UNIVERSITY OF EUROPEAN STUDIES OF MOLDOVA

By title of the manuscript

CZU: 343.1 (043.2)=111

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JUDICIAL CONTROL OF THE PREJUDICIAL PROCEDURE. NATIONAL ASPECTS AND COMPARATIVE LAW

Specialty 554.03 – Criminal procedural law

Abstract of the Doctor of Law thesis

Chisinau, 2024

The dissertation was prepared within the Doctoral School „Legal Sciences and International Relations" of the University of European Studies of Moldova.

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Public defense will be held on 15 mai 2024, time 14-00, in the meeting of the **Commission for Public Defense of Doctoral Dissertation** within the Doctoral School "Legal Sciences and International Relations" of the University of European Studies of Moldova, Chisinau Mun., Gh. Iablocikin Str., no. 2/1, Republic of Moldova, 200A hall.

Doctoral dissertation and abstract can be consulted at the National Library of the Republic of Moldova, at the USEM (University of European Studies of Moldova) Library, and on the ANACEC (National Agency for Quality Assurance in Education and Research) website.

The abstract has been sent on 10 april 2024.

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CONTENT

CONCEPTUAL MARKINGS OF THE RESEARCH

Actuality and importance of the researched theme. The importance of the research is determined by the need to improve the judicial control of the prejudicial procedure. Or, the institution of judicial review of the prejudicial procedure comes to bring certain remedies in the criminal procedure, especially with reference to guaranteeing and ensuring the rights of the persons concerned in the criminal process.

Ensuring the legal interests of the person in the prejudicial procedure in the criminal process is carried out in several directions and under different procedural forms, with the application of the appropriate methods, specified by the criminal procedural law. The basic task in this field falls to some subjects of the criminal process, to which the court is also assigned. However, the issue of the establishment and functioning of the judicial control of the prejudicial procedure in the criminal process is a current one for the legal doctrine and the practice of the judicial bodies.

According to art. 16 of the Constitution of the Republic of Moldova, "respecting and protecting the person is a primary duty of the state". Proclaiming this fundamental principle of civil society and the rule of law, the Constitution of the Republic of Moldova determined and materialized, at the same time, the most important terms of the legal mechanism for the protection of the human person and its values, a special role in the application of this mechanism having l the judicial power.

At the current stage, the rights of individuals can be defended by various means, which are specified in the law. At the same time, a reasonable combination of different forms of control – judicial, prosecutor, etc. is necessary. All these forms of control can complement each other with a certain degree of effectiveness, properly defending the rights and freedoms of man and citizen, ensuring the protection of the interests of the state and society.

If we make an incursion into the past, previously, the court practically did not participate in the control over the activity of the criminal investigation bodies. The power of control began with the submission of the case for examination in the court, where the judge examined and resolved the case on the merits and verified the legality and validity of the judgments issued in the context of appeals. In the scope of the criminal process, all these powers represented the traditional forms of judicial defense of the rights and freedoms of man and citizen. Their main disadvantage was "distancing" and "removal" in time.

Through the implementation of the institution of judicial control in the criminal process, the quality of the criminal investigation increases and the outlining at the appropriate time of the errors admitted during the criminal investigation phase.

Thus, the errors and violations admitted during the criminal prosecution phase must be corrected until the criminal case is submitted to the court, in particular, if the constitutional rights and freedoms of man and citizen are violated.

The framing of the theme in international concerns. The Universal Declaration of Human Rights contains provisions on the inviolability of intimate, family and private life, ensures the secrecy of correspondence and the inviolability of the domicile. The provisions of the Declaration are reproduced in the Constitution of the Republic of Moldova, according to which: "Every person has the right to effective satisfaction from the competent national legal courts against acts that violate the fundamental rights recognized by the constitution or the law" (art. 20); No one shall be arbitrarily arrested, detained or exiled (art. 9); Every person has the right, in full equality, to be heard in a fair and public manner by an independent and impartial tribunal, which will decide either on his rights and obligations, or on the merits of any criminal charge against him (art. . 10). Only the strict necessity of quickly discovering crimes and combating them can justify restricting the rights and freedoms of man and citizen. Or, in such circumstances, the judicial power appears as an insurmountable barrier to the lawlessness of legal bodies, any illegal actions and decisions of theirs to be examined by the court at the request of the injured persons.

The European Convention on Human Rights[1] protects the right to freedom and security, the right to a fair trial, the right to respect for private and family life, the right to two degrees of jurisdiction in criminal matters, etc. The convention became an integral part of the national legal system of the Republic of Moldova starting from September 12, 1997. In particular, art. 13 of the ECHR states that "any person whose rights and freedoms recognized by the convention have been violated has the right to effectively address a national institution, even when the violation was due to other persons who acted in the exercise of their official duties"; Art. 5 para. (3) of the ECHR provides that "any person arrested or detained under the conditions provided by par. 1 lit. c) from this article must be immediately brought before a judge or other magistrate empowered by law to exercise judicial powers..."; point 4 of art. 5 stipulates that "any person deprived of his liberty by arrest or detention has the right to lodge an appeal before a court, so that it can rule within a short period of time on the legality of his detention and order his release, if the detention is illegal" ; Art. 6 point 1 of the ECHR provides that "every person has the right to have his case judged - fairly, publicly and within a reasonable time - by an independent and impartial court, established by law, which will decide on the violation his rights and obligations of a civil nature, on the merits of any accusation in criminal matters, directed against him...".

Thus, simultaneously with the ratification of the ECHR, our state assumed, on the one hand, the obligation to guarantee every person under its jurisdiction the rights and freedoms provided for by the Convention, and on the other hand, our state accepted to submit to the execution of this obligations of an international legal control, carried out by the ECtHR. Therefore, the Republic of Moldova has

[1] European Convention on Human Rights, Published on 30-12-1998. In: International Treaties, no. 1, art. 342. [online] Available: https://www.legis.md/cautare/getResults?doc_id=115582&lang=ro [accessed: 24.03.2023].

recognized the right to individual appeal before the ECtHR, as well as the binding jurisprudence of the ECtHR both for national courts and for national public authorities.

Moreover, based on the commitments made by the Republic of Moldova at the time of the address to the Council of Europe, as well as the obligation to fulfill them arising from the constitutional provisions, the national legislative framework was and is in a continuous upward improvement, which led, in turn, to legislative and institutional reforms carried out according to European standards.

Starting from the principles set out in the ECHR and from the principles established in the constant jurisprudence of the ECtHR, the verification by a competent, independent and impartial court, duly notified, of the actions of the criminal investigation body and of the body that carries out actions serves as a judicial guarantee special investigation, in order to discover and eliminate violations of human rights and freedoms during the criminal investigation phase and, at the same time, to respect the legitimate rights and freedoms of the trial participants and other people.

Framing the theme in national and zonal concerns. In the specialized doctrine, the problems related to the defense of the rights and interests of the person in the application of procedural-criminal coercion measures were permanently in the sights of the researchers. During the research of this topic. It was found that scientists such as M. Strogovoci, I. Petrukhin, V. Najimov, Iu. Stețovschi and many others, along with the submission of other proposals, pronounced some time ago regarding the establishment of judicial control over the application of the preventive measure in the form of arrest and regarding its extension. However, by virtue of certain cases, including those regarding the former status of the court, stereotypes regarding the role and place of the prosecution bodies in the state, these proposals also had a number of opponents from among scientists and practitioners (A. Boicov, V. Djatiev, A Soloviov, M. Tocarev, A. Ciuvilev, Iu. Iachimovichi and others).

In the specialized literature, including the content of some doctoral theses, several issues related to the judicial review of the legality and validity of the pre-trial detention measure and its extension were analyzed (V. Galuzo, O. Izotova, Iu. Leahova, O. Țocolova et al.). The works of other researchers are also dedicated to this form of judicial control of the prejudicial procedure: I. Dolea, D. Roman, T. Vizdoagă, T. Osoianu, A. Airapetean, V. Șterbeț. T. Popovici, S. Țoncu, M. Avram, S. Ursu, I. Roșca, A. Oganesean, N. Artemov, N. Bozrov, V. Verin, A. Dracenov, Gh. Cozârev, A. Larin, L. Maslennicova, I. Petruhin, V. Savitchi and others.

