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TROCIN EUGENIU

FREE ACCESS TO JUSTICE - A PRECONDITION FORA FAIR TRIAL

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Summary of doctor of law thesis

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The thesis was elaborated within the Doctoral School of Law and Economic Sciences, State University of Moldova

Doctoral committee:

1. **Alexandru ARSENI**, habilitated doctor in law, university professor, SUM – president;
2. **Andrei SMOCHINĂ**, habilitated doctor in law, university professor, SUM – the scientific supervisor;
3. **Ion GUCEAC**, academician, habilitated doctor in law, university professor, SUM, member of the guidance Committee, member - referent;
4. **Ștefan BELECCIU**, doctor in law, university professor, Police Academy "Ștefan cel Mare" of MIA, member - referent;
5. **Valeriu BAEȘU**, doctor in law, university lecturer, ULIM – referent.

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President of the Doctoral Committee
Arseni Alexandru,
habilitated doctor in law, university professor _____

Scientific supervisor,
Smochină Andrei,
habilitated doctor in law, university professor _____

Author
Trocin Eugeniu _____

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CONCEPTUAL FRAMEWORKS OF THE RESEARCH

Actuality and importance of the research problem. The research of the right of free access to justice - a preliminary guarantee of a fair trial is a necessity nowadays, because according to the National Development Strategy "European Moldova 2030"[1], approved by the Parliament of the Republic of Moldova on November 17, 2022, justice is to become restorative (restoring violated rights and interests), resocialization of persons in conflict with the law and only then repressive (punishing the guilty).

It should be noted that the theoretical and historical evolution of free access to justice in the Republic of Moldova is not a new topic of research, but it is far from being exhausted, because the performance of justice is far below the expectations of Moldovan citizens, or, according to the Report on the evaluation of the Judicial Reform (July 2021)[2], there is a shortage of specialized professionals (prosecutors, judges, lawyers) in cases involving children, including cases of violence against children. Moreover, people with disabilities have more limited accessto justice, caused by the reduced capacity of public legal aid providers to offer specialized help.

In our opinion, access to the courts has become an essential element in the development of human rights, democracy and the law state, since the guarantee of human rights is an indispensable requirement in the process of organizing political and state life, and in a state governed by the rule of law, people must be given the confidence that their rights can be protected, including the option to submit legal actions.

The constitutional rules on free access to justice and the prohibition of restricting this right build a fundamental right with the value of a constitutional principle, since it presupposes the idea of equality, not so much formally, what the law provides for equality in the sense of equality in rights, but in practice - equality in possibilities, including various options through which the justice system helps people to resolve conflicts, ensuring the litigant access to legal assistance guaranteed by the state, the right to defense, the right to have the dispute examined within a reasonable time by an independent and impartial court, etc. The Constitution of the Republic of Moldova (Art. 20) is the founding block of the democratic system in which every person has the right to effective satisfaction in the event of a violation of his/her rights.

As free access to justice is a constitutional principle, any limitation to it can only be made within the provisions of the fundamental law, which is why they must not be excessive and can be instituted for reasons relating to the proper administration of justice and the discipline of the

[1] The Law no. 315 from 17.11.2022 for approving the National development strategy "The European Moldova — 2030. In Official Monitor no. 409-410 from 21.12.2022.

[2]Report on the evaluation of the Judicial Reform (July 2021). Available on: https://crjm.org/wp-content/uploads/2022/05/Final-Report-JMA_Ro.pdf (visited on 17.12.2023)

litigants, an aspect that is analyzed in detail in this study, with references to the practice of the ECtHR.

These are the issues that bring to the forefront of our research one of the great questions of the contemporary era, namely to what extent today's laws respond to existential aspirations and needs, more specifically, accessibility to justice. Such research becomes all the more challenging when we link this complex fundamental right with the guarantee of a fair trial, which, as we well know, gives substance to all human expectations in this area.

Research aim and objectives. The research is carried out at the middle of scientific conceptions and normative regulations of free access to justice, a fundamental right with the value of a constitutional principle, and aims to deepen the research of constitutional law in order to shed a clarifying light on access to justice as a preliminary guarantee of a fair trial through the prism of general and specific guarantees that ensure effective access to justice for the litigants.

Of course, such challenges and consequences of systemic reforms - highlight the challenges of the present, but they give expression to the ***objectives*** necessary to achieve the purpose of the doctoral thesis, which are;

- examining the doctrinal, legislative and jurisprudential framework on free access to justice;

- research into the historical and conceptual development of the right of access to justice in the light of a fundamental right with the value of a constitutional principle;

- determining the legal nature of access to justice;

- determining the limits of the named fundamental right;

- identifying the conditions for exercising access to justice.

The research hypothesis has an anticipatory character and is centered on revealing the scientific-practical dimension that free access to justice occupies, from a constitutional perspective, as a preliminary guarantee of a fair trial, within the framework of ensuring the fundamental rights related to this process implicitly and determines the indispensable role of the right of free access to justice.

In order to support the feasibility of this approach, we first of all set out the research and studies carried out to date on the notions, concepts and theories essential to the topic, including the normative and jurisprudential framework of the subject under investigation.

The scientific problem solved consists in elucidating the content of the right to free access to justice in the light of the fundamental right with the value of a constitutional principle and its degree of regulation, as a right by itself, from the perspective of doctrine, centered, in principle, on the constitutional values of the European Union, but especially as a complex right,

so as to meet the requirements of democracy and human aspirations from the perspective of international and national legal regulations, as well as European and constitutional case law.

Research methodology. Undoubtedly, the methodology used is claimed by the rigor of the construction and the doctrinal and critical interpretations of the right of free access to justice, and the methods used in the process of investigation and scientific research are: the method of historical analysis, dialectic, systemic analysis, comparative analysis and synthesis.

The historical method was used to research the genesis, evolution and enshrinement of the right of free access to justice, which made it possible to identify the various ways of ensuring effective access to justice in a fair trial.

The dialectical method, which entails analyzing opposing views on a phenomenon or process, made it possible to identify the legal nature of access to justice and its content, by examining conflicting doctrinal opinions and formulating one's own point of view on the issue under analysis.

Logical methods (systemic analysis, synthesis, induction, deduction) were used to interpret the main doctrinal conceptions and legal provisions regarding the limits of the right of access to justice, as well as the conditions necessary for effective access to justice.

The comparative method made it possible to expose the similarities and differences in the treatment of this institution in national and foreign doctrine, including by analyzing case law.

The method of synthetic analysis has contributed to the generalization of the research carried out, with the presentation of general conclusions and the formulation of proposals of *ferenda lex* in order to make access to justice more effective as a preliminary guarantee of a fair trial.

