in the criminal process;
- The research will inevitably contribute to amending the legislation in force in order to harmonize the legislation with EU standards;
- Evaluation of the legal act by testing the satisfaction of the beneficiaries, natural persons and legal persons (The national program in the fields of research and innovation for the years 2020-2023 (GD no. 381/2019), Strategic priority IV. Societal challenges, point 29 sub-point 1), letter b));
- Strengthening the mechanisms for the protection of human rights and the functioning capacities of the institutions of state power in the context of the needs for modernization through development and democratization (The national program in the fields of research and innovation for the years 2020-2023 (GD no. 381/2019), Strategic priority IV. Societal challenges, point 29 sub-point 1), letter h)).

**Scientific novelty and originality.** The scientific novelty of this research consists in the identification of legislative omissions, inconsistencies and collisions that lead to violations of the rights

of the person in the prejudicial stages, which will be analyzed based on the judicial practice of the courts, the Court of Appeal, the Supreme Court of Justice as well as the decisions and judgements of the Constitutional Court of the Republic of Moldova.

At the same time, the scientific novelty of the conducted study consists in the scientifically argued elaboration of a set of recommendations in the form of *lege ferenda* in order to strengthen the regime for the protection of human rights in the prejudicial stages of the criminal process.

The originality of the research is derived from the analysis and evaluation of ECtHR jurisprudence against the Republic of Moldova, European doctrine and practices, which contributed to revealing the causes and conditions that favored the violation of human rights in the prejudicial stages of the criminal process, as well as to the prevention of potential abuses and excesses.

Unanimously, through the research carried out, there were identified opportunities and solutions regarding the eradication of the vicious practices of interpretation and arbitrary application of criminal procedure rules contrary to international standards, with the aim of strengthening the human rights protection regime, on the one hand, and increasing the capacity of law enforcement, on the other hand, taking into account the demands of justice in a state of law.

**The fundamentally new results achieved for science and practice.** The author, inherently for local doctrine, subjected to a complex thematic research the set of theoretical-normative and practical problems faced by the competent bodies of the statute at the preliminary stage, starting with the receipt of the referral act, continuing with the exercise of the criminal investigation and ending with the referral of the criminal case to the court. Within the work, a new direction of research was outlined and launched for scientific debates – providing of human rights during the prejudicial stage – based on several fundamentally new theses, including:

- systematization of the principles of the criminal process into principles specific to the prejudicial phase and principles specific to the judicial phase;

- identifying the correlation of the general conditions of the criminal investigation with the principles of the criminal process, including the principles specific to the prejudicial phase; arguing for the existence of relevant connections; connection of the condition of complete, objective investigation and under all aspects of the circumstances of criminal cases (art. 254 of the Code of Criminal Procedure) with the principle of free access to justice (art. 19 of the Code of Criminal Procedure) and the principle of officialdom (art. 28 of the Code of Criminal Procedure); connection of the term of the criminal prosecution (art. 259 and 259/1 of the Code of Criminal Procedure) with the principle of respecting the reasonable term of the criminal prosecution (art. 20 of the Code of Criminal Procedure) etc.;

- promoting the principle of finding out the truth in the criminal process; arguing the indissoluble link between finding out the truth (as a fundamental principle of the criminal process), criminal evidence (invoking evidence and proposing evidence, admitting and administering it for the purpose of ascertaining the circumstances that are important for the case) and the purpose of the criminal process (every person who has committed a crime should be punished according to his guilt, and no innocent person should be prosecuted and convicted);

- designing of a viable mechanism regarding the assurance of human rights and freedoms in relation to criminal investigations at the preliminary stage and the proportionality of the restriction of certain rights and freedoms, to achieve a legitimate goal, imposing a balance between the limitation of rights and freedoms with the legitimate goal pursued;

- substantiating the respect for the rights and freedoms of the participants in the preliminary stage of the criminal process by invoking new grounds for the nullity of procedural acts and

delimiting relative and absolute nullities at the normative level;

- researching the competences and the legal regime of the measures taken by the competent bodies at the preliminary stage, the legal position of the participants, the regime and the effects of the decisions adopted, etc., issues and the promotion of lege ferenda proposals in order to strengthen the regime for the protection of human rights and freedoms in the prejudicial stages of the criminal process.

**Theoretical significance of the thesis**: resides in a complex study of the most important normative, doctrinal and practical problems of ensuring human rights at the prejudicial stages of the criminal process. At the same time, the research constitutes a challenge for new analyzes of the subject.

**Applied value of the thesis:** The research results and the author's conclusions will be promoted and disseminated through various methods, which will be used and applied both in the research activity, as well as in the practical activity of judicial bodies. The obtained research results were published in various scientific journals, as well as in conferences, including those organized by the author. The research will contribute to the training of Law faculty students, and its results can be integrated into new research described in European programs in the field of human rights implemented in the development strategies of EU member states or those that tend towards European integration.

**Implementation of scientific results.** The issue of respect for human rights in the criminal process is the subject of research in many specialized works, but the emphasis in most cases is on the respect of procedural guarantees in the judicial stage of the process. The author, for the first time for the local doctrine, proposed the goal of analyzing and researching in theoretical and practical terms the set of problems faced by the competent bodies of the statute in the exercise of their powers at the pretrial stage, starting with the receipt of the notification act (address) to the law enforcement bodies, in conjunction with the criminal investiga-

tion and the referral of the criminal case to the court of law.

The research results and the author's conclusions will be promoted and disseminated through various methods, which will be used and applied both in the research activity, as well as in the practical activity of the criminal investigation bodies, prosecutor's office and courts of law.

The results of the research obtained within the project by the author have been published in various national and international scientific journals. In the same way, the author organized and held a national conference on the researched topic, as well as participated in several scientific conferences, both national and international.

The research carried out by the author regarding the respect of human rights in prejudicial phases will contribute to the training of students of law faculties (Cycle I, II and III).

The results can be integrated into new research described in European programs in the field of human rights implemented in the development strategies of EU member states or those that tend towards European integration, including the Republic of Moldova.

**Intended initiatives**:

- supporting judicial cooperation in criminal matters, such as the training of judges and other legal practitioners;
- supporting judicial cooperation in order to ensure effective access to justice for citizens;
- further development of a European justice area based on the rule of law;
- promoting the independence and impartiality of the judicial system, on mutual recognition, mutual trust and judicial cooperation;
- protecting and promoting the rights and values enshrined in the EU treaties and the Charter of Fundamental Rights;
- supporting civil society organizations active at local, regional, national and transnational levels in promoting respect for fundamental human rights and interests.

**Approval of results.** The results obtained during the elaboration of the thesis were debated in several national and international scientific forums, as follows:

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2. OSTAVCIUC, Dinu. *Principiile procesului penal*. Chișinău: Ed. „PRINT-CARO", 2022. 719 p. ISBN 978-9975-135-64-1.
3. OSTAVCIUC, Dinu, OSOIANU, Tudor. Freedom of self-incrimination. În: *"Cogito"*, Multidisciplinary Research Journal. Vol. XV, no. 3/September, 2023, Bucharest, 2023, pp. 72-96. ISSN 2068-6706 (Baza de date SCOPUS) https://cloud.mail.ru/attaches/16981353401108414485%3B0%3B1?folder-id=0&x-email=navrucnd1%40mail.ru&cvg=f
4. OSTAVCIUC, Dinu. Joint form-investigations teams of international legal assistance in criminal matters. În: ACROSS – A Comprehensive Review of Societal Studies (Volumul 5 / Anul 2022), Galați, România. (*DOAJ - Directory of Open Access; Index Copernicus; MLA Directory of Periodicals; ERIH PLUS; EBSCO* https://kanalregister.hkdir.no/publiseringskanaler/erihplus/periodical/info?id=502415).
5. OSTAVCIUC, Dinu. The right not to be prosecuted, judged, or punished more than one time. În: *ACROSS,* Vol. 7 (5) 2023 Cross-border Laws and Regulations. ISSN 2602-1463. www.across-journal.com. (*DOAJ - Directory of Open Access; Index Copernicus; MLA Directory of Periodicals; ERIH PLUS; EBSCO*)
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8. OSTAVCIUC, Dinu. Inviolabilitatea domiciliului persoanei în cadrul procesului penal În: *Anale ştiinţifice ale Academiei „Ştefan cel Mare" a MAI RM: ştiinţe juridice.* 2023, nr. 16, pp. 8-22. ISSN 978-9975-170-00-0. Categoria – B. Categoria – B. https://academy.police.md/wp- content/uploads/2023/02/Anale_stiint_ale_Academiei_nr_16_2022.pdf

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20. Dinu OSTAVCIUC. Principiul respectării drepturilor, libertăţilor şi demnităţii umane. În: „*Drepturile persoanei: probleme actuale în lumina jurisprudenței naționale*”dedicată jubileului de 75 ani de viață ai dlui Andrei SMOCHINĂ, Chişinău : Biblioteca Științifică (Institut) “Andrei Lupan”, 2023, pp.66-81. ISBN 978-9975-62-497-8.

21. OSOIANU Tudor, OSTAVCIUC Dinu. Procedura de autorizare și contestare a punerii bunurilor sub sechestru în procesul penal. În: Știința, învățământul și practica prevenirii criminalității: (culegere de rapoarte și comunicări ale unor conferințe științifice). Chișinău: S. n., 2022 (CEP USM). pp.521-534. ISBN 978-9975-159-51-7 (PDF).