Subsequently, some aspects of the judicial control of the preliminary proceedings were also analyzed by the Romanian authors, namely by: M. Odroiu, A. Pintea, D. C. Pintea, A. C. Bălănescu, C. Ghigheci, A. Crișu, I. Oprea, I Neagu, M. Damaschin, R. Slăvoiu, M. A. Stanciu, Gr. Theodoru, N. Volonciu, A. Uzlă, etc.

The constitution and consolidation of the institution of judicial control of the prejudicial procedure, as well as the requirements (needs) of judicial practice determined the appeal to the

experience of other states in this field: it is about the research of the authors S. Bobotov, E. Bâcova, C. Guțenco, A. Nichiforov, V. Nicolaicic, C. Poleanschii et al.

At the same time, the studies carried out and the works published in this field have by no means exhausted the topicality of the analysis of the content and the specifics of the judicial review of the prejudicial procedure. However, this updates, in general, the issue of judicial control of the pretrial procedure, revealing the need for continuous improvement of the procedural-criminal legislation regarding the essence, place, forms and limits of the judicial control of the pretrial procedure.

The purpose of the work. The purpose of this doctoral thesis consists in the theoretical substantiation and complex research of the institution of judicial control of the prejudicial procedure, and in the optimization of the legal framework in this field.

The objectives of the research aim at:

• analysis of scientific materials related to the judicial control of the prejudicial procedure;

• researching the historical elongation of the institution of judicial control of prejudicial procedures;

• the conceptual approach to the judicial control of prejudicial proceedings in the criminal process;

• determining the practical importance of the judicial control of prejudicial proceedings;

• analysis of the conditions of judicial control regarding the legality of the procedural actions carried out during the criminal investigation phase;

• determining the particularities of judicial control in the process of authorizing special investigative measures;

• revealing the conditions of judicial control regarding the application of preventive detention and other coercive measures of a criminal procedural nature;

• identification of other duties of the investigating judge in carrying out judicial review;

• researching national and international judicial practice in the field of judicial review of prejudicial proceedings;

• analysis of the international procedural-criminal regulations in the field of judicial control of the prejudicial procedure;

• comparative analysis of the institution of judicial control of the prejudicial procedure in different Anglo-Saxon, Romano-German law systems;

• identification of legislative deficiencies regarding judicial control;

• formulating the conclusions and proposals of the law ferenda, aimed at improving the current legal framework for the regulation of the judicial control of the prejudicial procedure.

The research hypothesis in this paper resides in revealing the essence of the institution of judicial control of the prejudicial procedure, relatively analyzed in the local doctrine, emerging also from the

context of the latest amendments and additions to the criminal procedural legislation of the Republic of Moldova.

Synthesis of research methodology and justification of chosen research methods. In order to establish the scientific-theoretical framework of the present work, general dialectical-scientific methods, as well as other particular ones, were applied in the conducted research, such as: the historical, logical-legal, comparative-legal method.

At the same time, during the research of the subject of judicial control of the prejudicial procedure, other methods were also applied: historical-legal, comparative, legal-formal, grammatical, systemic, etc.

The conclusions and recommendations in the paper are based on the provisions of: international acts in the field of human rights, the Constitution of the Republic of Moldova, the criminal procedural law, as well as the decisions of the Constitutional Court and the explanatory decisions of the Plenum of the Supreme Court of Justice of the Republic of Moldova.

The normative basis of the research includes the provisions of the criminal procedural law, criminal law, constitutional law and other branches of law. At the same time, the procedural-criminal regulations from other states in the matter of judicial control of the prejudicial procedure were thoroughly researched.

The theoretical basis of the doctor's thesis is made up of the works of doctrinaires in the field of law, who researched various aspects of the judicial control of the prejudicial procedure in the criminal process.

The empirical basis of the research emerges from the ECtHR jurisprudence, especially from the decisions pronounced on the cases against the Republic of Moldova, and from multiple conclusions and decisions of the courts of the Republic of Moldova, especially of the Bălți Court of Appeal.

Publications on the topic of the thesis. 9 scientific papers were published on the topic of the doctoral thesis.

The volume and structure of the thesis: 222 pages of basic text that includes: Introduction, three chapters, general conclusions and recommendations, the bibliography of 280 titles; the statement regarding the assumption of responsibility; Author's CV.

Key words: criminal trial, judicial control, pretrial procedure, judge, criminal investigation action, special investigative measures, complaint, appeal, proceeding, prosecutor, arrest, procedural-criminal coercion measures, adversariality, conclusion.

THESIS CONTENT

In the Introduction, the topicality and importance of the problem addressed are argued, the purpose and objectives of the thesis are formulated, the scientific novelty of the results obtained, the theoretical importance and the applied value of the work, the approval of the results, the summary of the sections are pointed out. thesis.

Chapter 1, reserved for the analysis of the situation in the field of research and entitled The institution of judicial control of the prejudicial procedure in doctrine and legislation, identifies, describes and analyzes in great detail the specialized works, dedicated to the institution of judicial control of the prejudicial procedure and published both in the Republic of Moldova (authors: I. Dolea, D. Roman, T. Vizdoagă, T. Osoianu, A. Airapetean, V. Șterbeț, T. Popovici, S. Țoncu, M. Avram, S. Ursu, I. Roșca, A. Oganesean and .a.), as well as abroad. Some researchers, such as M. Strogovoci, I. Petrukhin, V. Najimov, Iu. Stețovschi and many others, along with the submission of other proposals, pronounced some time ago regarding the establishment of judicial control over the application of the preventive measure in the form of arrest and regarding its extension. At the same time, by virtue of certain cases, including those regarding the former status of the court of law, stereotypes regarding the role and place of the prosecutor's office in the state, these proposals also had a number of opponents among scientists and practitioners (A. Boicov , V. Djatiev, A Soloviov, M. Tocarev, A. Ciuvilev, Iu. Iachimovichi and others.). However, in the specialized literature, several issues related to the judicial control of the legality and validity of the pre-trial detention measure and its extension were analysed. Also, the establishment and consolidation of the institution of judicial control of the prejudicial procedure, as well as the requirements (needs) of judicial practice have also determined the appeal to the experience of other states in this field.

In the specialized literature, including the content of some doctoral theses, several issues related to the judicial review of the legality and validity of the pretrial detention measure and its extension were analyzed.

The constitution and consolidation of the institution of judicial control of the prejudicial procedure, as well as the requirements (needs) of judicial practice, determined the appeal to the experience of other states in this field.

The research carried out and the works published on this subject have not exhausted the actuality of the analysis of the content and the specifics of the judicial control of the prejudicial procedure. However, this updates, in general, the issue of judicial control of the prejudicial procedure, justifying the need for continuous improvement of the procedural-criminal legislation regarding the essence, place, forms and limits of the judicial control of the prejudicial procedure.

As a result, the degree of research of the topic and the scientific contribution of the studies in the field of judicial control were outlined, the scientific problem to be solved was formulated and the directions for its analysis were drawn.

It was found that the correct interpretation of the notion of "judicial control" is of both theoretical and practical importance, as it substantially influences the entire development of the control process, the scope, the subjects involved and other tangential particularities.

The vast majority of authors are of the opinion that judicial control has a preventive and precautionary role, it acts as a reliable guarantor of the respect and protection of the rights, freedoms and legitimate interests of the participants in the criminal process.

Chapter 2, with the generic Judicial control of prejudicial proceedings in the criminal process of the Republic of Moldova, reflects a series of considerations regarding the historical elongation and the national legal framework of the institution of judicial control, aspects related to the importance of control, but also those regarding the authorization of special investigative measures, of coercive measures with a criminal procedural nature, identification of other duties of the investigating judge.

The author claims that from a historical point of view, it was found that, through the judicial reform, promoted in the Russian Empire during the 60-70s of the 19th century, the judicial organization was based on modern principles, principles that allowed the realization of the right to justice through: eligibility judges, orality, adversariality, free assessment of evidence, etc. Judicial reform was also carried out in the national regions of Russia, including Bessarabia.

In the Romanian Countries, the legislator considered the separation of the instruction from the pursuit, which could be seen as a strong guarantee of individual freedom. The same reason determined the separation of the judgment from the preparatory instruction. In the Republic of Moldova, the evolution and consolidation of the institution of judicial control of the prejudicial procedure took place in three stages.