Scientific novelty of the obtained results. Although the main scientific novelty is given by the aim and objectives of the work, we also try to draw attention to the fact that this scientific approach is one of the few works that have dealt with the respect due to HUMAN BEINGS from the perspective of free access to justice - a preliminary guarantee for a fair trial.

On the other hand, the author's direct, detailed reflections, which breathe new life into this scientific research, are also to be found in his theoretical formulations, including:

- the approach to the right of access to justice in the light of a fundamental right with the value of a constitutional principle;

- the formulation of *ferenda lex* proposals, some quite novel, to remedy the current difficulties in guaranteeing and ensuring respect for fundamental human rights in general and the right of effective access to justice in particular.

At the same time, the identification and analysis of the main general and specific guarantees of effective access to justice has made it possible to justify the hypothesis of treating

access to justice as a preliminary guarantee of a fair trial in order to protect the subjective rights of individuals.

Theoretical importance and applicative value of the work. Regarding the relevance of the research, we consider that the results of the study will contribute to broadening and deepening the knowledge of access to justice as a fundamental right and, depending on the intended purpose, the results of the research can be used to solve problems related, in particular, to increasing the degree of effectiveness of access to justice, which must be concrete and effective, not theoretical and illusory, without certain unreasonable limits, or, when its general and specific guarantees are effectively applicable, the defendants are ensured free, equal and effective access to a fair trial.

The concepts and conclusions formulated can be used in the development of possible scientific research on issues relating to justice access, or contribute to clarifying the correctness of the corresponding provisions of the Constitution, in conjunction with the provisions of the Code of Criminal Procedure or the Code of Civil Procedure. The applicative value of the work lies in the fact that the solutions presented, the scientific conclusions announced can be used to improve the fundamental or procedural law.

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

Publications on the topic of the thesis. The research results find their axiological and legal reflection in 8 (eight) scientific works, among which 3 (three) are articles published in specialized journals, and another 5 (five) are published in the collections of national/international scientific forums carried out as author and co-author.

Summary of the thesis compartments. The thesis starts with an introduction and is structured in 3 compartments, divided into subchapters, followed by conclusions and recommendations, as well as bibliographical references including 376 sources.

Keywords: justice, rule of law, access to justice, fundamental right, constitutional principle.

THESIS CONTENT

In the Compartment 1, entitled "Reflections on free access to justice - a preliminary guarantee of a fair trial," was made an analysis of the opinions and research results related to the investigated topic, as it could be identified them in treatises and specialized journals, in various studies, monographs, online articles, etc., and also presented the normative and jurisprudential regulations in this direction.

In paragraph 1.1. "Analysis of scientific studies on free access to justice - a preliminary guarantee of a fair trial" the attention is focused on the studies signed by local authors such as Guceac Ion, Popa Victor, Costachi Gheorghe, Arseni Alexandru, Smochină Andrei, CârnațTeodor, Negru Boris, Goriuc Silvia, Dolea Igori, Arama Elena, Zubco Valeriu, Zaharia Victor, etc.

The studies examined make it clear that free access to justice is crucial for the functioning of justice and the rule of law. In this regard, is relevant the opinion of Prof. Ion GUCEAC, according to which real and effective access to justice acquires a certain meaning only if the court is able to restore the rights of the person whose rights and legitimate interests have been violated, otherwise the constitutional rules enshrining this right remain dead letter[3].

Prof. Alexandru ARSENI, attributes free access to justice to the category of fundamental principles, according to which justice is realized, in addition to: a) the principle of legality; b) the independence of the judge; c) the non-retroactivity of the law; d) the non-retroactivity of the law; d) the presumption of innocence; e) the guarantee of the right to defense; f) justice is unique and equal for all; g) the use of the official language and the right to an interpreter; h) the publicnature of judicial debates; i) the use of appeals[4].

Subsequently, Prof. Gheorghe COSTACHI and Prof. Ion GUCEAC, emphasize the need for court judgments to be legal, reasoned and to respect the principles of adversarial proceedings and equality before the law to ensure a fair trial, or, legality is an indispensable element of the rule of law, and the conformity of all actions and activities to the law is a fundamental requirement of the rule of law[5].

A valuable scientific support have been the works signed by Drăganu Tudor, Muraru Ioan, Deleanu Ion, Tănăsescu Elena Simina, Deaconu Ștefan, etc. Thus, according to Romanian Prof. Tudor DRĂGANU, free access to justice is a fundamental right, essential for the functioning of a

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[3] GUCEAC I. Free access to justice in national legislation and the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In Journal: Academos, no.2 (21) of 2011, p.43

[4] ARSENI A. Judicial authority - a veritable institution of realization of the branch of state power in the conditions of building the rule of law. In: The National Law Journal, no. 11, 2013, p. 19

[5] COSTACHI Gh., GUCEAC I. The phenomenon of constitutionalism in the evolution of the Republic of Moldova towards the rule of law. Chisinau: ÎS FEP "Central Typography", 2003, p. 25.

democratic judicial system, defining access to justice as the unrestricted ability of persons to bring an action in court, even if it is not always well founded in fact or in law[6].

Professors MURARU Ioan and TĂNĂSESCU Elena Simina examine free access to justice as a constitutional principle applicable to fundamental rights and freedoms, which applies regardless of the status of the protected person, and which allows access to justice for the defense of any right or any freedom and any legitimate interest, regardless of whether they derive from the Constitution or from the laws[7].

According to Prof. Ion DELEANU, free access to justice not only guarantees the restoration of legality when it has been violated, but is also an essential principle for the judicial organization[8].

Prof. Corneliu BÎRSAN treats free access to justice as a creation of the practice of the European Court of Human Rights and which is subsumed under the right to a fair trial[9].

The aspects investigated have made it possible to formulate the approach that access to justice presupposes the existence of clear competences, procedures and terms of address, as well as the possibility for the individual to make himself acquainted with this information in a language he understands, since access to justice is a fundamental right with the value of a constitutional principle.

Paragraph 1.2 of the chapter "Normative enshrinement of the right of free access to justice" is an exposition of the normative and jurisprudential regulations in this direction, addressing the evolution of justice and access to justice throughout history, emphasizing the importance of fundamental rights in a democracy.

By analysing the historical and contemporary regulations on the right of free access to justice, from the first attempts at constitutionalization in Mihail Kogălniceanu's 1848 draft, to subsequent constitutional developments, including during the period of totalitarian regimes, a continuous development of free access to justice as a fundamental right with the value of a constitutional principle has been identified.

Taking into account the aim of the study, we have identified the objectives of the research, objectives which, as we have shown, concern access to justice as a preliminary guarantee of a fair trial through the general and specific guarantees that ensure effective access to justice for the litigants.