22. OSTAVCIUC Dinu. Secretul corespondenţei-principiu general al procesului penal. În: *Probleme actuale privind respectarea drepturilor omului în procesul penal şi activitatea specială de investigaţii*. Materialele conferinţei ştiinţifice naţionale, 10.11.2022. Chişinău: S. n., 2023. pp.35-50. ISBN 978-9975-159-51-7 (PDF).

23. OSTAVCIUC Dinu. Limba în care se desfăşoară procesul penal și dreptul la interpret În: STUDII ȘI CERCETĂRI JURIDICE, Partea 5/2023 Culegere de lucrări ştiinţifice de specialitate. Chișinău, 2023. pp.154-172. ISBN 978-9975-3430-3-9

24. OSTAVCIUC Dinu. Egalitatea în procesul penal – principiu absolut sau relativ În: *STUDII ȘI CERCETĂRI JURIDICE, Partea 6/2022 Culegere de lucrări ştiinţifice de specialitate*. Chișinău, 2022. pp.111-122. ISBN 978-9975-3201-8-4.

The beneficiaries of the conducted research are the students of the law faculties (Cycle I, II and III). Furthermore, the research carried out is intended to contribute to raising the knowledge in the field of criminal prosecution of persons with powers in the exercise of criminal prosecution, as well as those who carry out the control over this activity.

Undoubtedly, the research can be of interest and useful-

ness for those trained in research, for representatives of public institutions and, last but not least, for deputies, politicians and other people from the perspective of improving the legislation of the Republic of Moldova.

Beneficiaries of the conducted research can also be NGOs, which, based on projects related to the respect of human rights, will carry out various activities, trainings, conferences and will be guided by the obtained research results.

In the meanwhile, the complex research carried out will also contribute to the enrichment of the local doctrine in the field of both criminal procedural law and in the field of respect for human rights.

**The volume and structure of the thesis:** 412 pages of basic text, annotation in Romanian, English and French, list of abbreviations, introduction, eight chapters divided into paragraphs, general conclusions and recommendations, bibliography consisting of 657 sources.

**Keywords**: fundamental rights and freedoms; criminal process; criminal investigation; the right to freedom and security; the right not to be subjected to torture; negative and positive obligations in the matter of fundamental rights; the right to a fair trial; property right, data protection, private life, etc.

## SYNTHESIS OF CHAPTERS

### Chapter I. ANALYSIS OF THE SCIENTIFIC SITUATION REGARDING THE PROVIDING OF HUMAN RIGHTS WITHIN THE FRAMEWORK OF PREJUDICE STAGES

1.1. Analysis of international scientific materials regarding the providing of human rights in the prejudicial stages. 1.2. Analysis of national scientific materials regarding the provision of human rights in the prejudicial stages. 1.3. Conclusions to Chapter I

In **Chapter I**, we focused on the analysis of specialized literature, which actually constitutes the theoretical foundation of the thesis. Consequently, the scientific-methodological basis of this study is represented by the scientific-practical works published in the Republic of Moldova, Romania, Belgium, Great Britain, Ukraine and other European countries. In support of the practical aspects of the research, we used the jurisprudence of the national courts, the decisions of the Constitutional Court, the explanatory decisions of the plenary session of the Supreme Court of Justice and the precedents of the European Court of Human Rights.

The analysis of the publications highlights the actuality and importance of research on the protection of fundamental rights in the criminal process as a whole, as well as at the stages that anticipate the trial of criminal cases, in particular.

The interest in the study of the respect of fundamental rights in the criminal process arose and developed because no references were made or studied over the years except the protection of fundamental data in general and even less in the criminal process. The scientific research published in the Republic of Moldova and Romania also had as its object the research of the problems regarding the criminal procedure, approaching tangentially and not particularly the phase of the criminal prosecution. We have not identified in both countries the publication of a monographic work dedicated to the theme of this thesis.

The following have been highlighted in the publications of the cited authors:

- actuality and importance of the rise research of the protection of fundamental rights and freedoms from the moment of registration of a notification regarding the crime until the notification of the court with the indictment;

- defective application of national legislation by law enforcement bodies and especially by the police;

- absolutely necessary reconfiguration of the entire criminal investigation architecture with a personal character by the law enforcement institutions of the Republic of Moldova;

Complex research is needed of the theoretical aspects, of the criminal procedural rules of the Republic of Moldova, by similarity with the criminal procedural rules of the ROM, of the jurisprudence of the European Court of Human Rights, the CJEU, of the Constitutional Courts, with reference to the protection of personal data in the criminal process, in order to identify the shortcomings, establishing the efficiency, the need for changes to criminal procedural legislation and judicial practice.

**Chapter II. FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS AND CRIMINAL PROCEDURAL LAW** covers 2.1. Respect for fundamental rights and freedoms within the criminal process; 2.2. The impact of the principles of the criminal process and the general conditions of the criminal prosecution on the guarantee of fundamental human rights in the prejudicial stages of the process; 2.3. Conclusions to Chapter II

In **Chapter II,** paragraph1, the author starts the theoretical approach from the paradigm of respecting the rights, freedoms and dignity of the person during the entire criminal process absolutely for all participants, emphasizing that limitations in certain situations must be provided by law and should be proportional to the situations that determined them, being unable to affect the very existence of the fundamental right, based on art. 54 of the Constitution of the Republic of Moldova. Respect for human

rights in the criminal process is more than a simple obligation, which should not be limited only to informing the participants in the process of their procedural rights. This involves not only informing the parties about their rights and obligations, but also explaining these rights, as well as ensuring the possibility of their implementation.

The persons must be free, benefit from all the rights, freedoms and have their dignity respected, and in case they are harmed, turn to the authorities to do justice to them. Through that intervention, the state shows its maturity as a rule of law and intervenes as a guarantor for the citizen, gaining trust before him. Criminal procedural legislation grants effective remedies to the person to defend himself when his rights, freedoms or dignity have been damaged or limited, and also grants effective satisfaction (restoration of the person's rights, reparation of the damage caused and the right to fair compensation). The criminal investigation body, the prosecutor and the courts must have an adequate respect and not an abstract one in relation to the parties in the process, taking concrete measures aimed at preventing damage to human honor and dignity.

Based on the analyzes in paragraph 2.2, we find in the *Conclusions in Chapter II* that the principles of the criminal process: ensures the organization and operation of the criminal process in general, all its stages, special procedures and institutions of the criminal process; are normative guidelines when it is necessary to use the analogy of the law or the law, which is rejected by the official doctrine; if certain provisions of the criminal procedural law are in contradiction with the principles of the criminal process, supremacy (preference) should be given to the latter. The meaning of the principles of criminal procedure is as follows: strengthening and further developing of the rule of law, ensuring the legitimate rights and interests of the participants in the criminal process; the development and improvement of criminal procedural legislation; are the most important guarantees for the

achievement of the goal of justice, they create the basic conditions for their successful achievement; expresses the essence of the process, its characteristic features; non-compliance with the principles of the criminal process may lead to the annulment of the adopted decisions;

We can affirm that both *the general conditions* of the criminal investigation and *the general conditions for judging criminal cases* concretize the content of *the principles of the criminal process* and guarantee their implementation during the process as a whole, constituting an intermediate and connecting link between the principles of the criminal process and express norms to carry out procedural actions. Therefore, these are not principles of the criminal process, being guiding norms specific to the criminal prosecution, which contain intermediate norms between *the principles of the criminal process* and the concrete provisions regarding the conduct of the criminal investigation.

**Chapter III. THE POSITIVE OBLIGATIONS RESULTING FROM THE PROTECTION OF THE RIGHT TO LIFE AND THE INADMISSION OF TORTURE** constitute the subject of examination within the following paragraphs - 3.1. Guaranteeing the right to life, inadmissibility of torture and inhuman and degrading treatment; 3.2. Guarantees of effective investigation of deaths and ill-treatment; 3.3. Protection from domestic violence in criminal prosecution; 3.4. Conclusions to Chapter III.

*In paragraphs 1 and 2,* a review of the applicable normative framework in this field has been made (art. 3, 5 of the UDHR, art. 1-3 of the ECHR, art. 1, 16 point 1), art. 24 of the Constitution of the Republic of Moldova, 10, art. 119 paragraph (5), art.122 paragraph (2), art. 123 paragraph (3), art. 262 paragraph (41), art. 274 paragraph (41), art. 524 of the Code of Criminal Procedure) followed by their analysis as well as by the ECtHR's rich jurisprudence in this matter. We focused equally on the negative obligations resulting from art. 1 - 3 of the ECHR

and ECtHR jurisprudence both on negative obligations, which require the state (its agents) to refrain from committing certain actions that would lead to the violation of art. 2 and 3 of the Convention, as well as on the positive obligations that require the active intervention of the state to protect the right of the person, to create certain conditions, protection mechanisms, to take certain measures.

The content of officialdom is expressed in the obligation of state bodies and official persons, within the limits of their competence, to ensure the defense of the legal order, the rights and freedoms of citizens, the interests of society. The entire procedural activity is carried out *ex officio*, through the active intervention of the competent judicial bodies, despite of the will of the parties, except when the law provides otherwise. The criminal process begins, proceeds and ends without the need for external intervention, even if some activities are sometimes carried out at the request of the parties;

The legal guarantee of the principle of officialdom consists in the application of disciplinary sanctions for criminal investigation officers and prosecutors who do not comply with the criminal procedure documents in order to achieve the purpose of the criminal process and the complete, objective investigation and under all aspects of the circumstances of the case. At the same time, when these representatives of legal bodies commit even more serious acts (for example, negligence, excess of power or abuse of office), they are also punished by criminal law.