At the same time, it was noted that the administration of justice by the investigating judge is a responsible and difficult task, his activity being permanently in the public eye, a fact that requires continuous improvement, in order to improve the image of justice in society. Or, namely the institution of the investigating judge is a relatively new procedural institution, which aims to eliminate excesses on the part of the criminal investigation bodies and the bodies that carry out the special activity of investigations, representing a procedural remedy intended to ensure compliance with the requirements of legality, speed and fairness of the criminal process. This institution appeared following the expansion of the material competence of judicial control over criminal prosecution, starting from the control of the legality of certain prosecution acts.

In the doctoral thesis it was demonstrated that in the Republic of Moldova, the evolution and consolidation of the institution of judicial control of the prejudicial procedure took place in three stages[2]:

1) The period of 2003-2012: the legalization of the institution of judicial control of the prejudicial procedure and its continuous improvement, based on the experience accumulated along the way. The consecration, in 2003, of the institution of judicial control of the preliminary proceedings and the establishment of the function of the investigating judge responded to the idea of intensifying the collaboration with the European Union. However, the Code of Criminal Procedure, as amended in 2003, contained rules that set the powers of the investigating judge, as well as a separate chapter (no. 8) entitled Judicial control regarding prejudicial procedural actions, where, in compartment 1 "Criminal prosecution", the procedure for carrying out judicial control was described in luxurious detail.

In the initial version of the Code of Criminal Procedure from 2003, the investigating judge had approximately 25 powers regarding the current and subsequent control over the prejudicial procedure (art. 41), which could be divided into the following three categories: a) control over the application of measures procedural coercion; b) control over the performance of special investigative measures and regarding criminal prosecution actions; c) subsequent judicial control.

It is concluded that the investigating judge could apply the measure of preventive arrest and house arrest, could change or cancel these preventive measures; provisionally suspend the driver's license; could set the person free on bail or under judicial control; decided on the suspension of the person from the position, the application of the fine or the sequestration measure on the assets and regarding the hospitalization of the person in a medical institution (art. 41, art. 200-202, Criminal Procedure Code of the Republic of Moldova, 2003 edition). This state of affairs represented the logical consequence of the implementation of the notion of "independent judiciary", a basic feature of which is related to the prerogative of the court regarding the limitation of the constitutional rights and freedoms of the person.

2) The second stage covers the years 2012-2016. During this period, the list of powers of the investigating judge regarding the judicial control of the prejudicial procedure was completed, and the concretization of the preventive and subsequent judicial control procedure was continued.

It is argued that, with regard to the powers related to the application of procedural-criminal coercion measures, the legislator admitted the application of provisional release on bail and under judicial control regarding any person, regardless of the seriousness of the crime committed (art. 191 and 192 Code of criminal procedure). During this period, certain changes also occurred in the authorization procedure for special investigative measures due to the adoption of the new Law on special investigative activity.

[2] TALPA, Ion, RUSU, Vitalie. Some reflections on the historical appearance of the institution of judicial control of the prejudicial procedure in the criminal process of the Republic of Moldova. Materials of the international conference "Jurisprudence - the fundamental component of integration processes and contemporary legal behavior", November 3-4, Chisinau, 2017, p.269-270

At the same time, the subsequent judicial control regarding the actions, inactions and decisions of the subjects carrying out the criminal investigation and the special investigative activity was supplemented with the right to file complaints in certain situations: refusal to start the criminal investigation, termination of the criminal investigation, resumption of the criminal investigation And so on (art. 313, paragraph (6) of the Criminal Procedure Code of the Republic of Moldova, 2014 edition).

3) In the third stage, which started in 2016, the improvement of the regulations in the matter of preventive and subsequent judicial control continues. Most of the changes were made regarding the implementation of judicial control over the procedural-criminal coercion measures.

First of all, the possibility of postponing for a period of 12 hours the notification of close relatives or another person, at the detainee's proposal, about the person's detention, was provided only "if there is a need to prevent a serious risk to life, freedom or integrity of a person, to ensure the secrecy of the initial stage of the criminal investigation, to prevent prejudice to criminal proceedings, to prevent the commission of another crime or to protect the victims of crimes, with the reasoned authorization of the investigating judge"[3].

The author appreciates the importance presented by the loss of force of art. 307 of the Code of Criminal Procedure of the Republic of Moldova, which allowed the application of the pretrial detention measure regarding the suspect. Furthermore, the procedure for canceling the measure of preventive arrest and house arrest until the expiration of the term for which they were applied was liberalized. And, finally, in 2018, in the interest of the criminally prosecuted person, the procedure for provisionally lifting the driver's license was implemented.

In the doctoral thesis, the legislator's actions are revealed, which continued the materialization of the tendency to consolidate the subsequent judicial control. Thus, starting from 2016, the refusal of the criminal investigation body to release the detained person, in violation of the provisions of art. 165 and 166 of the Code of Criminal Procedure of the Republic of Moldova, and of the person detained in custody, in violation of the established term. From 2020, the provisions of art. 313 para. (3) regarding the order of submitting complaints to the investigating judge regarding the actions (inactions) of the criminal investigation bodies and those who carry out the special investigative activity[4].

An aspect of novelty in terms of judicial control over prejudicial proceedings results directly from the amendments made to the Code of Criminal Procedure by Law no. 245 of 31.07.2023 for the

[3] The Code of Criminal Procedure of the Republic of Moldova/ Code no. 122. [online] [accessed 20.08.2023]. Available: https://www.legis.md/cautare/getResults?doc_id=141507&lang=ro#

[4] VERESCHAGINA, A. V., KUMANKOVA, D. A. Evolution of the institution of judicial control over pre-trial proceedings in the Republic of Moldova. In: Current problems of Russian law. Volume 17, No. 4 (137), April, 2022, p. 149-157.

amendment of some normative acts (amendment of the Criminal Procedure Code and the Contravention Code)[5].

In this context, according to the changes made, "the complaint is examined by the investigating judge within 30 days, without the presence of the parties, who are notified of the date of the examination of the complaint. The judge, by means of a reasoned conclusion, may order the setting of the hearing for presentation at the trial, with the summons of the prosecutor, of the person who submitted the complaint, as well as of the persons whose rights and freedoms may be affected by admitting the complaint. (…)[6]", previously, "the complaint is examined by the investigative judge within 10 days, with the participation of the prosecutor (…)[7]".

It was concluded that with regard to judicial control over the execution of criminal prosecution actions and with regard to special investigative measures, they were divided into three groups, depending on the criterion of the procedural peculiarities of execution, namely: a) carried out only with authorization of the judge; b) carried out only with the authorization of the judge, except in cases that do not suffer postponement or flagrant crimes, based on the order of the investigating judge, with the further information of the investigating judge (within 24 hours), who will confirm or not the legality of the decision taken by the prosecutor; c) without the authorization of the judge, however, if the legal requirements of the investigating body were not executed, the fulfillment was possible by force, based on the court's decision.

It is indubitable that the judicial control over the legality of the procedural actions carried out during the criminal prosecution concerns the actions aimed at the discovery and administration of evidence. Judicial control must also extend to those criminal prosecution actions, the execution of which is related to the limitation of the constitutional rights of the person, in particular the right to the inviolability of the domicile (the search, search, search of the living room and residence) and the right to the inviolability of the person (arrest, search and seizure of postal and telegraphic communications, interception of telephone conversations).

The author remains firmly on the position that criminal prosecution actions that attack the constitutional rights and freedoms of the person are subject to judicial review and prior to, and subsequent to, their execution.

It has been demonstrated that judicial control in the case of carrying out special investigative measures involves deviating from the provisions of certain principles of the criminal process (such as,

[5] Law no. 245 of 31-07-2023 for the amendment of some normative acts (amendment of the Criminal Procedure Code and the Contravention Code). [online] [accessed 20.08.2023]. Available: https://www.legis.md/cautare/getResults?doc_id=138674&lang=ro

[6] The Criminal Procedure Code of the Republic of Moldova. [online] [accessed 20.08.2023]. Available: https://www.legis.md/cautare/getResults?doc_id=141507&lang=ro#

[7] The Criminal Procedure Code of the Republic of Moldova. [online] [accessed 20.08.2023]. Available: https://www.legis.md/cautare/getResults?doc_id=141507&lang=ro#

for example, adversariality, publicity, etc.), which indicates the different legal character of the administration of justice and the judicial control of prejudicial procedure. Judicial control in the special investigative activity and in the domestic criminal process is considered to be one of the fundamental functions of the court. In a state of law, the court, as the most reliable guarantor of the rights and freedoms of the individual, endowed with a wide range of relevant procedural powers, controls the validity and legality of the activities of all subjects of the criminal process. In the framework of the current legislation, judicial control is present right from the moment of the start of the criminal prosecution, in its various forms and manifestations, being closely linked with the performance of special investigative measures, criminal prosecution actions and other coercive procedural actions.