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[6] DRĂGANU T. *Free access to justice*. Bucharest: LUMINA LEX, 2003. p. 7
[7] MURARU I., TĂNĂSESCU E.S. *Constitutional law and political institutions.* Bucharest: CH Beck, 2008. p. 163
[8] DELEANU I. *Institutions and constitutional procedures in comparative and Romanian law*. Arad: Servo-Sat, 2003, p. 61
[9] BÎRSAN C. *European Convention on Human Rights. Comment on articles.* Bucharest: All Beck, 2005, p.456-457

Subsequently, the degree of investigation of the topic of the doctoral thesis was established and the scientific problem of major importance was formulated.

In the Compartment 2, entitled, *"Free access to justice - a fundamental right with the value of a constitutional principle"* we move from the descriptive part of Compartment 1 to the analytical part of the research. This stage first reveals the evolution of conceptions of access to justice as a fundamental right with the value of a constitutional principle, the nature and legal characteristics of the right - principle of free access to justice, and an analysis of the limits of access to justice.

In this section, it was noted that access to justice guarantees that the dispute will be judged by a court that is provided for by law, but not by the court that the person bringing an action in court wants, and the courts are constituted in a system, and each link is established a specific jurisdiction, either subject-matter or territorial[10] .

Now, justice in a democratic society is a pyramidal, hierarchical arrangement, which has a particular legal relevance for at least two procedural institutions, jurisdiction and appeals, and the rule of the double degree of jurisdiction provides a guarantee that any error can be corrected, but also a basis for the dissatisfied party to request and obtain, if such a solution is justified, by setting aside the judgment on the merits.

The activity of a court of law in resolving legal disputes is *'jurisprudence*', and the subject-matter and scope of this activity is *'jurisdiction*'[11].

Therefore, the right of access to justice guides the natural or legal person who is a party to a dispute to determine or initiate its *resolution by the judiciary*.

The scientific guidelines set out in paragraph 2.1 *"The legal-scientific significance of the right of free access to justice"* have facilitated the deduction that, in civil matters, the right of access to justice belongs to a party, whether a natural or legal person, who considers that he or she is affected by a legitimate right or interest, whereas in criminal matters the right of the person who is to be subject to a judge or a court for the purpose of a decision prevails. But if the right of access to a court is to be respected, the court before which a dispute is brought, whether in civil or criminal matters, must have full jurisdiction, with jurisdiction to consider both matters of fact and of law.

The examined conceptualization has led to the conclusion that justice implies the rational equality of free persons, limited in their actions only by the rights and freedoms of others, or the equality of all persons without any privilege, i.e. an equality which can only be achieved by the greatest possible progress and the most detailed study of the factual situation within the limits of

[10] DRĂGANU T. *Free access to justice.* Bucharest: Lumina Lex, 2003, p.11
[11] ARSENI A., IVANOV V., SUHOLITCO L. *Comparative constitutional law.* Chişinău: CE USM, 2003, p.186

subjective rights and correlative obligations, and, by guaranteeing the right of free access to justice, to ensure that the person concerned has the option of bringing an action and the right to have his or her case heard by a competent court, without any abusive obstacles of a legal or practical nature.

Paragraph 2. 2 *"The legal nature of the right of free access to justice"* contains an analysis of the various conceptions of the legal nature of the right under investigation, concluding that access to justice is a fundamental right with the value of a constitutional principle common to the whole edifice of fundamental rights, freedoms and duties, guaranteed to all, and is equal for all persons, irrespective of the criterion of belonging to a state or of the rights, freedoms orlegitimate interests that it protects, and by the way in which it is regulated, it is intended to protect legitimate interests, and subject to the limitations that the law imposes, with only those restrictions that would undermine its substance being prohibited.

Free access to justice, which is a crucial fundamental right in a democratic society, implies:

1. Reasonable limitations - regulated by the state according to the needs and resources of the community and individuals.

2. Respect for the principle of non bis in idem, which prohibits repeated prosecution for the same offense and protects individuals from repeated prosecution or repeated prosecution after measures to terminate prosecution.

3. Compatibility with administrative procedures, as long as administrative decisions are subject to review by the competent courts.

4. Safeguards in civil proceedings, as it covers both the trial and the enforcement phase in civil proceedings.

5. Compatibility with the regulation of special procedures, provided that they are accessible and efficient for all concerned.

Both the complexity and importance of the right of free access to justice in a fair legal system lies in the fact that it is not limited to the ability to initiate legal proceedings, but, it also implies the existence of adequate mechanisms to ensure real and effective access for all citizens. This requires, among other things, transparency in the proceedings, protection against abuse and guaranteeing a fair trial. In addition, the complexity of this right is compounded by the need to adapt legislation and judicial practices to the diverse needs of the population, including those of vulnerable groups.

In conclusion, the features stated underline that the right of free access to justice isessential not only for the effective functioning of the legal system, but also for the maintenanceof equity and justice in a democratic society. This right must be constantly protected andpromoted in order to ensure that all citizens benefit from accessible and fair justice.

Paragraph 2.3 *„Conditions for the exercise of the right of free, equal and effective access to justice"* are focused more on identifying the characters of this fundamental right with constitutional principle value, or, in order to be real and effective, the act of justice must be based on the rigors of the law and their correct application, as well as impartial, that is, not to be biased to either party, because the law is one for all, without any discrimination, the judge being the only one able to apply this law[12].

Due to its constitutional consecration as a general principle for fundamental rights and freedoms, free access to justice is an eminent principle of the system of guarantees of rights and freedoms, along with the principle of universality, non-retroactivity of the law, equal rights of citizens, protection of citizens abroad, protection of foreigners and stateless persons in the territory of a state[13].

Therefore, access to justice must be equal for all persons, regardless of the criterion of belonging to a state or of the rights, freedoms and legitimate interests they protect, whereas it offers the possibility of greater legal protection than the other fundamental rights to which it serves as support[14]. Thus, the equal vocation of any person to be judged constitutes a specific application of the constitutional principle of equality in the field of justice, which from this perspective, it is the fundamental premise of any act of justice[15], or, access to justice must not only be general, but also equal, the State having the obligation not to exclude anyone from the possibility of access to an independent and impartial court that would judge the case fairly, whether the cause concerns liberty or property[16].

Therefore, regardless of the noble purpose pursued by the consecration of this right, free access to justice is not an absolute right, being susceptible to limitations, which may not in any way restrict the exercise of the right of access to justice or the right to an effective remedy, because they must serve a legitimate purpose and there must be a reasonable relationship of proportionality between the means used and the purpose pursued.