None of the participants in the criminal process may be subjected to torture or cruel, inhuman or degrading treatment; the victim of torture or cruel, inhuman or degrading treatment has the right to request, under the terms of the Code of Criminal Procedure, the initiation of criminal prosecution, to participate in the criminal trial as a victim and injured party and to have his moral, physical and material damages redressed.

The debate on the issues concerning the guarantees of pro-

tection of the right to life, of the prohibition of torture, of cruel, inhuman and degrading punishments and treatments, includes *in paragraph 3* the jurisprudence of the ECtHR in the matter of responsibility for human rights violations in the private sphere of the person's life. ECtHR, which recognized the state's positive obligation to prevent human rights violations between two private individuals in cases of domestic violence, stating that domestic violence can no longer be treated as a personal matter because of the devastating effect it has on the victim.

The criminal procedural legislation does not establish the maximum term for the extension of protective measures, which in our opinion affects the right of the suspect or the accused, because they, from the start, are placed in an uncertainty regarding this subject. For these reasons, we proposed to amend and complete the rules of criminal procedure, so that the maximum term for the application of protective measures should be established.

Criminal procedural legislation does not regulate the revocation of protective measures. Later, after the issuance of the protection ordinance, new circumstances may arise that would allow the revocation, or evidence may be administered that shows the non-existence of the elements of the crime or the lapse of the grounds that justified this measure.

**Chapter IV. GUARANTEEING THE RIGHT TO LIBERTY AND SECURITY DURING THE PHASE OF CRIMINAL PROSECUTION** contains the following paragraphs - 4.1. Respecting the rights of the detained person, who is suspected of committing a crime; 4.2. Respecting the rights of the accused in the procedures for applying, extending and contesting pre-trial detention and house arrest; 4.3. Ensuring the right to freedom and safety in the examination procedure of the inquiries regarding the authorization of hospitalization in the medical institution for the performance of judicial expertise; 4.4. Conclusions to Chapter IV

The analysis of internal procedural rules shows that they

mostly correspond not only to international acts, but also to the provisions of Directive 2013/48/EU of the European Parliament and of the Council of October 22, 2013, regarding the right to have access to a lawyer in criminal proceedings and European Arrest Warrant procedures, as well as the right for a third party to be informed following deprivation of liberty and the right to communicate with third parties and consular authorities during deprivation of liberty. However, the normative guarantees regarding the observance of the right to freedom and security suffer from some shortcomings and deficiencies.

We did not find a plausible explanation according to the undertaken analyzes in paragraph 1, why according to the provisions of art. 166 (paragraph 4) of the Code of Criminal Procedure in cases of *delict flagrant* minors cannot be detained until the crime is registered, even if they are suspected of having committed serious, particularly serious or exceptionally serious crimes. The provisions of article 174 paragraph (2) of the Code of Criminal Procedure regarding the repeated detention of the person are not clear enough, not specifying the prohibition of detaining the same person a second time for the same act.

Considering the findings of the CC in Decision no. 40 of 21.12.2017, our legislator recently intervened in the provisions of art. 232 paragraph (2) of the Code of Criminal Procedure, expressly regulating, that the application of preventive arrest, house arrest and extension of these measures, are considered filed within the deadline, if the date on which it was registered in the chancellery of the respective court falls within the required deadline of law for their realization.

We found in *paragraph 3* that the rules of criminal procedure do not include and do not clarify all the situations that may arise regarding the forced hospitalization of the person in the medical institution for the performance of judicial expertise. Thus, we consider that the ordinance regarding the internment is a disposition act separate from the ordinance disposing of the expertise.

It is important as an ordinance that will order forced hospitalization in the medical institution, in addition to the conditions mentioned in art. 255 of the Code of Criminal Procedure, to include, compulsorily, the reasons for internment, the person's behavior during the procedural actions (for example during the hearing), analysis of the medical documents of the suspect or the accused (for example, the medical card in which the fact of treating a psychiatric illness is mentioned), the note about finding out the suspect or the accused in the records of the drug addiction specialist or psychiatrist, analysis of the statements of other trial participants (for example, the statements of the victim or the witnesses from which the inappropriate behavior of the suspect, the accused results) and other matters related to the case;

The criminal investigation body or the prosecutor must request from the expert institution the information regarding the need for long-term surveillance of the suspect or the accused. If the criminal investigation body or the prosecutor does not request that information, at least it will be obliged to hear the judicial expert to determine the appropriateness of the internment. Conversely, after all, this decision has a medical tone, and respectively, only doctors can communicate about the duration of medical investigations. This information must be reflected in the internment ordinance and analyzed together with other evidence. Only in this way can the criminal investigation body justify its ordinance and order the forced internment of the suspect or the accused.

Within the procedure for the application of coercive measures of a medical nature, the participation of the defender is mandatory from the moment of the adoption of the ordinance by which it was ordered to carry out the judicial expertise in the inpatient of the psychiatric institution referring the person regarding whom the procedure is being carried out, if the defender was not previously admitted in this process. When the person is hospitalized in medical institutions, the defense attorney also has the right to meet with him, but, taking into account the state

of health of this person, the defense attorney will consult his client's doctor beforehand, after which he will decide whether or not it is necessary to talk to him, in order not to harm the customer.[8]

**Chapter V. SPECIFIC PROCEDURAL GUARANTEES RESULTING FROM THE RIGHT TO A FAIR TRIAL AT THE PHASE OF CRIMINAL PROSECUTION** includes, through the titles of the paragraphs, practically all the guarantees inherent in the fair process, which were debated in the context of the manifestation at the criminal prosecution stage - 5.1. Free access to justice; 5.2. Observance of the reasonable term and the particularities of the procedure for accelerating the criminal prosecution; 5.3. Respect for the presumption of innocence; 5.4. The suspect's and the accused's right to information about criminal charges; 5.5. The right to defense and the right to remain silent; 5.6. The right to an interpreter; 5.7. Conclusions to Chapter V. The right to a fair trial is ensured according to *paragraph 1* by the rules that oblige these criminal investigation bodies to act promptly in solving the case, either upon external notification or even *ex officio* (for example, art. 55 paragraph (4) of the Code of Criminal Procedure). At the same time, the criminal procedural law obliges judicial bodies to receive complaints and denunciations regarding crimes, even if they do not fall under their jurisdiction (art. 265 paragraph (1) of the Code of Criminal Procedure), and the refusal of these bodies can be appealed to the prosecutor or, as the case may be, to the investigating judge (art. 265 paragraph (2), art. 313 paragraph (2) point 1) letter a) of the Code of Criminal Procedure). Obviously, the Code of Criminal Procedure also intervenes with other rules to

[8] Dinu OSTAVCIUC, Tudor OSOIANU Dispunerea internării persoanei în instituția medicală pentru efectuarea expertizelor judiciare în procesul penal. În: *REVISTA NAȚIONALĂ DE DREPT. Publicație periodică științifico-practică*, nr. 2 (244), anul 22 (2021). pp. 10-17. Categoria – B. ISSN 1811-0770 https://ibn.idsi.md/ro/vizualizare_articol/145701

protect, ensure and guarantee the right of free access to justice."[9]

We argue in *paragraph 2* that the investigating judge must decide not only on the performance of an act, but on the criminal prosecution as a whole, establishing a concrete term for its completion. Therefore, the investigating judge must set a deadline in order to speed up the criminal prosecution and fulfill the procedural acts that are required to issue a solution to resolve the conflict of criminal law under the conditions of art. 259/1 of the Code of Criminal Procedure.[10]

According to *paragraph 3*, in all these stages, the presumption of innocence must be respected by both public and private authorities (for example, by mass media institutions) starting with the criminal investigation phase, avoiding public statements that would incite the general public to consider the person guilty until a final sentence of conviction is issued.[11] By regulating this principle in the Supreme Law (art. 21) we understand that the presumption of innocence is a constitutional principle, which guarantees any accused person the right not to be accused premeditated to a trial.

"Therefore, the presumption of innocence constitutes an incentive for the judicial body to insist on the search and knowledge of the evidence until the limit of their exhaustion, in order to prevent any mistake in establishing the guilt or innocence of the accused person."[12]

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[9] Ostavciuc Dinu, Principiile procesului penal, Chișinău, 2022, p. 433-444

[10] OSTAVCIUC, Dinu. Garanții naționale privind desfășurarea procesului penal în termen rezonabil. În: Legea și Viața. 2022, nr. 11-12(371-372), pp. 7-22. Categoria – C. ISSN 2587-4365 https://ibn.idsi.md/ro/vizualizare_articol/170822

[11] OSTAVCIUC, Dinu. Declarațiile publice pot sau nu afecta prezumţia nevinovăției? În: *Anale ştiinţifice ale Academiei „Ştefan cel Mare" a MAI RM: ştiinţe juridice.* 2022, nr. 15, pp. 118-131. Categoria – B. ISSN 978-9975-135-60-3 https://ibn.idsi.md/ro/vizualizare_articol/161257 https://heinonline.org/HOL/LandingPage?handle=hein.journals/celmare15&div=12&id=&page=

[12] Teodor-Viorel Gheorghe. Aflarea adevărului, principiu fundamental al procesului penal. Editura Hamangiu, București, 2021, p. 77.