Subsequently, an important role of judicial control is also evidenced in the application of coercive procedural measures, or, through them, the proper conduct of the criminal process is pursued, which has as its immediate goal the timely and complete ascertainment of the facts, protecting the person, society and the state of crimes, as well as the protection of the person and the society from the illegal acts of persons in positions of responsibility in their work related to the investigation of committed or alleged crimes, so that any person who has committed a crime is punished according to his guilt and no innocent person not be held criminally liable and convicted.

The author believes that coercive procedural measures are available only if the administered evidence convinces that the person has committed a crime provided for by the criminal law and the perpetrator is to be held criminally liable. These procedural measures are not part of the main activities of the criminal process, being only adjacent and having a provisional, optional coercive character, since they can be revoked, if the circumstances that required their application to persons disappear as an adequate response to the attitude of some participants at the criminal trial.

No less important is the issue of the possibility of applying coercion in the process of carrying out criminal prosecution actions regarding the injured party. Thus, in the case of the injured party's refusal to carry out the physical examination, the expertise, the interests of establishing the truth in criminal cases come into conflict with the expression of personal will. Or, the execution of criminal prosecution actions regarding the injured party in a forced order can only take place based on the authorization of the investigating judge. Also, the representative of the criminal investigation body must explain to the injured party that his refusal may substantially reflect on the evidentiary material and the results of the criminal investigation. Thus, for example, the refusal of the victim of the crime of rape to carry out the physical examination, the medico-legal expertise can substantially complicate the investigation or, in general, question the correctness of bringing the perpetrator to criminal responsibility[8].

[8] TALPA, Ion. The essence and particularities of judicial control over the criminal investigation phase. In: Materials of the interuniversity conference with international participation "Prevention and combating crime: problems, solutions and perspectives", May 18, Chisinau, 2023, p.257.

The judicial control over the application of the measure of preventive arrest, of house arrest, aims to ensure the inviolability of the person, consisting in the verification of its legality and validity by the court, in case of complaints, in this sense, by the persons specified in the law. The substantial character of the fences in case of application of preventive detention and its frequent use in the practice of criminal investigation bodies determined the need for judicial control regarding its application. Also here, the specifics of the application of coercive measures of a medical nature are discussed, as well as the importance and procedure of materializing judicial control in this field.

At the same time, the investigating judge also has an essential role in the case of the application of measures to ensure the execution of the judicial fine, of reparation of the damage caused by the crime, of the application of the measure of temporary suspension from office, of ensuring the reasonable term of the criminal prosecution, by examining requests for acceleration of the criminal prosecution.

In the paper it was shown that in the specialized literature, and at the present time, there are discussions regarding the nature of judicial control, its place, role and limits in the criminal process. In the view of some authors, judicial control is an independent variety of judicial activity, a specific judicial function, which has a secondary character in relation to criminal justice. The purpose of judicial control is not focused on the resolution of the criminal case in substance, referring only to the possibility of ensuring the conditions for the legal resolution of certain criminal disputes. Other specialists in the field argue that this judicial control in the criminal process is a form of administration of justice, the following arguments being presented: 1) it is carried out by the court; 2) it is carried out in the procedural order provided by the norms of the procedural-criminal law; 3) it is completed with the issuance of a court decision, binding for execution; 4) resolves the legal dispute regarding the legality and validity of the actions or decisions of the subjects subject to control (as, for example, regarding the possibility of restricting the constitutional rights and freedoms of citizens)[9].

The activity carried out by the investigative judge is a difficult and complex task, his decisions are permanently in the public eye, a fact that requires continuous improvement, in order to improve the image of justice in society.

The institution of the investigating judge is a relatively new procedural institution, which aims to eliminate excesses on the part of the criminal investigation bodies and the bodies that exercise the special investigative activity, representing a procedural remedy, intended to comply with the requirements of legality, speed and fairness of the process criminal[10]. This institution appeared

[9] LASTOCHKINA, R. N., YAZEVA, E. E., KULEV, A. G. Judicial control in criminal proceedings./ Educational and methodological manual. Yaroslavl: Yaroslavl State University named after. "P. G. Demidova", 2017, p. 6.
[10] POALELUNGI, M., AIRAPETEAN, A., COBZAC, E. et al. Models of judicial documents in the criminal process for investigating judges. Chisinau: FEP Tipografia centrală, 2018, p.3.

following the expansion of the material competence of the judicial control over the criminal investigation, starting from the control of the legality of certain prosecution acts[11].

The definition of the notion of "judicial control" is to be started by clarifying the essence of the term "control". Control is defined as a "verification, analysis, made in an area, to ascertain how the situation presents itself, how an activity is carried out"[12].

The control function of the court, traditionally, is carried out in the judicial stages of the criminal process and ends by highlighting and removing the violations of the law admitted during the investigation, but the control of complaints also covers the actions and decisions of bodies and persons with responsible positions, which carry out the criminal investigation[13]. In the opinion of the author E. Reabțeva, the court, unlike the prosecutor and the head of the criminal investigation body, is not linked to certain departmental interests and is not responsible for the discovery of crimes[14].

Over time, the proposal regarding the establishment of judicial control was perceived ambiguously, meeting opponents among researchers and practitioners. They, in arguing their position, mentioned the following:

1) the court, in the process of carrying out the control, cannot avoid evaluating the evidence, the final solution being predetermined, and in case of acceptance of the complaint (appeal), the court would become preconceived;

2) during the examination of the complaints (appeals), it will be inevitable to suspend the examination of the case, which would extend the term of the criminal prosecution;

3) there would be a risk of disclosing information from the criminal case materials, which would prevent the establishment of the truth;

4) this measure would prevent the quick and prompt neutralization of dangerous criminals[15].

As far as we are concerned, we express our disagreement with these arguments, for the following reasons: court rulings on the control carried out represent the result of the court hearing, held in a certain procedural form, with the assurance of the rights of the persons participating in the verified action. The advantage of the judicial control over the prejudicial procedure is that the status of the judge and the court, their functions, are not related to the quality of the criminal prosecution.

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[11] DOLEA I., ROMAN D., SEDLEȚCHI Iu., VIZDOAGĂ T. et al. Criminal Procedural Law. Chisinau: Ed. Cartier Juridic., 2005 p.596.

[12] OPREA, I., PAMFIL, C. -G., RADU, R., ZĂSTROIU, V. The New Universal Dictionary of the Romanian Language. / Second edition. Bucharest: Ed. Litera Internacional, 2006, p. 294

[13] DOLEA I., ROMAN D., SEDLEȚCHI Iu., VIZDOAGĂ T. ș.a. Drept procedural penalty. Op.cit., p. 597; FOKOV, A. Judicial control in the draft Code of Criminal Procedure of the Russian Federation. B: Russian Justice, No. 9/2000, p. 44.

[14] RYABTSEVA, E. V. Judicial sanction in criminal proceedings in Russia. Moscow: Publishing house. Yurlitinform, 2010, p. 25.

[15] ENIKEYEV, Z. D. Controversial issues of the competence of the prosecutor to authorize arrests. In: Competence of the USSR Prosecutor's Office. / Edited by A.F. Kozlov. Sverdlovsk, 1982, p. 82.

Chapter 3, generically called ***Judicial control of the prejudicial procedure in the criminal process of other states***, includes aspects regarding the international legal framework of the judicial control of the prejudicial procedure: the concept and system of the judicial control of the prejudicial procedure in the procedural-criminal law of the states of the Anglo-law system -Saxon; the concept and system of judicial control of the prejudicial procedure in the procedural-criminal law of the states of the Romano-German legal system.

The judicial control regarding ensuring the rights and freedoms of the person is dictated by the norms of international law. The accession of the Republic of Moldova to the Council of Europe requires the recognition of a set of international normative legal acts in the field of human rights: the Universal Declaration of Human Rights, the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the International Covenant on civil and political rights. The international treaties in the field of human rights mentioned above provide for and regulate the judicial defense of the rights of the person, it being a means of restoring the rights and freedoms of the person and the citizen in cases of illegality, and the ECHR emphasizes the need for a thorough judicial control over the empowerment of the state , to which are also attributed those regarding the restriction of freedom. Based on these premises, justice will instinctively tend to defend the freedom of the person and, where possible, will interpret legal norms in favor of personal freedom. The judiciary will refrain from accepting regulations that give broad powers to the executive branch, which offer the possibility of curtailing individual freedom.