Consecration by the legislator of special rules of procedure and ways of exercising procedural rights, ensuring the possibility of reaching the courts on an equal basis, we consider that it does not affect the effectiveness of the right of free access to justice, however, condition States to ensure an appropriate legal framework so that any person can actually satisfy their interests before the court, insofar as they are real, lawful, and, and in accordance with the principle of security of legal relations.

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[12] DEACONU Șt. *Constitutional law.* Bucharest: CH Beck, 2011, p. 226
[13] IANCU Gh. *Constitutional law and political institutions,* Bucharest: Lumina Lex, 2002, p. 138
[14] TĂNĂSESCU S.E. *The principle of equality in Romanian law.* Bucharest:: 1999. p. 234
[15] TĂNĂSESCU E.S. *The principle of equality in Romanian law.* Bucharest: ALL BECK, 1999, p. 233
[16] *Assessing the Effectiveness of National Human Rights Institutions.* Swizeland: I.C.H.R.P., 2005, p. 16

Thus, by promoting a fair trial, the public's trust in justice is strengthened and it ensures that the fundamental rights of the individual are protected and respected.

In the Compartment 3, called *„Garanties to ensure effective access to justice",* we continued research as an expression dictated by the logical architecture of doctrinalconsiderations, jurisprudential and legislative – focused on the jurisprudence of the European Court of Human Rights, the thesis that free access to justice is a preliminary guarantee of a fair, fair trial, given that it is ensured the general and specific guarantees to give it a greater degree of effectiveness, such as: the right to defense, the equality of arms, the contradictory process, the, publicity of the proceedings before the court and of the judgments rendered by it or the resolution of the case within a reasonable time**.**

Basically, the research materialized in this compartment comes to deepen and elucidate the guarantees of an effective access to justice in the conditions of a fair trial.

In paragraph 3.1 *„General guarantees of effective access to justice"* pointed out that in order to ensure effective protection of human rights it is necessary to establish safeguards that would strengthen the mechanisms of protection of these rights, including effective and effective access to justice[17], the guarantees of human rights are the totality of objective and subjective factors that contribute to the full realization and multilateral protection of the rights and freedoms of citizens[18] forming the system of conditions, means and modalities that ensure equal legal possibilities for establishing, obtaining and realizing their rights and freedoms[19].

The right to court must also meet the possibility to file a summons application and to see it settled by a court decision, the definitive nature of judgments and prompt enforcement of final judgments[20].

The issues investigated further denote that the fundamental right of the person to appeal to justice implies the obligation of the court to rule on the submitted application, whereas it is essential that the person concerned has the opportunity to see his or her legitimate interests satisfied[21].

The following categories of guarantees of the right of free access to justice have been identified:

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[17] Decision of the Constitutional Court of the Republic of Moldova no.16 from 2of May 1998. In: Official Monitor of Republic of Moldova no. 56-59/24 from 25.06.1998.

[18] *Russia in search of strategy: society and power. Edited by* Г.В. ОСИПОВА, В.К. ЛЕВАШОВА, В.В. СУХОДЕЕВА. Moscow: Зерцало, 2000. с. 34.

[19] *Russia in search of strategy: society and power. Edited by*. Г.В. ОСИПОВА, В.К. ЛЕВАШОВА, В.В. СУХОДЕЕВА. Moscow: Зерцало, 2000. с. 34.

[20] VITKAUSKAS D., DIKOV Gr. *Protection of the right to a fair trial under the European Convention on Human Rights: Handbook for legal practitioners* Ed. a 2-a. Strasbourg: Council of Europe, 2019, p. 31

[21] CHIRIȚĂ R. *European convention on human rights. Comments and explanations. Vol. I. Bucharest*: C.H. BECK, 2007, p. 288;

1. *general*, which in turn is divided into explicit general guarantees (publicity of judicial activity, operability of judicial activity) and implied general guarantees (equality of arms, adversariality, reasoning of judgments);

2. *specific*, of the category to which the specific explicit guarantees (the presence of innocence, the right to be informed about the nature of the accusation, the granting of time and facilities necessary to prepare the defense, are part, the right of the accused or defendant to question witnesses in the trial, the right of defense, and, the right to free assistance of an interpreter) and specific implied guarantees (the right of the accused or defendant not to incriminate themselves)[22].

Following the examination of the case-law of the European Court of Human Rights, it was possible to identify the following aspects. In order to ensure the right of free access to justice, it is essential to promote genuine transparency of judicial proceedings. It must allow for the effective application of fundamental principles, except where the opening of the hearing could affect the interests of the State, morals, dignity or privacy of persons, or, as well as to maintain order and solemnity in the courtroom. The publication of judgments has an important role, since the judge must prevent errors and ensure the correctness of law enforcement, based on the establishment of facts.

Ordering the officio evidence is essential to finding out the truth, and the court has a responsibility to ensure that the evidence is legal and relevant, and to present it to the parties for discussion. The court may request the taking of evidence at any time during the proceedings, without being restricted by the time limits set for the submission of evidence by the parties.

By generalising the issues examined in this compartment, we can point out the following reasoning:

– the principle of adversariality constitutes a set of rights and obligations for the court and the parties, intended to ensure the balance necessary for judicial dialogue for fair judgment;

– parties involved in a lawsuit must communicate their claims, defenses and evidence to each other through written requests addressed to the court;

– throughout the trial, all parties must be heard equally, including on matters of fact and law discussed by the court, in order to ensure that the truth is found, including by administering evidence in a public hearing[23];

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[22] DAMASCHIN M. *Right to a fair trial in criminal matters. Bucharest:* Legal Universe, 2009, p.35

[23] TROCIN E. *The right - the principle of a contradictory process - a prerequisite for achieving effective access to justice. Scientific communication within the National Scientific and practical conference dedicated to the international day of human rights „Rights of the person: current issues in the light of national jurisprudence". In honorem Andrei SMOCHINĂ at the age of 75. ICJPS, december 8, 2021. Chisinau: Scientific Library (Institut).*

– the procedural equality of the parties hints at the general principle of equality between citizens. Without equitable access to the means of defence, to the documents and evidence of the file, without the possibility for each party to put forward their arguments and to participate in a contradictory procedure, finding out the truth can be compromised, and judicial errors can occur, affecting the right to free access to justice;

– complying with the reasonable time limit is crucial to the credibility and efficiency of access to justice. States should pay particular attention to speeding up procedures while avoiding excesses in the opposite direction, since too fast or too long a procedure can affect the necessary balance, and the reasonable time limit must be assessed according to the complexity of the case, the behaviour of the complainant and the authorities[24].