In *paragraphs 5.4. and 5.5* the indissoluble link between the right to information of the suspect and the accused regarding the accusations in criminal matters and the right to defense and the right to remain silent was elucidated through the jurisprudence of the ECtHR and the Constitutional Court. Accurate and complete information about the charges brought against a person and, consequently, about their legal status that the court can hold against him is an essential condition of a fair trial. "*There is a link between letters a) and b) of Article 6 § 3 of the European Convention: the right to be informed about the nature and cause of the accusation must be analyzed in light of the right of the accused to prepare his defense"*[13] "The purpose of guaranteeing the right to be assisted by a lawyer assumes: prevention of judicial errors, equality of arms between prosecution and defense, counterbalancing the vulnerabilities of suspects under police custody, safeguarding against coercion and ill-treatment of suspects, ensuring respect for the suspect's right not to incriminate himself and the right to remain silent."[14] In the meanwhile, certain links between the right to remain silent and the presumption of innocence were outlined.

Within the analyzes dedicated to the right to the interpreter, the importance was reiterated regarding "*notification of the right to an interpreter, as well as of the other fundamental rights of defense in a language the applicant understands (...)*."[15]

[13] Points 23 and 24 of the DCC no. 63 of 11.06.2020 of inadmissibility of the notification no. 39g/2020 regarding the exception of unconstitutionality of some provisions from articles 332 paragraph (2) and 391 paragraph (2) of the Code of Criminal Procedure (termination of the criminal process when the deed constitutes a misdemeanor and the resolution of the case is made according to the provisions of the misdemeanor code)

[14] Anca Ioana Negru, Administrarea și aprecierea probelor în procesual penal, Universul Juridic, București, 2022, p. 90. Hotărârea CtEDO, Beuze c. Belgia, (§ 125-130). Disponibilă: https://hudoc.echr.coe.int/eng?i=001-187802 (accesată: 15.08.2022).

[15] ECtHR Judgement, the case of Wang v. France, of 28.04.2022 (§ 70). Available: https://hudoc.echr.coe.int/eng?i=001-216926 [accessed: 26.03.2023]

**Chapter VI. GUARANTEE OF THE RIGHT TO PRIVATE LIFE WITHIN THE FRAMEWORK OF CRIMINAL PROSECUTION** includes, through the titles of the paragraphs, practically all the fundamental guarantees of this fundamental right, which were investigated in the context of the criminal prosecution - 6.1. Guarantees of respect for the right to private life within evidentiary procedures and special investigative measures; 6.2. Protection of personal data; 6.3. Conclusions to Chapter VI

In the *first paragraph* there were elucidated the conditions limiting the right to private life and the proportionality test. In order to respect the right to private life, the criminal investigation body must take measures so that the facts and circumstances of the personal life of the person being searched and which are not related to the case should not become public. The ECtHR reminds in the case of Cacuci and S.C. Virra & Cont Pad S.R.L. v. Romania[16] that telephone calls made from commercial premises, as well as from home, fall under the notions of "private life" and "correspondence" within the meaning of art. 8 § 1 (see Halford v. the United Kingdom, 25 June 1997, point 44).

Although it is entitled, Special investigative measures carried out with the authorization of the investigating judge, art. 303 of the Code of Criminal Procedure does not expressly indicate the respective measures - With the authorization of the investigating judge, special investigative measures are carried out related to limiting the inviolability of the person's private life, entering the room against the will of the people who live in it.

However, certain rules of the general part of the Code of Criminal Procedure allow identifying those special investigative measures, which must be carried out only with the authorization of the investigating judge. Provisions of art. 132/2 paragraph (1) of the Code of Criminal Procedure indicate which special

[16] ECHR Judgement of 17. 01.2017 (paragraph 65). Available: http://hudoc.echr.coe.int/eng?i=001-176052

investigative measures must be carried out in order to discover and investigate crimes only with the authorization of the investigating judge:

The provisions of art. 15 of the Code of Criminal Procedure provides sufficient guarantees to the right to private life, prohibiting the criminal investigation body and the court to accumulate information about the private and intimate life of the person without the existence of any need. At the same time, we note in *paragraph 2* that the sphere of private life also includes the personal data of the person, and the criminal procedural law grants guarantees in this regard as well, being reiterated the ECtHR jurisprudence which *"ruled that the concept of "private life" (...) includes personal information about which there is a legitimate expectation that it will not be published without the consent of those to whom it relates (Flinkkilä and Others v. Finland, Judgement of 6 April 2010, § 75; Saaristo and Others v. Finland, Judgement of 12 October 2010, § 61)*."[17]

Article 28 of the Constitution guarantees a right that allows individuals to be guaranteed their right to privacy with regard to information that, although neutral, is collected, processed and disseminated collectively and in a manner that is inconsistent with this constitutional norm.

**Chapter VII. PROTECTION OF PROPERTY RIGHTS WITHIN THE FRAMEWORK OF CRIMINAL PROSECUTION** is covered in the sense of theoretical investigations by covering the following titles 7.1. Claiming the right of ownership through civil action; 7.2. The conditions for limiting the right of ownership in the procedure for authorizing, applying and contesting the seizure of assets. 7.3. Conclusions to Chapter VI.

[17] DCC no. 10 of 05.01.2018 of inadmissibility of the notification no. 177g/2017 regarding the exception of unconstitutionality of the article 177 paragraph (1) of the Criminal Code (violation of the inviolability of personal life) (point 19).

The settlement of the civil action simultaneously with the settlement of the criminal case gives the civil party effective guarantees both on the right of ownership and on the examination of the civil action within a reasonable period. The refusal of the criminal investigation body or the court to recognize the person as a civil party does not deprive him of the right to contest this refusal before the investigating judge or to file a civil action in the order of the civil procedure (art. 222 paragraph (3) of the Code of Criminal Procedure). This particularity of the civil action is again a guarantee of the person's property right.

In some situations, the judicial bodies do not respect and do not maintain a fair balance between the legitimate objective pursued and the property right of the person. Thus, the judicial bodies, after carrying out the required procedural actions, pick up assets for the purpose of administering evidence, but, later, without ordering about these assets, they deposit them in the room for keeping criminal bodies or in the office of the person who carries out the criminal investigation. The long stay of an asset in the custody of the judicial bodies, especially when a decision has been taken on the criminal case, implicitly to terminate the criminal prosecution, remove it from the criminal prosecution or close the criminal case, is an interference with the right to property. Moreover, there is interference with this right when third parties are concerned, who have used these goods for service purposes, for example.

In the second *paragraph* we noted that art. 13 of the Code of Criminal Procedure leads us to conclude that the principle of inviolability in the matter of criminal procedure is expressed in two aspects: lifting and seizure. The same opinion is expressed by Professor Igor Dolea.[18]

"Lifting and seizure of the property of a natural or legal person can be carried out during the criminal investigation in

[18] Dolea Igor. Codul de procedură penală al Republicii Moldova (Comentariu aplicativ), Ediția a 2-a, Editura Cartea Juridică, Chișinău, 2020, p. 76.

compliance with the constitutional principle of the inviolability of property and only on the basis of a court decision (art.13 of the Code of Criminal Procedure)."[19]

The Constitutional Court explained that "*(...) the seizure applied under the terms of article 204 paragraph (1) of the Code of Criminal Procedure depends mandatorily on the recognition of the quality of suspect, accused, defendant or civilly responsible party. The application of the seizure for the reparation of the damage caused by the crime in respect of persons other than those expressly mentioned by the contested norm, by referring to the procedural-criminal norms of the amended law (...), does not constitute an adequate application of the law*."[20]

We did not find a plausible explanation regarding the normative omission to stipulate the right of the civil party in the criminal process to notify the investigating judge in order to apply the seizure when the prosecutor refuses or hesitates to file the respective action; there is an eminent danger of disappearance, damage or destruction of goods.

**Chapter VIII. COMPLIANCE WITH *NON BIS IN IDEM* RIGHT AND THE SECURITY OF LEGAL REPORTS WITHIN THE FRAMEWORK OF CRIMINAL PROSECUTION** is intended to be covered by the following titles 8.1. Previous conviction for the same act as a basis for the decision - to refuse to initiate a criminal investigation, to remove the person from criminal investigation, to terminate the criminal investigation or to dismiss the case; 8.2. Providing the security of legal relations and the resumption of criminal prosecution.

[19] DCC no. 27 of 25.11.2010 for the control of the constitutionality of some provisions of the Law no.1104-XV of 06.06.2002 "Regarding the Center for Combating Economic Crimes and Corruption" and the Law no.190-XVI of 26.07.2007 "Regarding the prevention and combating of money laundering and the financing of terrorism" (point 5).

[20] DCC no. 91 of 27.07.2018 regarding the exception of the unconstitutionality of the article 204 paragraph (1) of the Code of Criminal Procedure (application of seizure in criminal cases) (point 27).

8.3. Conclusions to Chapter VIII.

The Constitutional Court notes that the *non bis in idem* principle imposes on the competent public authorities not only the prohibition to repeatedly *try a person*, but also the prohibition *to prosecute* the person several times for the same act[21].

From the analysis of art. 22 of the Code of Criminal Procedure, we note that this corresponds to the international guarantees in the matter of the regulation of the *ne bis in idem* principle. Moreover, the national norm establishes and specifically indicates the cases when the person cannot be prosecuted or tried twice for the same criminal act. In other words, the procedural norm in question has a detailed and explicit content in order to guarantee the right subject to debate. Therefore, in the national criminal procedure, the principle should be applied if the person was previously suspected, charged, accused or convicted of an act that later became the subject of a criminal prosecution or repeated judicial examinations.