In the Anglo-Saxon legal system, the normative definition of the concept of judicial control over prejudicial activity is not attested. The very term judicial review of the prejudicial phase in the UK is used conventionally, because here the work of the court is a component part of the prejudicial activities. And if the powers of the police bodies are much wider, then the powers of the judicial system are more authoritative and capable not only of canceling or correcting the actions of persons with responsibility within the police, but also of adopting, in the process of carrying out prejudicial investigations, certain judgments on which the further fate of the criminal case depends.

In UK and US criminal procedure, judicial review of preliminary proceedings is not treated as having specific or separate aims and tasks from the main proceedings. Here, judicial control is organically included in the basic procedure, finding its reflection - mainly - not in the system of special procedures, but in the phases of the criminal process. Although certain forms of judicial control are carried out in isolation, separately, they do not have their own material-legal basis for regulation, nor any purposes that would differ from the general ones of the criminal process. Respectively, they do not have an autonomous character. Thus, the application of procedural-criminal coercion measures is linked, each time, to the filing of the accusation (the case of Great Britain) or the start of the criminal

investigation (as it is, for example, in the USA), they represent independent phases of the criminal process, according to the system criminal procedure of the concerned states.

According to the Fourth Amendment to the US Constitution, "the right of the people to the protection of their person, premises, and property is guaranteed and shall not be violated, including by unreasonable arrests and searches. No mandate can be issued, except in cases where sufficient grounds are present, confirmed by oath or official declaration. Also, the warrant must contain a detailed description of the place to be searched and the person to be arrested". In this way, the application of the measure of arrest or the carrying out of the search is possible only on the basis of a warrant issued by the court.

De facto, the practice followed a different path. In reality, judges recognize that the search cannot be carried out every time under a warrant (as, for example, if it was carried out simultaneously with the lawful arrest of the person; if the object of the search can easily move: cars, sea vessels, aircraft etc. or if the person voluntarily consents to the search[16].

Referring to the procedural-criminal law of the states of the Romano-German legal system, we note that, in most European states, the judicial control of the criminal investigation is carried out on similar procedural bases, although with certain particularities regarding the powers of the parties involved in the criminal process at the investigation stage and how states apply the principle of legality and expediency.

The scope of judicial control over criminal prosecution is quite broad. The author considered that it is not appropriate to describe in detail the specifics of each variety of judicial control, since they are carried out on the basis of an identical judicial procedure. However, the most important form of judicial control – the control over preventive detention – is to be described and analyzed in more detail[17].

In this context, it was pointed out that from the moment of issuing the order regarding the arrest of the accused, judicial control over him begins. In accordance with the provisions of § 112 of the Criminal Procedure Code of the Federal Republic of Germany, the measure of arrest is not applied, if it is not proportional to the importance of the case, the measure of punishment that can be applied or the safety and correction measures. As explained by the Federal Constitutional Court of Germany, the principle of proportionality requires that the individual be protected regarding the possibility of intervention by the public power in the sphere of his rights. If, however, such an intervention is

[16] TALPA, Ion. Judicial Review in the Criminal Procedure Law of Great Britain and the United States of America. Law and life. No. 11, Chisinau, 2017, p.50.
[17] TALPA, Ion. The specificity of the judicial control of the prejudicial procedure in the criminal process of France and Germany. Law and life. No. 10, Chisinau, 2017, p.27.

irremovable, then, in the content of the court decision, the grounds and purposes of the application of the measure of preventive detention are to be exposed, clearly and in detail[18].

It was concluded that the continental legislation provides for the performance of this activity under the direction of a judge or other magistrate with specific judicial powers (investigating judge, liberties and detention judge, judge with powers to supervise the investigation), whose competence is delimited by national legislation. Here we are talking about the specifics of the judicial control of the prejudicial procedure according to the criminal procedural law of France, Germany, Spain, Belgium, Italy, Romania, Ukraine, the Russian Federation, etc.

[18] FILIMONOV B. A. Judicial control over arrest in criminal proceedings in Germany. B: Bulletin of Moscow University. Episode 11, Law. 1994, no. 3, p. 37.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The scientific results, obtained as a result of the investigation carried out as part of the doctoral thesis with the generic Judicial control of the prejudicial procedure. National aspects and comparative law, found their appropriate reflection in the following aspects: the analysis of scientific materials related to the judicial control of the prejudicial procedure; the research of the historical elongation of the institution of judicial control of prejudicial proceedings; the conceptual approach to the judicial control of prejudicial proceedings in the criminal process; determining the practical importance of judicial review of prejudicial proceedings; analysis of the conditions of judicial control over the legality of the procedural actions carried out during the criminal investigation phase; determining the particularities of judicial control in the process of authorizing special investigative measures; revealing the conditions of judicial control over the application of preventive detention and other coercive measures of a criminal procedural nature; identification of other duties of the investigating judge when conducting the judicial review; the research of national and international judicial practice in the field of judicial control of prejudicial proceedings; the analysis of the international procedural-criminal regulations in the field of judicial control of the prejudicial procedure; the comparative analysis of the institution of judicial control of the prejudicial procedure in different legal systems – Anglo-Saxon, Romano-Germanic; identification of legislative deficiencies regarding judicial control; formulating the conclusions and proposals of the law ferenda, aimed at improving the current legal framework for the regulation of the judicial control of the prejudicial procedure.

Through this scientific approach, the current scientific problem of major importance was also solved, it constituting the complex research of the specifics of the judicial control of the preliminary procedure, a fact that contributed to the justification of its role in the protection of the fundamental rights and freedoms of man and the citizen in the criminal process, including through the conclusions and recommendations formulated, in order to guarantee and strengthen the legal order and the effective and correct administration of justice in criminal cases.

From the scientific problem of major importance, which guided us throughout the process of developing this study in the matter of judicial control of the prejudicial procedure, the conclusions of the paper, developed on the basis of the research hypothesis, also result, referring to them as follows:

1. The evolution of the procedural-criminal legislation of the Republic of Moldova in accordance with the provisions of the Constitution and the international regulations, to which our country has adhered, is characterized, first of all, by the increased attention to guaranteeing the rights of the person, by expanding the powers of the court when conducting the judicial review of the prejudicial procedure (See: Chapter 1, Subchapter 1.1.).
2. The investigating judge, authorizing the execution of criminal prosecution actions, finds not only the normative standards in the practice of the European Court, but also increases the

quality of the adopted decision, motivating his own position through the prism of the conclusions of the Strasbourg magistrates (See: Chapter 1, Subchapter 1.1 .).

3. Judicial control in the special investigative activity and in the domestic criminal process is considered to be one of the fundamental functions of the court. In a state of law, the court, as the most reliable guarantor of the rights and freedoms of the individual, endowed with a wide range of relevant procedural powers, controls the validity and legality of the activity of all the subjects of the criminal process (See: Chapter 1, Subchapter 1.1.).
4. In the Republic of Moldova, the evolution and consolidation of the institution of judicial control of the prejudicial procedure took place in three stages: 1) the period of 2003-2012 - the legalization of the institution of judicial control of the prejudicial procedure and its continuous improvement based on the experience accumulated along the way; 2) the second stage - the years 2012-2016, during this period the list of powers of the investigating judge regarding the judicial control of the prejudicial procedure was completed; 3) in the third stage, which began in 2016, the improvement of the regulations in the matter of preventive judicial control continues and thereafter (See: Chapter 2, Subchapter 2.1.).
5. The judicial control of the criminal investigation, exercised today by the investigating judge, was introduced in the national criminal procedure in 1994, by supplementing the Criminal Procedure Code in the 1961 version with articles 1951 - 1952, which provided for the right to appeal in court the legality and validity of the arrest warrant, issued by the prosecutor. Later, in 1997, the Code of Criminal Procedure was supplemented with articles 1953 - 1954, which provided for the right to contest in court the legality of the prosecutor's refusal to initiate criminal proceedings. In 1998, the CPP was supplemented with articles 78, 781, 782, 79, 791 and 792, which referred to the examination procedure by the court of the application of preventive detention and the way of contesting the court decision. And in 1998, "The Code of Criminal Procedure was supplemented with chapter XX1, called Judicial control over the prejudicial procedure, which offered the possibility to appeal in court the decisions and actions of the criminal investigation bodies and the prosecutor" (See: Chapter 2, Subchapter 2.1.).
6. Since the Republic of Moldova declared itself interested in joining the European Convention on Human Rights[19], it was necessary to harmonize the legislation in the field, in order to correspond to its rigors. The Republic of Moldova ratified the European Convention on Human Rights, Convention published on 30.12.1998 in International Treaties[20], and according