In paragraph 3.2 *„Specific guarantees of effective access to justice",* particular attention has been paid to the rights of the defence, since, the person who benefits from the right of access to justice has not only the right to appeal to the court, but the right to obtain, after all the stages of the trial, the right to, a legal solution to the charges brought before the court.

By ensuring the impartiality of decisions, the correct assessment of facts and the fair application of law, the judiciary fulfils its role of providing fair justice and maintaining public confidence in legality and fairness, however, in order to ensure effective access to justice and prevent judicial errors, the following measures are required:

1. *Ensuring access to justice:* states are obliged to guarantee the effectiveness and accessibility of the right to appeal to the court so that any person can protect their legitimate interests before a judge. This involves a full examination of the case without undue delay or restrictions that would impede access to justice.

2. Regulating the limitations of access to justice: although access to justice must be guaranteed, it does not necessarily imply the right to appeal to all degrees of jurisdiction and all extraordinary means of redress, which exceptions are intended to ensure the stability and security of legal relations**.**

3. *Compliance with the principle of adversariality:* ensuring that the parties to a lawsuit have the right to be informed of all the evidence and observations submitted to the court, and, to challenge and support each other's claims and defenses, to ensure that the truth is found.

[24] TROCIN E. *Theoretical and practical aspects regarding the solution of the case within a reasonable period of time in the light of the ECHR jurisprudence*. In: The role of democratic institutions in ensuring the protection of human rights and fundamental freedoms: Roundtable materials dedicated to the International Day of human rights, December 6, 2018. Chișinău: AAP, 2019, p.266

4. *Compliance with the principle of privacy:* it is crucial for the fairness and impartiality of justice, as parties cannot be prevented from attending court hearings, and third parties canonly be excluded in strictly regulated cases, to protect your privacy under certain conditions.

5. *Adherence to the reasonable time limit:* ensuring a reasonable time limit for the resolution of cases, both in civil and criminal proceedings, is essential to ensuring effective and credible justice. The reasonable time limit should be assessed in the context of each case, taking into account the duration of the procedure, the complexity of the case, the behaviour of the parties and authorities, and other relevant circumstances.

6. *Guaranteeing independence and impartiality*: what are the fundamental guarantees of effective access to justice, or, independence, refers to the mood of judges, and, supported by an appropriate status to ensure fair judgment, and impartiality refers to the fair attitude of the court towards all aspects and parts of a case, as well as how to conduct the process.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The results of this doctoral thesis were reflected in the following: it was examined the doctrinal, legislative and jurisprudential framework on free access to justice (chapter 1); was examined the historical and conceptual evolution of the right of access to justice in the light ofthe fundamental right with constitutional principle value (320, pp. 112-124, 340, p. 251-256, chapter 1, 2); was determined the legal nature of access to justice (322, pp.17-34, chapter 2); were detailed the limits of the nominated fundamental right (340, p. 252-254, p, chapter 2); were identified the conditions for exercising access to justice (340, pp. 254-255, chapter 2) have been identified, the main general and specific guarantees ensuring effective access to justice were elucidated (321, pp. 41-54; 337, p. 262-267; 338, p. 170-178; chapter 3).

The research carried out confirmed the relevance and importance of the topic addressed, and the analyses made have allowed ***the solution of the scientific problem*** that resides in the elucidation of the content of ensuring the right of free access to justice in the light of the fundamental right with constitutional principle value and its degree of regulation, as a stand- alone right, from the perspective of doctrine, focused, in principle, also on the constitutional values of the states of the European Union, but especially as a complex right, to meet the demands of democracy and human aspirations from the perspective of international and national legal regulations, as well as European and constitutional jurisprudence.

The complete fulfillment of the purpose and objectives set, allowed the following scientific considerations to be formulated:

1. Access to justice is a fundamental right with constitutional principle, granted to each person regardless of citizenship, race, nationality, gender, etc., meant to effectively satisfy access to the competent courts. At the same time, the right of access to justice is a constitutional right of guarantee against acts that violate its rights, freedoms and legitimate interests, whereas it guarantees any interested person the option of bringing proceedings and of enjoying the right to have his case examined by a competent court, no abusive obstacles of a legal or practical nature (see sub-chapters 2.1 and 2.2).

2. From the consideration that the option of the constituent to use the concept of ”*free”* access to justice, since it can and must be limited, we consider that the notion of „*free access to justice*”, we consider that, in both legal doctrine and legal norms it would be appropriate to replace it with the phrase „*access free, equal, and effective to justice*”, being thus included in the notion also the legal characteristics for the exercise of this right-principle (see subchapter 2.3).

3. The limits of the right of access to justice must pursue a legitimate aim, must not affect the very substance of the right and must ensure a reasonable relationship of proportionality between the aim pursued and the means chosen, such as: the formal conditions under which a

court may be brought, conditions regarding the limitation periods or the limitation periods for the referral of a court, or, conditions for the payment or registration of amounts of money, the existence of immunities conferred on certain categories of persons accepted under international law and national law (see sub-chapters 2.2 and 2.3).

4. An effective access to justice dominates constitutional democracy and is an eminent principle of the system of guarantees of rights and freedoms, established to protect not only the applicant, but also the other participants in the process, in the sense that they benefit as well as the plaintiff from the right to have their requests admitted and debated in substance, to determine whether or not they are well founded. In order to be effective, the right of access to justice must not encounter any obstacle that prevents its beneficiary from exercising it, and by establishing additional conditions by law, what a non-absolute carrier attributes to the right does not affect its legal value on the grounds that such restrictions are valid and constitutional insofar as they do not affect the existence of the right or freedom itself, having a legitimate aim and a relationship of proportionality between the means used and the intended purpose (see sub-chapters 2.1 and 2.3).

5. The accessibility of justice is not equivalent to its gratuitousness, and the fees must be proportional to the value of the object of the trial or to other expenses disproportionate to the financial possibilities of the plaintiff, otherwise, such expenditure may represent a de facto deterrence of free access to justice. For these reasons, it is necessary to establish certain facilities whereby certain categories of persons are exempt from the payment of taxes, provided for situations of postponement or instalment of the payment of this tax, or exempted from part of it, depending on the material situation of the natural person. At the same time, the normative framework admits cases in which the court, following the analysis of the material, financial state of the natural/legal person and of the evidence administered, may order the postponement of the payment of the state fee, as well as, or its exemption, which constitutes a mechanism for ensuring access to justice, and the recently made changes to the state tax aim to ensure a budgetary balance between a qualitative public service and the obligation of the citizen using thisservice (see sub-chapters 2.1, and 2.3).