"The guarantee enshrined in Article 4 Protocol 7 comes into force when new proceedings are instituted and the previous judgment of acquittal or conviction has already become final. At this stage, the elements of the file will necessarily include the decision by which the first "criminal" trial within the meaning of the Convention has ended and the list of charges brought against the person who is the subject of the new trial. These documents

[21] DCC no. 12 of 14.05.2015 regarding the exception of unconstitutionality of the article 287 paragraph (1) of the Code of Criminal Procedure (resumption of the criminal investigation) (notification no.15g/2015) (point 52). *The Court notes that the general rule established by the bis element (double procedure) of the ne bis in idem principle seeks to prohibit the repetition of a criminal proceeding that has been concluded by a "final" decision (See A and B v. Norway, [mc], 15 November 2016, § 109).* DCC no.62 of 19.06.2018 of inadmissibility of the notification no. 75g/2018 regarding the exception of unconstitutionality of some provisions from the article 275 point 8 of the Code of Criminal Procedure (circumstances which exclude criminal prosecution) (point 28).

will normally contain a statement of facts relating to the offense for which the person has already been tried and another relating to the second offense of which he is charged."[22]

We started in *paragraph 2* with the examination of the provisions of art. 4 paragraph 2 of Protocol no. 7 to the European Convention, which enshrines the principle of *non bis in idem* which does not prevent the resumption of the criminal prosecution *if new or recently discovered facts* or *a fundamental flaw* in the previous procedure are likely to affect the judgment rendered according to the provisions of the domestic procedural norms.

Analysis of art. 22 paragraph (3) of the Code of Criminal Procedure denotes that "new or recently discovered facts or fundamental flaw" refers only to court decisions. Regarding the prosecutor's ordinances mentioned in the criminal procedural law, it only indicates the need to cancel them, as the text has not been adjusted to the requirements deriving from Article 4 § 2 of Protocol no. 7 and ECtHR jurisprudence in this matter. At the same time, the respective aspects also refer to the situation of resuming the criminal prosecution, placing the person under a more serious accusation or establishing a harsher punishment for the same person and for the same act.

[22] ECHR Judgement, the case of Butnaru and Bejan-Piser v. Romania, of 23.06.2015 (§ 32). Available: https://hudoc.echr.coe.int/eng?i=001-155355 [accessed: 09.09.2022].

## GENERAL CONCLUSIONS AND RECOMMENDATIONS

The research undertaken allowed to establish the following conclusions through the prism of the formulated purpose and the drawn objectives.

1. Most of the cases of violations of fundamental rights and freedoms by the ECtHR in Moldovan cases are due to the erroneous interpretation and application of the procedural legislation, the neglect of European standards, but mostly to the abuses admitted by the investigation officers, criminal prosecution officers, prosecutors and even by the investigating judges. (Chapter 2,)

2. Criminal procedural legislation corresponds for the most part to international treaties in criminal matters. In very few requests submitted by the citizens of the Republic of Moldova to the ECtHR, the violation of guaranteed rights was found due to the imperfect legal framework and contrary to the ECHR principle. (Conclusions to Chapters 3 – 8)

3. The erroneous, arbitrary or different application by the state institutions of the procedural-criminal rules that guarantee or limit human rights and freedoms at the preliminary stage of the process is due to the lack of an effective mechanism for unifying and systematizing the practice of criminal prosecution. Vicious practices are also caused by the inability of some decision-makers to directly apply the Decisions of the ECtHR and the Constitutional Court under art. 7 of the Code of Criminal Procedure. (Chapter 2).

4. The procedural - criminal legislation of the Republic of Moldova mostly contains sufficient procedural guarantees to allow the optimization of the exercise of proportionality when it is necessary to protect the fundamental rights and freedoms within the criminal investigation. (Conclusions to Chapters 3 – 8)

5. It was found that the respect of the rights and freedoms of the participants in the preliminary stage of the criminal pro-

cess can be ensured, by identifying new grounds for invoking the nullity of the procedural documents and delimiting the relative and absolute nullities at the normative level. Violation of a fundamental right does not always result in the nullity of the procedural act affected by the respective defect, as certain conditions of invocation must also be respected. (Chapter 5)

6. The complex researches of the theoretical aspects, of the procedural-criminal norms of the Republic of Moldova, through similarity with the jurisprudence of the European Court of Human Rights, the CJEU, the jurisprudence of the Constitutional Court, with reference to the protection of the rights of the parties at the prejudicial stages of the criminal process, allowed the identification of some reprehensible shortcomings, and the need of adjusting the procedural-criminal legislation to the quality requirements. (Conclusions to Chapters 3 - 8).

**The obtained results** derived from the objectives of the thesis, contributing to ***the solution of the important scientific problem***, which resides in the elaboration of the framework concept regarding the protection of fundamental rights and freedoms within the prejudicial stages of the criminal process, fact that allowed to argue the adjustment of criminal procedure norms to international and regional standards in the context of the European integration process. In this sense, the *lege ferenda* recommendations were theoretically substantiated, as well as proposals for the establishment of good practices for the interpretation and application of criminal procedural guarantees regarding the respect of fundamental rights.

Among **the main scientific results submitted for support** in the field of societal challenges, on which the research was developed, we mention the following: strengthening the mechanisms for the protection of human rights and the functioning capacities of the institutions of state power in the context of the needs for modernization through development and democratization; evaluation of the act of justice by testing the satisfaction

of the beneficiaries; the development of European criminal law in the field of human rights through predilection to the national normative framework; the scientific substantiation of the recommendations regarding the assurance of human rights in the prejudicial stages of the criminal process by implementing and capitalizing on ECHR standards; arguing the measures to prevent arbitrariness from the judicial bodies; ascertaining and solving the vulnerabilities of the application of procedural guarantees in the prejudicial stages of the criminal process; prospective efficiency of the quality of the judicial act and of society's trust in the activity of judicial bodies; the scientific argumentation of the premises for reducing the convictions of the Republic of Moldova by the ECtHR in the field of criminal matters; increasing the capacity to apply the criminal procedural law by strengthening the regime for ensuring human rights by the judiciary; identifying the mechanisms for ensuring proportionality between the restriction of human rights and freedoms and the legitimate goal pursued; dosage of criminal procedural rules in the matter of protecting human rights by substantiating the proposals of the *lege ferenda*.

In order to argue the recommendations, it started from the following **conclusions:**

1. Respect for the rights, fundamental freedoms and dignity of the person must be ensured during the entire criminal process absolutely to all participants, and the limitations in certain situations must be provided by law and should be proportional to the situations that determined them, not being able to harm the very substance of law.

2. The principles of the criminal process proclaim the fundamental rights of the participants in the process, being closely interconnected and forming a certain set of a common legal framework. Causing mutual actions, the principles constitute a unique system that determines the democratic content and form of the domestic criminal process.

3. The principle of *legality* and the principle of *respect for human rights, freedoms and dignity* also find expression in the other principles of the criminal process stipulated in art. 7-28 of the Code of Criminal Procedure.

4. Not all *general conditions of criminal prosecution* are directly related to *the principles of the criminal process.* The most relevant connections have the condition *of complete, objective investigation and under all aspects of the circumstances of criminal cases* (art.254 of the Code of Criminal Procedure) with the principle *of free access to justice* (art.19 of the Code of Criminal Procedure) and *the principle of officialdom* (art.28 of the Code of Criminal Procedure), and *the term of the criminal prosecution* (art.259 and 259/1 of the Code of Criminal Procedure) derives from the principle *of respecting the reasonable term of criminal prosecution* (art. 20 of the Code of Criminal Procedure).[23]

5. The regulation of the criminal process is meant to protect, as a matter of priority, the person as the supreme value of society, his rights and freedoms. In fact, this presupposes the principle of humanism. The humanism of the criminal process is the expansion of the rights of people who are supposed to have committed crimes or suffered as a result of them and the real assurance of these rights. At the same time, the principle of humanism in the criminal process guarantees human rights and the relationship of the state regarding to these rights. Therefore, the principle of the humanism of the criminal process consists in the need to solve the problems of the investigation of crimes and the administration of justice through methods based on morality and justice, which provides for the construction of criminal procedural reports based on the respect and protection of the rights, freedoms and legal interests of the person, as well as his human dignity. We propose renaming of art. 10 of the Code of Criminal

[23] OSTAVCIUC, Dinu. Principiile procesului penal. Chișinău: Ed. „PRINTCARO", 2022. 719 p.

Procedure in the sense stated.

6. The provisions of art. 15 of the Code of Criminal Procedure ensure respect for the private and intimate life of the person, which leads to the idea of the existence of two different notions. The practice of the ECtHR and that of the Constitutional Court have shown that intimate life falls within the sphere of private life, therefore it is not necessary to indicate both notions.[24]

7. According to the provisions of art. 20 paragraph (1) of the Code of Criminal Procedure we deduce that the legislator does not have in mind the calculation of the term of the trial, starting with the notification of the criminal investigation body, but not from the moment of the start of the criminal investigation. Resulting from the provisions of art. 1, 274, 279 of the Code of Criminal Procedure we deduce that until the start of the criminal investigation, the criminal investigation body verifies the reporting of the crime and determines whether or not there is *reasonable suspicion* of the crime, in order to decide whether or not to start the criminal investigation.[25] These actions must not extend in time, without necessity in all cases until the expiration of the 45-day period.