[19] European Convention on Human Rights Adopted in Rome on 4 November 1950. It entered into force on 3 September 1953. [online] [accessed 31.04.2023]. Available: https://www.echr.coe.int/documents/d/echr/convention_ron
[20] Convention no. 342 of 04-11-1950 for the defense of human rights and fundamental freedoms. Published: 30-12-1998 in International Treaties, No. 1, art. 342. [online] [accessed 31.04.2023]. Available: https://www.legis.md/cautare/getResults?doc_id=115582&lang=ro

to the commitments assumed, the high contracting parties recognize the rights and freedoms of individuals under their jurisdiction.Astfel, în anul 2003, prin adoptarea unui nou Cod de Procedură Penală, în procesul penal autohton apare un nou subiect distinct, și anume judecătorul de instrucție, existând în fiecare judecătorie din Republica Moldova, cu excepția celor specializate, care dispun de atribuții speciale (A se vedea : Capitolul 2, Subcapitolul 2.1.).

7. A new aspect in the context of judicial control over prejudicial proceedings results directly from the amendments made to the Code of Criminal Procedure by Law no. 245 of 31-07-2023 for the amendment of some normative acts (amendment of the Criminal Procedure Code and the Contravention Code). In this context, according to the changes made, "the complaint is examined by the investigating judge within 30 days, without the presence of the parties, who are notified of the date of the examination of the complaint. The judge, by means of a reasoned conclusion, may order the setting of the hearing for presentation at the trial, with the summons of the prosecutor, of the person who submitted the complaint, as well as of the persons whose rights and freedoms may be affected by admitting the complaint. (…)", previously, "the complaint is examined by the investigative judge within 10 days, with the participation of the prosecutor (…)" (See: Chapter 2, Subchapter 2.1.).

8. The Criminal Procedure Code was amended by Law no. 286 of 05.10.2013, for the modification of some normative acts (regarding the special investigation activity). According to the amendments, although previously certain special investigative measures could only be carried out with the authorization of the investigating judge, currently, the legislator has allowed derogations from this rule, being possible to carry out based on the reasoned ordinance of the prosecutor, with subsequent legalization (A see: Chapter 2, Subchapter 2.1.).

9. The importance of judicial control derives from the fact that judicial control in the criminal process is a specific variety of the procedural-criminal activity adjacent to justice. It is carried out by the judge, alone, in the form of verifying the legality and soundness of the actions and decisions of the persons in charge of the criminal investigation bodies that limit the rights and freedoms of citizens (See: Chapter 2, Subchapter 2.2.).

10. The judicial control of the prejudicial procedure represents a specific form of exercise of judicial power through the lens of examining and resolving issues related to the validity and legality of the application of procedural-criminal coercion measures, the limitation of the fundamental rights and freedoms of the person during the criminal prosecution and the special investigation activity, regarding the complaints against the actions and decisions of the persons with responsibility within the legal bodies, completed with the adoption of an

appropriate decision, in order to defend the constitutional rights and freedoms of man and the citizen and to solve the tasks of the criminal process (See : Chapter 2, Subchapter 2.2.).

11. The limits of the judicial control of the prejudicial procedure are determined by the powers granted to the court, as well as by the presence and possession of the specific legal means, necessary to verify the legality and validity of the decisions and actions of the criminal investigation bodies (See: Chapter 2, Subchapter 2.2 .).

12. The investigative judge is a guarantor of respect for the fundamental rights and freedoms of citizens. Moreover, this subject is empowered to oversee the legality of procedural actions in the criminal process, holding the necessary levers to establish the necessity and proportionality of the inadmissible action in relation to the restriction of the fundamental rights and freedoms of the concrete person in the distinct case (See: Chapter 2, Subchapter 2.3 .).

13. The investigating judge ensures judicial control during the criminal investigation by seizing assets, under the law, there being also an exception to the general rule noted, according to which the criminal investigation body has the right to sequester assets based on the ordinance own, without having the authorization of the investigating judge. Such a situation is determined by the existence of a case of flagrant delict or a case that does not suffer postponement. At the same time, subsequently, the criminal investigation body is obliged to communicate about this to the investigating judge immediately, but no later than 24 hours from the moment of carrying out this procedural action (See: Chapter 2, Subchapter 2.5.).

14. The measure of temporary suspension from office is applied by the investigating judge or the court only at the request of the prosecutor, and the conclusion of the investigating judge can be challenged within 3 days from the date of issuance (See: Chapter 2, Subchapter 2.6.).

15. The request regarding the acceleration of the criminal prosecution, provided for by art. 2591 para. (1) CPP, can be submitted in writing after, at least, 6 months from the start of the criminal investigation. A new repeated request regarding the acceleration of the criminal prosecution can be submitted by the parties after 6 months from the definitive stay of the decision of the investigating judge issued (See: Chapter 2, Subchapter 2.6.).

16. The decisions taken by the investigating judge during the judicial review of the preliminary proceedings are necessary for: a) the application of one of the most drastic preventive measures – preventive detention; b) carrying out a spectrum of criminal investigation actions, determined by the criminal procedural law; c) carrying out certain strictly determined categories of special investigative measures; d) ensuring the legality and soundness of the decisions taken during the criminal prosecution (See: Chapter 2, Subchapter 2.3.).

17. The judicial control of the preliminary proceedings is an independent function of the court, carried out by a subject specially empowered in this regard - the investigating judge -, the

essence of which consists in his carrying out the control over the respect of the rights, freedoms and interests of the participants at the criminal trial, in providing them with urgent judicial protection, as well as the appropriate conditions for the realization of the provisions of the principle of adversariality at this stage of the criminal trial (See: Chapter 3, Subchapter 3.1.).

18. Judecătorul de instrucție este un subiect al probatoriului în procesul penal, căruia îi este imanent spiritul activ „de situație" în privința cercetării, examinării circumstanțelor faptei penale. Împuternicirile discreționare ale judecătorului de instrucție la soluționarea chestiunilor ce sunt de competența acestuia sunt stabilite strict prin lege, specificându-se că el soluționează doar acele chestiuni care sunt solicitate de părți și, respectiv, care țin de competența lui (A se vedea : Capitolul 2, Subcapitolul 2.3.).

19. In the criminal process of Great Britain and the USA, judicial review of pretrial proceedings is not examined as having specific purposes and tasks or separate from the main proceedings. Here, judicial control is organically included in the basic procedure, finding its reflection mainly not in the system of special procedures, but in the phases of the criminal process. (See: (Chapter 3, Subchapter 3.2.).

20. In most European states, the judicial control of the criminal investigation is carried out with certain particularities in terms of the powers of the parties involved in the criminal process in the investigation phase and the way in which the states apply the principle of legality and expediency. The continental legislation provides for the performance of this activity under the direction of a judge or other magistrate with specific judicial powers (investigating judge, liberties and detention judge, judge with powers to supervise the investigation), whose competence is delimited by national legislation. (Chapter 3, Subchapter 3.3.).

Description of personal contributions emphasizing its theoretical significance and practical value. The personal contributions lie in the detailed and complex research of the judicial review of the preliminary proceedings, including from the perspective of the right to a fair trial. The particularities of conducting judicial review, the scope of the review, the limits, the importance and the role of the investigating judge in guaranteeing the rights and freedoms of the person are subject to a multi-aspect analysis. The conclusions reached by the author are based on doctrinal concepts, judicial practice and judge practice. The doctoral thesis contains conclusions and recommendations with an obvious scientific novelty and originality, in order to improve the framework of procedural-criminal regulation in the sphere of judicial control. The author substantiated the ferenda law proposals, formulated on the basis of his own research and theoretical conclusions, as well as the proposals to improve the criminal procedural activity. In the content of the doctoral thesis, relevant arguments are presented in support of the opinions of researchers in the field, others, on the contrary, were subject to debate.