6. Access to justice can be general, equal, and effective if the state provides for the establishment of a system of free legal aid, both in civil and criminal matters, and by applying the exemption, deferral or instalment of payment of state fees shall ensure an imminent guarantee of free and effective access to justice, and, whereas those situations are regulated where the party cannot meet the costs of a process due to lack of material means, or, by assessingthe legality and the substantiated nature of the requests for exemption or reduction of state fees, the court carries out its task of ensuring the person's accessibility to justice (see sub-chapter 2.3).

7. Access to justice does not mean access to all degrees of jurisdiction and to all extraordinary means of redress, with an exceptional character by definition, namely to ensure the stability and security of legal relations, however, the content of this right-warranty resides in the positive obligation of the state to ensure access to the court system, the court procedure, jurisdiction and remedies, and, etc (see sub-chapters 3.1.4 and 3.3).

8. By virtue of its positive obligations, the State must not admit the existence of an immunity mechanism, which would allow for an exemption of certain categories of persons fromany form of responsibility, including in the non-criminal field, because those rights and privileges would be a blow to ensuring equal access to justice, discrediting the quality ofdemocracy in a state. Subsequently, the establishment of administrative-territorial or preliminary procedures designed, in general, to ensure the faster resolution of certain categories of disputes, as well as the decongestion of courts or the avoidance of court costs, it does not constitute a measure to limit free, equal and effective access to justice (see chapters 2.3 and 3.1.4).

9. Effective access to justice in the conditions of a fair trial means that in order to be fair, the process must be conducted after a contradictory procedure, with respect for the rights of the defence and for the equality of arms, arms and arms, and each Party shall have sufficient, equivalent and adequate opportunities to support its position on matters of law and fact. Thus, in the absence of explicit general guarantees (publicity of judicial activity, operability of judicial activity), implicit general (equality of arms, adversariality, motivation of decisions), specific explicit (presumption of innocence, the presence of, the right to be informed of the nature of the charge, the granting of the time and facilities necessary to prepare the defence, the right of the accused or defendant to question witnesses in the trial, the right of defence, the right to defend, the right to free assistance of an interpreter) and specific defaults (the right of the accused or defendant not to incriminate themselves), *free, equal access, and, and effectively justice* becomesillusory (see subchapters 3.1 and 3.2).

10. The impact of the jurisprudence of the European Court of Human Rights has resulted in an explicit constitutional exploitation of the right to a fair trial, thus, national courts in European countries have the possibility to apply the Constitution first, which includes a provision on the right to a fair trial, unlike the situation in the Republic of Moldova where such explicit regulation is missing, and the courts refer to the provisions of the European Convention on Human Rights. Therefore, it would also be necessary in the case of the Republic of Moldova to explicitly proclaim the right to a fair trial in the Supreme Law, which would constitute a constitutional guarantor of sorts, to ensure greater effectiveness of the judicial act in relation to the rights, freedoms and legitimate interests of the participants in the process, as well as to avoid the application of the ricochet procedure. Thus, we consider it appropriate to enshrine the right of the

parties to a fair trial within the same constitutional text that guarantees access to justice (see sub-chapter 2.2).

11. In line with the case-law of the European Court of Human Rights examined in this study, in order to increase the effectiveness of the right of access to justice in a fair trial, it is necessary that judgments given are sufficiently reasoned, this would allow the higher court to verify the compliance of the judgment with the law, if they are challenged with appeal or appeal, or not only the non-motivation of the judgment, but, but also insufficient motivation or motivation in general, vague terms, is a reason for scrapping. Moreover, the reasoning of a judgment must be clear and precise, refer to the evidence administered in question and be consistent with it, to respond in fact and in law to all aspects of the incident in question, to lead logically and persuasively to the solution in the device, to include, the reasons of fact and lawthat formed the conviction of the court, as well as those for which the requests/defenses of the parties were removed (see subchapter 3.1.5).

Description of personal contributions with the emphasis of theoretical significance and its practical value.

Personal contributions consist of deepening research to bring a clear light on access to justice as a preliminary guarantee of a fair trial in the light of general and specific guarantees that ensure access for litigants effective at justice. In this respect, the legal nature of the right of free access to justice has been identified. The conditions for exercising the right of free, equal and effective access to justice were subject to a complex examination, while the characters of the right of access to justice were highlighted. Similarly, a complex examination has also been subject to the main general and specific safeguards that ensure that litigants have effective accessto justice. The thesis contains proposals for amending and supplementing both the Supreme Law and the normative framework, through which to ensure an effective access to justice of the litigant. In order to justify the necessity of operating legislative changes, arguments have been made, resulting from the judicial practice and the opinions of scientific researchers in the field.

Scientific novelty and originality is argued by the fact that the right of free access to justice, although it is frequently found in the jurisprudence of the ECtHR, however, there is little scientific work, that would provide a broad view of its essence and legal nature. Thus, for the first time, the historical and conceptual evolution of the right of access to justice was analyzed in the complex, and the direct, detailed reflections, they brought a new spirit related to the approach of the right of access to justice in the light of the fundamental right with constitutional principle value. Proposals were made by *lex ferenda*, some quite unusual, to remedy the current difficulties in order to guarantee and ensure the respect of fundamental human rights in general, and the right of effective access to justice, in particular. At the same time, the main general and

specific guarantees of effective access to justice were identified and analyzed, this fact allowed to justify the hypothesis of treating access to justice as a preliminary guarantee of a fair trial in order to protect the subjective rights of persons. Therefore, the research carried out and completed with the elaboration of the doctoral thesis is in accordance with the requirements of scientific novelty and originality.

The legal and empirical basis of the study is constituted by the regulations of the international instruments in the field of fundamental rights and freedoms, constitutional norms, provisions of the Criminal Procedure Code and the Civil Procedure Code, the case law of the European Court of Human Rights.

The scientific basis of the research is formed by the published works of scientists from the Republic of Moldova, Romania, Russia, France and so on.

Theoretical significance of the thesis. We believe that the results of the study will contribute to amplifying and deepening the knowledge on access to justice as a fundamental principle, and the results of the research can be used to solve related problems, in particular, to increase the effectiveness of access to justice, which must be concrete and effective, not theoretical and illusory, without certain unreasonable limits, or, where its general and specific guarantees are effectively applicable, free, equal and effective access to a fair trial shall be ensured to the litigants.

Practical value of the thesis. The formulated concepts and conclusions can be used to conduct scientific research on access to justice, or to help clarify the correctness of the corresponding provisions of the Constitution, in conjunction with the criminal procedural or civil procedural provisions. The applicative value of the paper consists in the fact that the solutions presented, the scientific conclusions announced can be used to improve the fundamental or procedural law.

Data on approval of results. Scientific investigations have found their reflection in 8 (eight) publications in specialized journals in the country and abroad, in summaries of communications presented at national and international scientific conferences.