8. Analysis of the provisions of art. 22 paragraph (2) of the Code of Criminal Procedure denotes that "new or recently discovered facts or fundamental flaw" expressly refers only to court decisions. Concerning the prosecutor's orders mentioned in art. 22 paragraph (3) of the Code of Criminal Procedure for termination of criminal prosecution, removal of the person from

[24] OSTAVCIUC, Dinu. Inviolabilitatea vieţii private. În: Anale ştiinţifice ale Academiei „Ştefan cel Mare" a MAI RM: ştiinţe juridice. 2023, nr. 16, pp. 105-132. ISSN 978-9975-170-00-0. Categoria – B. https://academy.police.md/wp- content/uploads/2023/02/Anale_stiint_ale_Academiei_nr_16_2022.pdf

[25] OSTAVCIUC, Dinu. Garanții naționale privind desfășurarea procesului penal în termen rezonabil. În: Legea şi Viaţa. 2022, nr. 11-12(371-372), pp. 7-22. Categoria – C. ISSN 2587-4365 https://ibn.idsi.md/ro/vizualizare_articol/170822

criminal prosecution and/or closure of the case or refusal to initiate criminal prosecution, the criminal procedural law only indicates the necessity of canceling them. Therefore, based on ECtHR and national jurisprudence, we consider it appropriate to amend and complete art. 22 paragraph (3) of the Code of Criminal Procedure, in order to concretely indicate that the cancellation of the prosecutor's ordinances can only take place if *new or recently discovered facts or a fundamental flaw* in the previous procedure affected the respective decision.[26]

9. We are of the opinion that, when we refer to the procedural functions indicated in art. 24 of the Code of Criminal Procedure we cannot only talk about the criminal investigation, because this is only a phase of the criminal process, exercised both by the criminal investigation body and by the prosecutor. The latter, in addition to the duties at this stage of the trial, is also empowered with the duty of supporting the accusation in the court of law, having the position of state prosecutor (art. 51 paragraph (1) art. 53 of the Code of Criminal Procedure). In other words, the prosecutor actively participates in supporting the position of the prosecution and in the trial phase of the criminal case. Simultaneously, the final limit of the criminal investigation phase is the end of the criminal investigation, after which the prosecutor presents the materials of the criminal case to the parties, draws up the indictment and notifies the court. It is precisely at these stages that the principle of contradiction is expressed.[27]

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[26] OSTAVCIUC, Dinu. The right not to be prosecuted, judged, or punished more than one time. În: ACROSS, Vol. 7 (5) 2023 Cross-border Laws and Regulations. ISSN 2602-1463. www.across-journal.com. (DOAJ - Directory of Open Access; Index Copernicus; MLA Directory of Periodicals; ERIH PLUS; EBSCO)

[27] Dinu, OSTAVCIUC. Principiul contradictorialităţii în procesul penal. . În: Protecţia drepturilor şi libertăţilor fundamentale ale omului în procesul asigurării ordinii şi securităţii publice. Ediția a II-a. Conferință ştiinţifico-practică internațională. 08.12.2022. Chişinău, Republica Moldova, 2023, pp. 16-37. ISBN 978-9975-135-66-5. CZU 34+351.74/.75(082) P 95

10. Both from the point of view of consistent exposition, but also of practical application, the order in which the cases of mandatory participation of the defender are presented by the legislator are being confusing, as well as point 10) paragraph (1) art. 69 of the Code of Criminal Procedure - *the interests of justice demand his participation in the court hearing in the first instance, in the appeal and in the recourse, as well as in the trial of the case by way of extraordinary appeal.* According to ECtHR jurisprudence, *the cases in which the interests of justice require the participation of the defender* actually include the other 10 cases indicated in art. 69 of the Code of Criminal Procedure. The text criticized by us must be brought in line with the last sentence of the paragraph (4) of art. 70 of the Code of Criminal Procedure, which at the moment encounters difficulties in the practice of applying this rule, resulting in non-uniform practices, because it gives the right not only to the court to decide if ***the interests of justice demand it,*** but also to the prosecutor, i.e. also at the criminal prosecution stage;

11. According to art. 69 paragraph (1) of the Code of Criminal Procedure "11) *the mandatory participation of the defender in a procedural action is expressly provided for by this code*". We have identified certain rules of procedure that put in difficulty not only criminal investigation officers, prosecutors and courts, but also LASGS, given the extensive interpretation of this case or the way in which the legislator chose to draft the legal texts regarding the participation of the defender to some procedural actions. It should be excluded from art. 104 of the Code of Criminal Procedure the word ***only***, because it inclines the addressee of the law more towards the obligation of the presence of the defender in all cases of hearing the accused, even if the accused does not have a chosen defender, or the accused person is not a beneficiary of legal assistance guaranteed by the state under the conditions of art. 69 of the Code of Criminal Procedure, which would mean that the defense attorney must partic-

ipate in all criminal cases when the accused is heard, even if the provisions of art. 282 paragraph (1) of the Code of Criminal Procedure in the current wording also unconditionally indicates the obligation of the participation of the lawyer in the submission of the accusation, which in fact can be interpreted rather that at the time of the notification of the indictment ordinance, the accused must be assisted by the lawyer, in all criminal cases;

12. We consider that the provisions of art. 90 paragraph (2) of the Code of Criminal Procedure - *no person can be forced to make statements contrary to his interests or those of his close relatives* - do not meet the requirements of quality, predictability in application and clarity, examined both in the context of all the norms cited above, and in the context of the conclusions that can be made on their side; The fact that no person can be compelled to make statements contrary to his interests and those of his close relatives - can be interpreted otherwise than in the sense of the privilege against self-incrimination. It is not clear whether the provisions of art. 90 paragraph (2) of the Code of Criminal Procedure refers only to witnesses or only to other participants in the process, because the title of art. 90 of the Code of Criminal Procedure is *the Witness***.** The criminal procedural norm in question could also concern other participants in the process, given the fact that the phrase *No person* is used in this norm (…).We could well assume, as by the phrase *No person* (…) - both the witness and other participants in the process are taken into account. The meaning intended by our legislature when the phrase was coined is also not clear (…) *to make declarations contrary to his interests or those of his close relatives.* We might assume that when it is mentioned - *No person can be forced to make statements contrary to his interests or those of his close relatives,* the legislator had in mind the right not to incriminate oneself and the right not to incriminate close relatives. But there can be another interpretation, given the fact that several norms of the Code of Criminal Procedure, which regulate the privilege of

non-self-incrimination of the witness, the suspect, the accused, the defendant (art. 21, art. 63 paragraph (7), art. 64 paragraph (4), art. 66 paragraph (2) point 8), art. 90 paragraph (3) point 8), art. 90 paragraph (12) point 7), art. 103 paragraph (3), art. 109 paragraph (7) of the Code of Criminal Procedure) do not reserve this right by using the expression: *against his interests and those of his close relatives,* but, as noted, - by using other expressions that regulate the right to remain silent.[28]

13. Analysis of art. 166 paragraph (4) of the Code of Criminal Procedure denotes that the detention of the *mature* person takes place in cases of *flagrante delicto.* Therefore, when a person will commit a criminal act and will be caught in *flagrante delicto*, having the legal grounds for detention, the competent judicial bodies can apply this coercive measure also regarding the minor, who will be the subject of the given crime. Or, the current rule deprives the criminal investigation body and the prosecutor of the right to detain minors until the crime is registered (in *flagrante delicto*), even if they are suspected of having committed serious, particularly serious or exceptionally serious crimes (for example, a murder).

14. The provisions of art. 174 paragraph (2) of the Code of Criminal Procedure are not clear enough because, in our opinion, they can be interpreted ambiguously. Or, the released person can be detained for the same reasons (mentioned in art. 166 of the Code of Criminal Procedure), but for the *reasonable suspicion* of committing another crime, other than the one for which he was detained and subsequently released. Thus, the legislative intervention in art. 174 paragraph (2) of the Code of Criminal Procedure is imposed, as it regulates not only the same grounds, but also the same deed.

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[28] OSTAVCIUC, Dinu, OSOIANU, Tudor. Freedom of self-incrimination. În: "Cogito", Multidisciplinary Research Journal. Vol. XV, no. 3/September, 2023, Bucharest, 2023, pp. 72-96. ISSN 2068-6706 (Baza de date SCOPUS) https://cloud.mail.ru/attaches/16981353401108414485%3B0%3B1?folder-id=0&x-email=navrucnd1%40mail.ru&cvg=f

15. We found that it is not enough to respect the right to freedom and security, which the detained person is only given a copy of the information regarding his rights and obligations, but the criminal investigation officer or the prosecutor must necessarily explain it to him, as well as his rights and obligations in a language that he understands.