The novelty and scientific originality of the paper also lies in the fact that the theoretical and scientific-practical aspects of the judicial control over the prejudicial procedure were examined, including under a comparative aspect. We believe that the examination of the aspects of this subject, for the time being insufficiently studied, allowed the formulation of certain conclusions, which bear, for the most part, a character of novelty and substantial originality and which are important for the improvement of the practical activity of the judicial bodies, as well as for the improvement of criminal procedural legislation . In this way, the research undertaken corresponds to the criteria of scientific novelty and originality.

The legal and empirical basis of the study consists of: a) national criminal procedural legislation;

b) the decisions of the Constitutional Court; c) judicial practice in the matter of judicial control;

d) the criminal procedural regulations from the legislation of some foreign states in the matter of judicial control of the prejudicial procedure; e) ECtHR decisions.

The scientific basis of the study is made up of the works of local authors, as well as those from other countries, such as France, the Russian Federation, Ukraine, Romania, etc. Empirical data from the judicial practice, in particular, of the Bălți Court of Appeal, were used in the PhD thesis.

The theoretical significance of the thesis consists in the fact that the obtained results are relevant from a theoretical point of view in terms of identifying the particularities of the judicial control over the prejudicial procedure, the scope of the control and its importance in order to guarantee the rights and freedoms of the person. The investigated subjects are presented in a complex and detailed way, with a reflection of their content under legal-organizational, theoretical and methodological aspects; the doctoral thesis expands and amplifies the knowledge in the science of the criminal process with reference to the judicial control of the prejudicial procedure, results that can be used in further research in the field.

The practical value of the thesis is determined by the fact that the research results are oriented towards the improvement of criminal procedural legislation. They can be used both in scientific research and in the teaching process. The applicative value of the study is also manifested in the fact that: 1) the author's proposals for improving the Code of Criminal Procedure can be implemented by the legislator in the legislative process; 2) the practical recommendations, argued within the paper, are useful to judges and litigants; 3) the content of the doctoral thesis can be used by students and the teaching staff of educational institutions with a legal profile in the process of learning the appropriate topics for various courses, such as Criminal Procedural Law.

Data on approval of results. The scientific results and basic conclusions of this doctoral thesis were discussed at the meetings of the Department of Public Law, Faculty of Law, USEM. The results of scientific investigations were reflected in the author's publications in specialized magazines in the country and in summaries of communications presented at national and international scientific

conferences. At the same time, they were exposed as part of the activity of judge and President of the Court of Appeal Balti.

Indication of the limits of the obtained results, with the determination of the remaining unsolved problems. The limits of the obtained results are summarized in: the research of the subject of the judicial control of the prejudicial procedure; in-depth analysis and research of the institution of judicial control, in the territory of the Republic of Moldova, as well as in comparison with other countries, but also with other legal systems, such as the Anglo-Saxon one.

Recommendations:

1. Amendment of para. (6) art. 259^1 CPP RM, as follows: "A repeated request regarding the acceleration of the criminal prosecution can be submitted in the event of the existence of new well-founded circumstances."

2. Amendment of art. 200 para. (3) CPP RM, as follows: "(3) During the criminal case, the provisional suspension from office is applied by the conclusion of the investigating judge, or the court, at the request of the prosecutor, for a period of 6 months, with the possibility extending the term up to 24 months, under the conditions provided for in para. (2). The conclusion of the investigating judge can be challenged within 3 days from the date of issue."

3. Amendment of art. 200 para. (3) CPP RM, as follows: "For reasons that justify the existence of the risk of preventing the normal development of the criminal prosecution, considering the complexity of the investigations necessary for the case and the administration of the evidence, the extension of the temporary suspension from the position can be ordered for a period that does not may exceed 48 months, calculated cumulatively during the criminal investigation and trial of the case. The extension is ordered by the conclusion of the investigating judge or the court, at the motivated approach of the prosecutor, for every 6 months."

4. Repeal of par. (5) art. 200 of the CPP which states: "During the trial of the case, at the request of the prosecutor, the defendant may be provisionally suspended from office until the decision is final, taking into account the grounds from para. (2). The decision of the court can be contested separately within 3 days".

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ADNOTARE

TALPA Ion. Controlul judiciar al procedurii prejudiciare. Aspecte naționale și de drept comparat. Teză de doctor în drept la specialitatea științifică 554.03 – Drept procesual penal. Chișinău, 2024.

***Structura tezei*:** Introducere, trei capitole, concluzii generale și recomandări, bibliografia din 280 de titluri, 233 de pagini de text de bază. La tema tezei au fost publicate 9 (nouă) lucrări științifice.

Cuvinte-cheie: proces penal, control judiciar, procedură prejudiciară, judecător, acțiune de urmărire penală, măsuri speciale de investigații, plângere, recurs, demers, procuror, arest, măsuri de constrângere procesual-penală, contradictorialitate, încheiere.

Scopul lucrării constă în cercetarea complexă a instituției controlului judiciar al procedurii prejudiciare, instituție care derivă din normele juridice privind dreptul fiecăruia la apărare și protecție judiciară, cu toate componentele caracteristice acestei activități (formele, sarcinile, condițiile și procedură.

Obiectivele studiului vizează: analiza materialelor științifice referitoare la controlul judiciar al procedurii prejudiciare; cercetarea elongației istorice a instituției controlului judiciar al procedurilor prejudiciare; abordarea conceptuală a controlului judiciar al procedurilor prejudiciare în cadrul procesului penal; determinarea importanței practice a controlului judiciar al procedurilor prejudiciare; analiza condițiilor controlului judiciar asupra legalității acțiunilor procesuale realizate la faza de urmărire penală; determinarea particularităților controlului judiciar în procesul autorizării unor măsuri speciale de investigație; relevarea condițiilor controlului judiciar asupra aplicării arestului preventiv și a altor măsuri de constrângere cu caracter procesual penal; identificarea altor atribuții ale judecătorului de instrucție la efectuarea controlului judiciar; cercetarea practicii judiciare naționale și internaționale în domeniul controlului judiciar al procedurii prejudiciare; analiza reglementărilor internaționale procesual-penale în domeniul controlului judiciar al procedurii prejudiciare; analiza comparată a instituției controlului judiciar al procedurii prejudiciare în diferite sisteme de drept anglo-saxon, romano-germanic; identificarea carențelor legislative privitoare la controlul judiciar; formularea concluziilor și propunerilor *de lege ferenda*, menite să îmbunătățească actualul cadru legal de reglementare a controlului judiciar al procedurii prejudiciare.

Noutatea științifică și originalitatea tezei este asigurată de cercetarea complexă a unui spectru larg de chestiuni și probleme actuale din domeniul controlului judiciar al procedurii prejudiciare, conform prevederilor legii procesual-penale a Republicii Moldova și a altor state, în baza lor fiind trasate căile de perfecționare a practicii judiciare autohtone din acest domeniu. Teza de doctor reprezintă prin sine o cercetare substanțială și detaliată a controlului judiciar al procedurii prejudiciare, ca instituție de bază a procesului penal, care asigură apărarea drepturilor și libertăților omului și cetățeanului în cadrul etapelor prejudiciare.

Problemă științifică importantă soluționată vizează cercetarea complexă a specificului controlului judiciar al procedurii prejudiciare, fapt care a contribuit la relevarea rolului ei în protecția drepturilor și libertăților fundamentale ale omului și cetățeanului în cadrul procesului penal, inclusiv prin concluziile și recomandările formulate, în vederea garantării și consolidării corespunzătoare a ordinii de drept și a efectuării eficiente și corecte a justiției în cauzele penale.

Semnificația teoretică a tezei de doctor se manifestă în faptul că lucrarea este dedicată soluționării unor probleme legate de perfecționarea reglementărilor procesual-penale din domeniul exercitării controlului judiciar asupra etapelor prejudiciare. Teza de doctor reprezintă una din puținele lucrări, în care se studiază în ansamblu instituția controlului judiciar al procedurii judiciare, mai cu seamă analizându-se modificările aduse legislației procesual penale a RM la capitolul controlul judiciar al procedurii prejudiciare și elucindu-se particularitățile actuale în vigoare.