The indication of the limits of the obtained results, with the establishment of the remaining unresolved problems, resides in the development and deepening of the scientific investigations regarding the increase of the effectiveness of the access to justice, which must be concrete and effective, not theoretically and illusory, no unreasonable limits. At the same time, it is important to study the experience of some states that have advanced in the field, to identify the applied innovations and to take over what can be useful for the Republic of Moldova, inparticular in the process of harmonising legislation with the EU regulatory framework.

Following the analysis and the findings made, we believe that the conclusions will enrich the national legal doctrine in the field of access to justice, and the recommendations willcontribute to the continued development of the institution in the context of ensuring fair justice:

1. Amending Article 20 of the Constitution of the Republic of Moldova, as follows:

„Article 20 Access to justice

(1) Everyone has the right to effective satisfaction from the competent courts against acts that violate his rights, freedoms and legitimate interests.

(2) No law may restrict free, equal and effective access to justice.

(3) The parties have the right to a fair trial and to the settlement of cases within a reasonable time.

(4) Judgments must be legal, sufficiently reasoned and be based only on the circumstances found and the evidence investigated in court."

2. Amending Article 26 of the Constitution of the Republic of Moldova, with the following content:

„ Article 26 Right of defence and effective legal aid

(1) The right to defence and effective legal aid is guaranteed.

(2) Every person has the right to react independently, by legitimate means, to the violation of his rights and freedoms.

(3) Throughout the trial, the parties have the right to be assisted by a lawyer, elected or appointed ex officio.

(4) The interference in the activity of the persons exercising the defence within the limits provided shall be punished by law."

3. Completion of the Criminal Procedure Code and the Civil Procedure Code with a new article, with the following content:

„Right to a fair trial

Everyone shall have the right to a fair trial of his case, within an optimal and foreseeable period, by an independent, impartial and legally established court. To this aim, the court is obliged to order all the measures allowed by law and to ensure the fast development of the judgment".

4. Amending Article 239 of the Civil Procedure Code of the Republic of Moldova no. 225 of 30 May 2003, with the following content:

„ Judicial decision

(1) In order to confirm the observance by the judge of the principles of the right to a fair trial, the judicial decision must be legal, and, sufficiently motivated and to rely only on the ascertained circumstances and the evidence investigated in the hearing.

(2) The judgment must be drafted in clear, simple and accessible language in order to be understood, with the coherent, consistent and unambiguous invocation of all the grounds."

5. Amending Article 384 of the Criminal Procedure Code of the Republic of Moldova no. 122 of March 14, 2003 with the following content:

„Court sentence

(1) The court decides on the accusation submitted to the defendant by adopting the sentence of conviction, acquittal or termination of the criminal trial.

(2) The sentence shall be adopted in the name of the law.

(3) In order to confirm the observance by the judge of the principles of the right to a fair trial, the sentence must be legal, well-founded, sufficiently reasoned, drafted in clear, simple and accessible language, in order to be understood, with the coherent, consistent and unambiguous invocation of all the reasons underlying its issuance."

(4) The court shall base its sentence only on the ascertained circumstances and the evidence that was investigated in the court hearing."

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ADNOTARE

TROCIN Eugeniu. „Accesul liber la justiție - garanție preliminară desfășurării unui proces echitabil". Teză de doctor în drept la specialitatea: 552.01. Drept constituțional. Chişinău, 2024

Structura tezei: introducere, trei capitole, concluzii generale şi recomandări, bibliografia din 393 de surse, text de bază 165 de pagini. Rezultatele obținute sunt reflectate în 8 articole ştiinţifice.

Cuvinte-cheie: acces la justiție, drept fundamental, principiu constituțional, proces echitabil, efectivitate, dreptul la apărare, asistență juridică, jurisprudența CtEDO.

Domeniul de studiu: Drept constituțional.

Scopul lucrării constă în aducerea unei lumini clarificatoare privind accesul la justiție ca o garanție preliminară desfășurării unui proces echitabil prin prisma garanțiilor generale și specifice care asigură justițiabililor un acces efectiv la justiție.

Obiectivele cercetării: examinarea cadrului doctrinar, legislativ și jurisprudențial privind accesul liber la justiție; cercetarea evoluției normative și conceptuale a dreptului de acces la justiție în lumina dreptului fundamental cu valoare de principiu constituțional; determinarea naturii juridice a accesului la justiție; detalizarea limitelor dreptului fundamental nominalizat; identificarea condițiilor de exercitare a accesului la justiție; elucidarea principalelor garanții generale și specifice care asigură justițiabililor un acces efectiv la justiție.

Noutatea ştiinţifică a rezultatelor obţinute constă în faptul că prezentul demers științific este printre puținele lucrări din perspectiva accesului liber la justiție - garanție preliminară desfășurării unui proces echitabil, fiind abordat dreptul de acces la justiție în lumina dreptului fundamental cu valoare de principiu constituțional, precum și formularea unor propuneri de *lege ferenda*, pentru remedierea dificultăților actuale în vederea garantării și asigurării respectării drepturilor fundamentale ale omului, în general, și a dreptului de acces efectiv la justiție, în special. Identificareași analiza principalelor garanții generale și specifice ale unui acces efectiv la justiție a permis în final justificarea ipotezei tratării accesului la justiție ca o garanție preliminară a unui proces echitabil în vederea protecției drepturilor subiective ale persoanelor.

Problema ştiinţifică soluţionată constă în elucidarea conținutului asigurării dreptului de acces liber la justiție în lumina dreptului fundamental cu valoare de principiu constituțional și a gradului său de reglementare, ca drept de sinestătător, din perspectiva doctrinei, axată, în principiu, și pe valorile constituționale ale statelor Uniunii Europene, dar mai ales ca drept complex, astfel încât să răspundă cerințelor democrației și aspirațiilor umane din perspectiva reglementărilor juridice internaționale și naționale, precum și a jurisprudenței europene și constituționale.

Importanța teoretică se manifestă prin faptul că rezultatele studiului vor contribui la amplificarea şi aprofundarea cunoştinţelor privind accesul la justiție ca drept - principiu fundamental. Conceptele și concluziile formulate pot fi utilizate în vederea desfășurării unor eventuale cercetări științifice cu referire la accesul la justiție, ori contribui la clarificarea corectitudinii prevederilor corespunzătoare din Constituție, în coroborare cu prevederile procesual penale sau procesual civile.

Valoarea aplicativă a lucrării constă în faptul că soluțiile expuse, concluziile științifice anunțate pot fi utilizate pentru perfecționarea legii fundamentale sau procesuale.