16. The criminal investigation body and the prosecutor are deprived of the right to apply a measure that would immediately protect the victim or the injured party of domestic violence. Therefore, the current provision in the Code of Criminal Procedure does not provide sufficient guarantees, in our view, in this chapter. Thus, we consider that it is necessary to amend and supplement the criminal procedural law by granting the criminal investigation body and the prosecutor the right to issue the protection order;

17. We find an omission in the procedural-criminal norms, because the injured party is not expressly indicated in the text of art. 215/1 (2) of the Code of Criminal Procedure together with the victim of domestic violence to submit a request directly to the court (investigating judge) regarding the issuance of the protection order, the legislative intervention being appropriate in the provisions of art. 215/1 (2) of the Code of Criminal Procedure, so that the victim of domestic violence is expressly granted the same rights as the injured party.[29]

18. Criminal procedural legislation does not establish the maximum term for the extension of protective measures, which in our opinion affects the right of the suspect or the accused, because they, from the start, are placed in an uncertainty regarding

[29] OSOIANU, Tudor; OSTAVCIUC, Dinu. Procedura aplicării măsurilor de protecţie a victimelor violenţei în familie. În: Protecţia drepturilor şi libertăţilor fundamentale ale omului în procesul asigurării ordinii şi securităţii publice. Conferinţă ştiinţifico-practică internaţională. 09.12.2021. Chişinău, Republica Moldova, 2022, pp. 10-29. ISBN 978-9975-135-53-5. CZU 34+351.74(082)=135.1=161.1 https://ibn.idsi.md/ro/vizualizare_articol/153476

this subject. For these reasons, we propose to amend and supplement the rules of criminal procedure, so that the maximum term for the application of protective measures is established. Or, otherwise these restrictions can be extended until the expiration of the limitation period;

19. Criminal procedural legislation does not regulate the revocation of protection measures for victims of domestic violence and sexual crimes. We support the opinion that this aspect needs to be regulated, because when the protective ordinance is issued for a certain period, new circumstances may arise that would allow the revocation, or evidence may be administered that shows the non-existence of the elements of the crime or other objective circumstances; The revocation of the protection measure can be initiated by request and by the victim, the injured party, the accused or his defender; We propose that the reason for revoking the protection measure is to remove the person from criminal prosecution, the termination of the criminal prosecution, and the dismissal of the criminal process;

20. We found that the expression *"obliges the criminal investigation body ... to issue a procedural document"*, from the provisions of art. 259/1 paragraph (5) of the Code of Criminal Procedure can have several meanings. We do not exclude that in the event that the investigating judge will oblige the undertaking of a procedural act, the criminal prosecution body will execute the requirements of the court, performing only the mentioned act. We believe that the investigating judge must decide not only on the execution of an act, but on criminal prosecution as a whole, establishing a concrete term for its completion.

21. We have not identified an argumentative justification regarding the normative omission to stipulate the right of the civil party in the criminal process to notify the investigating judge in order to apply the seizure when the prosecutor refuses or hesitates to file the respective action.

21. Article 306 of the Code of Criminal Procedure which

regulates the content of the conclusion of the investigating judge regarding the authorization of coercive procedural measures, including regarding the seizure of assets, does not expressly indicate the solution of partial admission of the approach examined according to the procedure provided by art. 305 of the Code of Criminal Procedure. Also the text of art. 306 of the Code of Criminal Procedure does not provide for the solution of the inadmissibility of repeated actions with the same object regarding the authorization of seizure. Last but not least, we note that the provisions of art. 306 of the Code of Criminal Procedure, omits to impose the requirement of assessing the purpose pursued, the appropriateness of the limitations of the right to property, as well as the assessment of the proportionality between the coercion measure applied and the objectives pursued.[30]

22. Our legislature, recently went further in ensuring the guarantees of access to the criminal investigation materials until the end of the criminal investigation of the injured parties, their successors and representatives without making any distinction between their categories as made by the jurisprudence of the ECtHR and the CC; in this case, the bans restricting access to the file materials of the representatives of the defense side remain disproportionate. This aspect could be the subject of prospective research.

Following the findings and conclusions presented, we formulate the following **Recommendations**: *of lege ferenda*

- The renaming of art. 10 The principle of humanism;

- The text "*is victim or witness*" in art. 10 paragraph (6) of the Code of Criminal Procedure should be replaced with the text "*participates in criminal proceedings, regardless of its procedural status*";

[30] OSOIANU Tudor, OSTAVCIUC Dinu. Procedura de autorizare și contestare a punerii bunurilor sub sechestru în procesul penal. În: Ştiința, învățământul și practica prevenirii criminalității: (culegere de rapoarte și comunicări ale unor conferințe științifice). Chişinău: S. n., 2022 (CEP USM). pp.521-534. ISBN 978-9975-159-51-7 (PDF).

- The exclusion of the text "*and intimate*" from art. 15 of the Code of Criminal Procedure, with the inclusion of the prosecutor;

- The exposition in the next edition of the provisions of art. 20 paragraph (1) of the Code of Criminal Procedure – "*The conduct of the criminal process must be carried out within a reasonable period of time*";

- The replacement of the text from art. 22 paragraph 3 of the Code of Criminal Procedure – "*except for the cases when these ordinances were canceled",* with the text – "*except for cases when new or recently discovered facts or a fundamental flaw in the previous procedure affected the respective decision*";

- Replacement of point 10) paragraph (1) of art. 69 of the Code of Criminal Procedure with point 11) from the same article and paragraph, insignificantly adapting the text – "*as well as in other cases where the interests of justice require the participation of the defender in the criminal process*";

- Exclusion from the provisions of art. 71 paragraph (4) of the Code of Criminal Procedure of the text "*the prosecutor, by reasoned ordinance, or*";

- The exclusion of paragraph (2) from art. 90 of the Code of Criminal Procedure;

- Exclusion from the provisions of art. 104 paragraph (1) of the Code of Criminal Procedure of the word "only";

- The exclusion of the word *"mature"* from the provisions of art. 166 paragraph (4) of the Code of Criminal Procedure;

- The replacement of art. 308 paragraph (12) to which the provisions of art. 166 paragraph (7) of the Code of Criminal Procedure make reference with art. 308 paragraph (10);

- Completion of art. 167 paragraph (1) of the Code of Criminal Procedure, so that after the text "*at the same time, he is given written information about the rights provided for in art. 64*", should be inserted the text "*and these rights are explained to him in a language he understands*";

- Completing the provisions of art. 174 paragraph (2) of the Code of Criminal Procedure with the text – "*and the same act for which he was previously detained";*

- Completion of art. 215/1 paragraph (2) of the Code of Criminal Procedure, so that the injured party is also included alongside the victim of domestic violence with the right to initiate the procedure for the application of protective measures to be expressly granted the same rights enjoyed by the injured party;

- Completion of art. 62 of the Code of Criminal Procedure and art. 304 paragraph (1) of the Code of Criminal Procedure with provisions regarding the civil party's right to submit a request regarding the insurance of the civil action;

- The establishment in art. 215/1 paragraph (4) of the Code of Criminal Procedure of a deadline for the application of protective measures for victims of domestic violence and sexual crimes of 24 months cumulatively;

- Completion of art. 215/1 of the Code of Criminal Procedure with paragraph (7) "The revocation of the protection measure can be initiated by request and by the victim, the injured party, the accused or the defender if the grounds and reasons that were the basis of the application have disappeared. As grounds for revocation of the protection ordinance of the victim, of the injured party, the protection measure should be the removal of the person from criminal prosecution, the termination of the criminal prosecution, and the classification of the criminal process;

- Exposition of the provisions of art. 259/1 paragraph (5) of the Code of Criminal Procedure thesis I in the following wording - (5) "The investigating judge decides on the request regarding the acceleration of the criminal investigation through a reasoned conclusion, by which he either obliges the criminal investigation body to adopt one of the solutions provided in art. 191 of the Code of Criminal Procedure, establishing a certain term for speeding up the procedure, or rejecting the request;

- Completion of the text of art. 306 of the Code of Criminal Procedure with provisions regarding "*the solution of partial admission of the application* as well as *the solution of inadmissibility of repeated applications* submitted under the conditions of art. 305 of the Code of Criminal Procedure, which were previously rejected in the same case and regarding the same person.

**Priority directions of perspective**:

1. The right of the accused and his defense attorney to the materials of the criminal case until the end of the criminal investigation;
2. Guarantees of the right of ownership in the context of parallel financial investigations;
3. The guarantee of human rights within the framework of the judicial control of the criminal prosecution in the second degree of jurisdiction.

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**ADNOTARE**

**OSTAVCIUC Dinu. „Asigurarea drepturilor omului în cadrul etapelor prejudiciare: normativul procesual penal național, practici europene și internaționale". Teză de doctor habilitat în drept. Școala Doctorală „Științe penale și Drept public" a Academiei „Ștefan cel Mare"**
**a MAI al Republicii Moldova. Chișinău. 2023**


**Structura tezei:** text de bază 412 pagini, adnotare în limbile română, engleză și franceză, lista abrevierilor, introducere, opt capitole divizate în paragrafe, concluzii generale și recomandări, bibliografia din 657 surse.

**Cuvinte-cheie:** drepturi şi libertăţi fundamentale; proces penal; urmărirea penală; dreptul la libertate şi siguranţă; dreptul de a nu fi supus torturii; obligaţiile negative şi pozitive în materia drepturilor fundamentale; dreptul la un proces echitabil; dreptul de proprietate etc.

**Domeniul cercetării:** Drept procesual penal.

**Scopul și obiectivele lucrării. Scopul** tezei este cercetarea complexă a garanțiilor internaționale și naționale în domeniul asigurării drepturilor omului în cadrul etapelor prejudiciare ale procesului penal în vederea evaluării necesităţilor de perfecţionare a legislaţiei şi de promovare a bunelor practici. În vederea realizării scopului, atât în aspect teoretic cât și în aspect practic, au fost trasate următoarele **obiective**: identificarea cauzelor condamnării Republicii Moldova la CtEDO pentru nerespectarea drepturilor și libertăților participanților în proces, până la transmiterea dosarului penal în instanță; evaluarea oportunității de a schimba practicile vicioase de interpretare și de aplicare arbitrară a normelor de procedură penală contrar standardelor internaționale în materia respectării drepturilor și libertăților fundamentale; constatarea circumstanțelor care determină aplicarea eronată, arbitrară sau diferită de către instituțiile statului a normelor procesual-penale ce garantează sau limitează drepturile și libertățile omului la etapa prejudiciară a procesului; fundamentarea unui mecanism consecvent în vederea asigurării proporționalității dintre limitarea drepturilor și libertăților omului și scopul legitim urmărit în cadrul urmăririi penale; evaluarea oportunității de a interveni cu propuneri de *lege ferenda* în vederea armonizării și eficientizării activității organelor de aplicare a legii, cu referire la etapele prejudiciare ale procesului penal etc.