Valoarea aplicativă a lucrării constă în faptul că recomandările și concluziile formulate în teza de doctorat pot fi aplicate în soluționarea lacunelor legale și în perfecționarea continuă a Codului de procedură penală; propunerile practice, argumentele lucrării pot fi utile practicienilor, și anume avocaților, procurorilor, judecătorilor, în vederea aplicării corecte a normelor legale și a uniformizării practicii judiciare. Subsecvent, conținutul tezei de doctorat poate fi utilizat de către teoreticieni în procesul didactic de formare inițială și continuă a specialiștilor din domeniul jurisprudenței.

***Implementarea rezultatelor științifice*.** Rezultatele științifice ale tezei de doctorat au fost implementate în procesul aplicării directe a normelor de drept, doctorandul fiind Președintele Curții de Apel Bălți.

АННОТАЦИЯ

ТАЛПА Ион. Судебный контроль за досудебным производством. Национальные аспекты и сравнительное право. Докторская диссертация по научной специальности 554.03 – Уголовно-процессуальное право. Кишинев, 2024.

Структура диссертации: Введение, три главы, общие выводы и рекомендации, библиография из 280 наименований, 233 страниц основного текста. По теме диссертации опубликовано 9 (девять) научных работ.

Ключевые слова: уголовное судопроизводство, судебный контроль, досудебное производство, судья, действия по уголовному преследованию, специальная розыскная деятельность, жалоба, кассационная жалоба, ходатайство, прокурор, арест, меры процессуального принуждения, состязательность, определение.

Цель статьи состоит в комплексном исследовании института судебного контроля за досудебным производством, вытекающего из правовых норм о праве каждого на защиту и справедливое разбирательство, со всеми характерными составляющими этой деятельности (формы, задачи, условия и порядок действий).

Задачи исследования касаются: а) исследования исторической протяженности уголовно-процессуального законодательства, с тем чтобы на основе исторического опыта совершенствовать деятельность судебного контроля за досудебным производством; б) изучение и анализ международно-правовых норм, гарантирующих защиту прав и свобод человека и гражданина в уголовном процессе, и определение степени их применения; в) исследование в контексте сравнительного права института судебного контроля за досудебным производством в уголовном процессе других государств; г) обоснование важности и необходимости существования и нормативного совершенства института судебного контроля за досудебным производством, его актуальности и ценности; д) формулирование понятия, определение объекта и пределов судебного контроля за досудебным производством; е) анализ уголовно-процессуальных норм в сфере судебного контроля за досудебным производством, выявление несоответствий в практической деятельности этой сферы и отслеживание путей их устранения; ж) разработка рекомендаций по совершенствованию деятельности в сфере судебного контроля за досудебным производством; з) выявление особенностей судебного контроля за проведением специальной розыскной деятельности и за действиями по уголовному преследованию, который может осуществляться только с санкции судьи по уголовному преследованию; и) разработка предложений по совершенствованию уголовно-процессуального механизма судебного контроля за досудебным производством во всем его многообразии и формах.

Научная новизна и оригинальность диссертации обусловлена комплексным исследованием широкого спектра актуальных вопросов и проблем в сфере судебного контроля за досудебным производством согласно положениям уголовно-процессуального законодательства Республики Молдова и других государств, на основании чего выделены пути совершенствования практики национальных судебных инстанций в этой сфере. Докторская диссертация представляет собой содержательное и подробное исследование судебного контроля за досудебным производством, как базового института уголовного процесса, обеспечивающего защиту прав и свобод человека и гражданина в досудебных стадиях.

Решенная важная научная задача касается комплексного исследования специфики судебного контроля за досудебным производством, что способствовало обоснованию его роли в защите основных прав и свобод человека и гражданина в рамках уголовного процесса, в том числе посредством выводов и рекомендаций, сформулированных в целях обеспечения и укрепления соответствующего законности и эффективного и правильного отправления правосудия по уголовным делам.

Теоретическая значимость докторской диссертации обусловлена тем, что работа посвящена решению некоторых проблем, связанных с совершенствованием уголовно-процессуального регулирования в сфере осуществления судебного контроля за досудебными стадиями. В тексте работы мы представляем собственное видение данного уголовно-процессуального института, а также тенденции и особенности его материализации в практической деятельности правоохранительных органов.

Прикладная ценность работы обусловлена тем, что рекомендации и выводы, сформулированные в докторской диссертации, в результате проведенного исследования могут быть приветствованы для «дальнейшего развития» различных теоретических и практических проблем, связанных с уголовным процессом, они могут послужить основой для проведения будущих научных исследований уголовно-процессуального характера в области судебного контроля за досудебным производством.

ANNOTATION

TALPA Ion. Judicial control of the prejudicial procedure. National aspects and comparative law. Doctoral thesis in the scientific specialty 554.03 - Criminal Procedure Law. Chisinau, 2024.

Dissertation structure: Introduction, three chapters, general conclusions and recommendations, bibliography of 280 titles, 233 pages of main text. 9 (nine) scientific papers have been published on the topic of the dissertation.

Key words: criminal proceedings, judicial control, pre-trial proceedings, judge, criminal prosecution actions, special search activity, complaint, cassation complaint, petition, prosecutor, arrest, measures of procedural coercion, competitiveness, definition.

The purpose of the article is to comprehensively study the institution of judicial control over pre-trial proceedings, arising from the legal norms on the right of everyone to protection and a fair trial, with all the characteristic components of this activity (forms, tasks, conditions and procedures).

The objectives of the research relate to: a) researching the historical extent of the criminal procedure legislation in order to improve the activities of judicial control over pre-trial proceedings based on historical experience; b) study and analysis of international legal norms that guarantee the protection of human and civil rights and freedoms in criminal proceedings, and determine the degree of their application; c) a study in the context of comparative law of the institution of judicial control over pre-trial proceedings in the criminal process of other states; d) substantiation of the importance and necessity of the existence and normative perfection of the institution of judicial control over pre-trial proceedings, its relevance and value; e) formulation of the concept, definition of the object and limits of judicial control over pre-trial proceedings; f) analysis of criminal procedure norms in the field of judicial control over pre-trial proceedings, identification of inconsistencies in the practice of this area and tracking of ways to eliminate them; g) development of recommendations for improving activities in the field of judicial control over pre-trial proceedings; h) identifying the peculiarities of judicial control over the conduct of special investigative activities and over criminal prosecution actions, which can be exercised only with the sanction of a criminal investigation judge; i) development of proposals for improving the criminal procedure mechanism of judicial control over pre-trial proceedings in all its diversity and forms.

The scientific novelty and originality of the dissertation is due to a comprehensive study of a wide range of topical issues and problems in the field of judicial control over pre-trial proceedings in accordance with the provisions of the criminal procedure legislation of the Republic of Moldova and other states, on the basis of which ways to improve the practice of national judicial instances in this area are identified. The doctoral dissertation is a meaningful and detailed study of judicial control over pre-trial proceedings, as a basic institution of the criminal process that ensures the protection of human and civil rights and freedoms in the pre-trial stages.

The solved important scientific problem concerns a comprehensive study of the specifics of judicial control over pre-trial proceedings, which contributed to the substantiation of its role in protecting the fundamental rights and freedoms of man and citizen in the framework of the criminal process, including through conclusions and recommendations formulated in order to ensure and strengthen the appropriate legality and effective and correct administration of justice in criminal matters.

The theoretical significance of the doctoral dissertation is due to the fact that the work is devoted to solving some problems related to the improvement of criminal procedure regulation in the field of judicial control over the pre-trial stages. In the text of the work, we present our own vision of this criminal procedure institution, as well as the trends and features of its materialization in the practical activities of law enforcement agencies.

The applied value of the work is due to the fact that the recommendations and conclusions formulated in the doctoral dissertation, as a result of the study, can be welcomed for the "further development" of various theoretical and practical problems related to the criminal process, they can serve as the basis for future scientific research of a criminal procedural nature in the field of judicial control of the prejudicial procedure.

TALPA Ion

JUDICIAL CONTROL OF THE PREJUDICIAL PROCEDURE. NATIONAL ASPECTS AND COMPARATIVE LAW

Specialty 554.03 – Criminal procedural law

Abstract of the Doctor of Law thesis

Approved for printing: 04.04.24
Offset paper. Offset printing.
Printing coli: 2,3.

Paper size 60x84 1/16
Print run 50 copies.
Order no. 104

Publishing House
„Pulsul Pieței" Typography,
Chisinau, 5 Gh. Iablocikin Str.