Implementarea rezultatelor ştiinţifice: Rezultatele studiului își găsesc reflecție axiologică și juridică în lucrări științifice publicate în reviste de specialitate sau în culegerile forurilor științifice naționale/internaționale efectuate în calitate de autor și coautor. Considerăm că, rezultatele investigațiilor reflectate în prezenta lucrare pot fi utile studenților, masteranzilor din cadrul instituţiilor de învăţământ superior cu profil juridic.

АННОТАЦИЯ

ТРОЧИН Евгений. «Свободный доступ к правосудию – предварительная гарантия справедливого суда». Докторская диссертация по специальности: 552.01. Конституционное право. Кишинев, 2024 г.

Структура диссертации: введение, три главы, общие выводы и рекомендации, библиография из 393 источников, основной текст 165 страниц. Полученные результаты отраженыв 8 научных статьях.

Ключевые слова: доступ к правосудию, основное право, конституционный принцип, справедливое судебное разбирательство, эффективность, право на защиту, правовая помощь, судебная практика ЕСПЧ.

Область исследования: Конституционное право.

Цель диссертации – является разъяснение доступа к правосудию как предварительной гарантии проведения справедливого судебного разбирательства через призму общих и конкретных гарантий, которые обеспечивают эффективный доступ к правосудию.

Задачи исследования: изучение доктринальной, законодательной и судебно-правовой базы, касающейся свободного доступа к правосудию; исследование нормативной и концептуальной развитии права на доступ к правосудию как фундаментальное права со значением конституционного принципа; определение правовой природы доступа к правосудию; детализация границ основного права на доступ к правосудию; определение условий для осуществления доступа к правосудию; разъяснение общих и конкретных гарантий, обеспечивающих эффективный доступ к правосудию.

Научная новизна полученных результатов заключается в том, что данный научный подход относится к числу немногих работ, рассматривающих проблему свободного доступа к правосудию как предварительной гарантии проведения справедливого судебного разбирательства, затрагивая право доступа к правосудию как фундаментальное права с ценностью конституционного принципа, а также формулирование некоторых предложений по изменении в законодательство чтобы исправить трудности в его реализаций, гарантировать и обеспечить основные права человека в целом и права эффективного доступ к правосудию, в частности. Выявление и анализ общих и конкретных гарантий эффективного доступа к правосудию позволили обосновать гипотезу о трактовке доступа к правосудию как предварительной гарантии справедливого судебного разбирательства в целях защиты субъективных прав личности.

Решаемая научная задача состоит в выяснении содержания права свободного доступа к правосудию с точки зрения основного права и трактовке его как конституционного принципа, степени его регулирования с позиции доктрины, ориентированной в принципе, на конституционные ценности государств Европейского Союза, но особенно как на комплексный закон, так, чтобы он отвечал требованиям демократии и человеческим устремлениям с точки зрения международного и национального правового регулирования.

Теоретическая значимость состоит в том, что результаты исследования будут способствовать расширению знаний о доступе к правосудию как праве – основополагающем принципе. Сформулированные концепции и выводы могут быть использованы для проведения возможных научных исследований по вопросам доступа к правосудию или способствовать выяснению правильности соответствующих положений Конституции во взаимосвязи с уголовно-процессуальными или гражданско-процессуальными положениями.

Прикладная ценность работы состоит в том, что представленные решения, озвученные научные выводы могут быть использованы для совершенствования основного или процессуального права.

Внедрение научных результатов: Результаты исследования находят своё аксиологическое и правовое отражение в научных работах, опубликованных в специализированных журналах или в сборниках национальных/международных научных форумов, выполняемых в качестве автора и соавтора. Полагаем, что результаты исследований, отражённые в данной работе, могут быть полезны студентам, магистрантам вузов юридического профиля.

ANNOTATION

TROCIN Eugeniu. „Free access to justice - preliminary guarantee of a fair trial". Doctor of Law thesis in specialty: 552.01. Constitutional right. Chisinau, 2024

The thesis structure: introduction, three chapters, general conclusions and recommendations, bibliography from 393 sources, basic text 165 pages. The results are reflected in 8 scientific articles.

Keywords: access to justice, fundamental right, constitutional principle, fair trial, effectiveness, right of defence, legal aid, ECtHR jurisprudence.

The field of study: Constitutional law.

The aim of the study is to clear the subject of access to justice as a preliminary guarantee of a fair trial through the general and specific guarantees that ensure effective access to justice for the litigants.

The research objectives: examination of the doctrinal, legislative and jurisprudential framework on free access to justice; research on the normative and conceptual evolution of the right of access to justice in the light of the fundamental right with the value of a constitutional principle; determination of the legal nature of access to justice; definition of the limits of the fundamental right; identification of the conditions for exercising access to justice; elucidation of the main general and specific guarantees ensuring effective access to justice.

The scientific novelty of the obtained results consist in the fact that the present scientific approach is among the few works from the perspective of free access to justice - a preliminary guarantee for a fair trial, the right of access to justice being addressed in the light of the fundamental right with the value of a constitutional principle, as well as the formulation of proposals of lege ferenda, to remedy the current difficulties in guaranteeing and ensuring respect for fundamental human rights in general and the right of effective access to justice in particular. The identificationand analysis of the main general and specific guarantees of effective access to justice finally made it possible to justify the hypothesis of treating access to justice as a preliminary guarantee of a fair trial for the protection of the subjective rights of persons.

The solved scientific problem consists in elucidating the content of ensuring the right of free access to justice in the light of the fundamental right with the value of a constitutional principle and its degree of regulation, as a stand-alone right, from the perspective of doctrine, focused, in principle,also on the constitutional values of the states of the European Union, but especially as a complex right, so as to meet the requirements of democracy and human aspirations from the perspective of international and national legal regulations, as well as European and constitutional jurisprudence.

The theoretical importance is that the results of the study will contribute to a deeper knowledge on access to justice as a fundamental right. The concepts and conclusions formulated can be used to carry out further scientific research on access to justice or to help clarifying the correctness of the relevant provisions of the Constitution in conjunction with the provisions of criminal or civil procedure.

The applicative value of the work consists in the fact that the presented solutions, the scientific conclusions announced can be used to improve the fundamental or procedural law.

The implementation of the scientific results: the results of the study find their axiological and legal reflection in scientific works published in specialized journals or in the collections of national/international scientific forums carried out as author and co-author. We believe that the results of the investigations reflected in this research can be useful for students, master students in higher education institutions with legal profile.

TROCIN EUGENIU

FREE ACCESS TO JUSTICE - A PRECONDITION FOR A FAIR TRIAL

Doctoral thesis in law

Specialty: 552.01 - Constitutional law

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