**Noutatea și originalitatea științifică:** Noutatea științifică a prezentei cercetării constă în identificarea omisiunilor, incoerențelor și coliziunilor de ordin legislativ care aduc atingeri drepturilor persoanei în cadrul etapelor prejudiciare, care vor fi analizate în baza practicii judiciare a instanțelor judecătorești, Curții de Apel, Curții Supreme de Justiție precum și hotărârilor și deciziilor Curții Constituționale a Republicii Moldova. Totodată, noutatea științifică a studiului realizat constă în elaborarea științifică-argumentată a unui set de recomandări sub formă de *lege ferenda* în vederea consolidării regimului de protecție a drepturilor omului în cadrul etapelor prejudiciare ale procesului penal. **Originalitatea** cercetărilor se materializează prin analiza practicii CtEDO versus Moldova, pentru a evidenția cauzele și condițiile care favorizează fenomenul încălcării drepturilor omului în etapele prejudiciare a procesului penal. Studiul a identificat și evaluat oportunități de a schimba practicile vicioase de interpretare și de aplicare arbitrară a normelor de procedură penală.

**Semnificația teoretică a tezei**: rezidă într-un studiu complex a celor mai importante probleme de ordin normativ, doctrinar și practic ale asigurării drepturilor omului la etapele prejudiciare ale procesului penal.

**Valoarea aplicativă a tezei:** Rezultatele cercetării şi concluziile autorului vor fi promovate şi diseminate prin diverse metode, care vor fi folosite şi aplicate atât în activitatea de cercetare, precum și în activitatea practica a organelor judiciare. Rezultatele cercetărilor obținute au fost publicate în diverse reviste științifice, precum și în cadrul conferințelor, inclusiv organizate de către autor. Cercetarea va contribui la instruirea studenților facultăților de Drept, iar rezultatele ei pot fi integrate unor noi cercetări descrise în programe europene din domeniul drepturilor omului implementate în strategiile de dezvoltare ale statelor membre ale UE sau cele ce tind spre integrarea europeană.

## ANNOTATION

**OSTAVCIUC Dinu. "Providing of human rights within the framework of prejudicial stages: national criminal procedural regulation, European and international practices". PhD thesis in law. Doctoral School of Criminal Sciences and Public Law of the Academy "Ștefan cel Mare" of the MIA of the Republic of Moldova. Chișinău. 2023**

**Thesis structure:** 412 pages of basic text, annotation in Romanian, English and French, list of abbreviations, introduction, eight chapters divided into paragraphs, general conclusions and recommendations, bibliography of 657 sources.

**Keywords**: fundamental rights and freedoms; penal trial; criminal investigation; the right to freedom and security; the right not to be subjected to torture; negative and positive obligations in the matter of fundamental rights; the right to a fair trial; property rights, etc.

**The field of research:** Criminal Procedural Law.

**The purpose and objectives of the paper.** The aim of the thesis is the complex research of the international and national guarantees in the field of ensuring human rights in the prejudicial stages of the criminal process in order to assess the needs for improving the legislation and promoting good practices. In order to achieve the goal, both theoretically and practically, the following objectives were drawn: identifying the causes of the conviction of the Republic of Moldova at the ECtHR for non-respect of the rights and freedoms of the participants in the trial, until the criminal file is submitted to the court; evaluating the opportunity to change the vicious practices of interpretation and arbitrary application of criminal procedure rules contrary to international standards in respect of fundamental rights and freedoms; ascertaining the circumstances that determine the erroneous, arbitrary or different application by the state institutions of the criminal procedural rules that guarantee or limit human rights and freedoms at the prejudicial stage of the process; the foundation of a consistent mechanism in order to ensure the proportionality between the limitation of human rights and freedoms and the legitimate aim pursued within the criminal prosecution; evaluating the opportunity to intervene with lege ferenda proposals in order to harmonize and streamline the activity of law enforcement bodies, with reference to the prejudicial stages of the criminal process, etc.

**Scientific novelty and originality:** The scientific novelty of this research consists in the identification of legislative omissions, inconsistencies and collisions that lead to violations of the rights of the person in the prejudicial stages, which will be analyzed based on the judicial practice of the courts, the Court of Appeal, the Supreme Court of Justice as well as the decisions and judgements of the Constitutional Court of the Republic of Moldova. At the same time, the scientific novelty of the conducted study consists in the scientifically-argued elaboration of a set of recommendations in the form of lege ferenda in order to strengthen the regime for the protection of human rights in the prejudicial stages of the criminal process. The originality of the research is materialized through the analysis of ECtHR practice against Moldova, in order to highlight the causes and conditions that favor the phenomenon of human rights violations in the prejudicial stages of the criminal process. The study identified and assessed opportunities to change the vicious practices of interpretation and arbitrary application of criminal procedure rules.

**Theoretical significance of the thesis:** resides in a complex study of the most important normative, doctrinal and practical problems of ensuring human rights at the prejudicial stages of the criminal process.

**Applied value of the thesis:** The research results and the author's conclusions will be promoted and disseminated through various methods, which will be used and applied both in the research activity, as well as in the practical activity of judicial bodies. The obtained research results were published in various scientific journals, as well as in conferences, including those organized by the author. The research will contribute to the training of Law faculty students, and its results can be integrated into new research described in European programs in the field of human rights implemented in the development strategies of EU member states or those that tend towards European integration.

**АННОТАЦИЯ**

**к диссертации Дину ОСТАВЧУКА на тему. «Обеспечение прав человека на досудебных стадиях: национальное уголовно-процессуальное законодательство, европейские и международные практики» представленную на соискание ученой степени доктора наук по специальности 554.03 «Уголовно-процесуальное право». Докторская школа уголовных наук и публичного права Академии «Штефан чел Маре» МВД Республики Молдова. Кишинэу. 2023 год**

**Структура диссертации:** основной текст 412 страниц, аннотации на румынском, английском и русском языках, список сокращений, введение, восемь глав, разделенных на параграфы, общие выводы и рекомендации, библиография из 657 источников.

**Ключевые слова:** основные права и свободы; уголовный процесс; уголовное преследование; право на свободу и безопасность; право не подвергаться пыткам; негативные и позитивные обязательства в отношении основных прав; право на справедливый уголовный процесс; право собственности и др.

**Область научной деятельности:** Уголовно-процессуальное право.

**Цель и задачи иследования.** Целью работы является комплексное исследование международных и национальных гарантий в области обеспечения прав человека на досудебных стадиях уголовного процесса для оценки необходимости совершенствования законодательства и внедрения передовых практик. Для достижения цели как в теоретическом, так и в практическом планах были поставлены следующие задачи: выявление причин осуждения Республики Молдова в ЕСПЧ за несоблюдение прав и свобод участников процесса до передачи уголовного дело в суд; оценка возможностей устранения порочных практик толкования и произвольного применения уголовно-процессуальных норм с нарушением международных стандартов в сфере соблюдения основных прав и свобод; выявление обстоятельств, определяющих ошибочное, произвольное или иное применение государственными учреждениями уголовно-процессуальных норм, гарантирующих или ограничивающих права и свободы человека, на досудебной стадии процесса; разработка последовательного механизма обеспечения соразмерности между ограничениями прав и свобод человека и законной целью уголовного преследования; оценка возможностей изменения законодательства с целью гармонизации и совершетсвования деятельности правоохранительных органов на досудебных стадиях уголовного процесса и т.д.

**Научная новизна и оригинальность:** Научная новизна данного исследования состоит в выявлении законодательных упущений, несоответствий и коллизий, приводящих к нарушениям прав человека на досудебных стадиях, которые проанализированы на основе судебной практики, практики Апелляционного суда, практики Высшей судебной палаты, а также решений и постановлений Конституционного Суда Республики Молдова. Также, научная новизна проведенного исследования заключается и в научно-обоснованной разработке комплекса рекомендаций по изменению законодательства в целях усиления защиты прав человека на досудебных стадиях уголовного процесса. Оригинальность исследования проявляется в анализе практики ЕСПЧ против Молдовы с целью выявления причин и условий, благоприятствующих феномену нарушения прав человека на досудебных стадиях уголовного процесса. Исследование выявило и оценило возможности изменения порочных практик произвольного толкования и применения уголовно-процессуальных норм.

**Теоретическая значимость диссертации** заключается в комплексном исследовании важнейших нормативных, доктринальных и практических вопросов обеспечения прав человека на досудебных стадиях уголовного процесса.

**Прикладное значение диссертации:** Результаты исследования и выводы автора будут пропагандироваться и распространяться различными методами, которые будут использоваться и применяться как в исследовательской деятельности, так и в практической деятельности судебных органов. Полученные результаты исследований были опубликованны в различных научных журналах, а также на конференциях, в том числе организованных автором. Исследование будет способствовать обучению студентов юридических факультетов, а его результаты могут быть интегрированы в новые исследования, описанные в европейских программах в области прав человека, внедренных в стратегии развития стран-членов ЕС или тех, которые стремятся к европейской интеграции.

**OSTAVCIUC DINU**

# PROVIDING OF HUMAN RIGHTS WITHIN THE FRAMEWORK OF PREJUDICIAL STAGES: NATIONAL CRIMINAL PROCEDURAL REGULATION, EUROPEAN AND INTERNATIONAL PRACTICES

**Specialty 554.03 – CRIMINAL PROCEDURAL LAW**

**Summary of the doctoral thesis in law**

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