CZU 343.12/.13
DOI https://doi.org/10.52388/2345-1971.2022.e2.05

ENSURING THE RIGHT TO DEFENSE IN THE CRIMINAL PROCESS [1)]

Dinu OSTAVCIUC
Doctor of Law, Associate Professor,
Academy "Ștefan cel Mare" of the Ministry of Internal Affairs,
Chisinau, Republic of Moldova
e-mail: *ostavciuc@mail.ru*
https://orcid.org/0000-0001-5317-3296

The right to defense is one of the essential principles of the criminal process. Violation of this right affects the fairness of the process and leads to procedural sanctions. In this article, the role of international and national legislation and practice will be analyzed regarding the application and observance of the principle of ensuring the right to defense, the role of the Constitutional Court and other legal institutions in this regard. Or, states are obliged to effectively guarantee the accused persons the right to defense, as this is a condition for the realization of the act of justice in a democratic state. Following the analysis carried out, we come with recommendations and explanations regarding the content of this principle, because it should not be seen as simple legal assistance, but has a more complex content.

Keywords: *principle, the right to defense, legal assistance, defender, attorney, procedural sanctions.*

ASIGURAREA DREPTULUI LA APĂRARE ÎN PROCESUL PENAL

Dreptul la apărare este unul din principiile esențiale ale procesului penal. Încălcarea acestui drept afectează echitatea procesului și duce la sancțiuni procesuale. În articolul respectiv se va analiza rolul legislației și practicii internaționale și a celei naționale cu privire la aplicarea și respectarea principiului asigurării dreptului la apărare, rolul Curții Constituționale și a altor instituții juridice în acest sens. Or, statele sunt obligate să garanteze efectiv persoanelor acuzate dreptul la apărare, întrucât aceasta este o condiție de realizare a actului de justiție într-un stat democratic. În urma analizei efectuate venim cu recomandări și explicații privind conținutul acestui principiu, deoarece acesta nu trebuie privit ca o simplă asistență juridică, ci are un conținut mai complex.

Cuvinte-cheie: *principiu, dreptul la apărare, asistență juridică, apărător, avocat, sancțiuni procesuale.*

GARANTIR LE DROIT DE LA DÉFENSE DANS LES PROCÉDURES PÉNALES

Le droit de la défense est l'un des principes essentiels de la procédure pénale. La violation de ce droit affecte l'équité du processus et entraîne des sanctions procédurales. L'article analysera le rôle de la législation et de la pratique internationales et nationales concernant l'application et le respect du principe de garantie du droit à la défense, le rôle de la Cour Constitutionnelle et d'autres institutions juridiques à cet égard. Les États sont tenus de garantir effectivement aux accusés le droit de la défense, car c'est une condition pour réaliser l'acte de justice dans un État démocratique. Suite à l'analyse effectuée, nous formulons des recommandations et des explications sur le contenu de ce principe, car il ne doit pas être considéré comme une simple aide juridictionnelle, mais a un contenu plus complexe.

Mots-clés: *principe, droit à la défense, aide légale, défenseur, avocat, sanctions procédurales.*

[1)] Article elaborated on the basis of the project *"Ensuring human rights in pretrial stages: the national criminal procedural law, European and international practices"*, within the Postdoctoral Programs for the years 2022-2023, with the number 22.00208.0807.04/PD I.

ОБЕСПЕЧЕНИЕ ПРАВА НА ЗАЩИТУ В УГОЛОВНОМ ПРОЦЕССЕ

Право на защиту является одним из неотъемлемых принципов уголовного процесса. Нарушение этого права влияет на справедливость процесса и влечет за собой процессуальные санкции. В данной статье будет проанализирована роль международного и национального законодательства и практики в области применения и соблюдения принципа обеспечения права на защиту, роль Конституционного Суда и других правовых институтов в этом отношении. Однако, государства обязаны эффективно гарантировать обвиняемым право на защиту, поскольку это является условием осуществления акта правосудия в демократическом государстве. По итогам проведенного анализа мы приходим с рекомендациями и разъяснениями относительно содержания данного принципа, поскольку его следует рассматривать не как простую юридическую помощь, а имеет более сложное содержание.
Ключевые слова: *принцип, право на защиту, юридическая помощь, защитник, адвокат, процессуальные санкции.*

Introduction

Ensuring the right to defense is a principle of criminal procedure, which is regulated and guaranteed by both international and national acts. States are obliged to effectively ensure the guarantee of this right, because, otherwise, the right to a fair trial is violated. At the same time, this is a condition for the realization of the act of justice in a democratic state.

Methods and materials. Theoretical, normative and empirical material was used in the development of this publication. Also, the research of the respective subject was possible by applying several scientific investigation methods specific to the criminal procedural theory and doctrine: the logical method, the comparative analysis method, the systemic analysis, etc.

The purpose of the research. Research and analysis of the internal regulatory framework, jurisprudence and doctrine regarding the provision of the right to defense and the effect of its non-compliance in the context of ensuring and guaranteeing the rights and freedoms of the parties in the criminal process.

Results obtained and discussions

According to paragraph 11 (1) of the Universal Declaration of Human Rights[1], "*Any person accused of a crime is presumed innocent until his guilt has been legally proven in a public trial in which he has been provided with all the necessary guarantees for his defense*."

The International Covenant on the Civil and Political Rights[2] of Man provides in the content of art. 14 para. (3) lit. b) and d) that, "*Any person accused of committing a criminal offense has the right, under conditions of full equality, to at least the following guarantees: to have the time and the necessary facilities to prepare his defense and to communicate with the defender that he - choose it; to be present at the trial and defend herself or have the assistance of a defense attorney chosen by her; if she does not have a defense attorney, to be informed about the right to have one and whenever the interest of justice requires her to be assigned a defense attorney ex officio, without payment, if she does not have the means, to remunerate him.*"

[1] The Universal Declaration of Human Rights, *adopted and proclaimed by the UN General Assembly through Resolution 217 A (III) of December 10, 1948*. Available: https://www.legis.md/cautare/getResults?doc_id=115540&lang=ro [accessed: 10.08.2022].

[2] The International Covenant on Civil and Political Rights, *adopted and opened for signature by the General Assembly of the United Nations on December 16, 1966. Entered into force on March 23, 1967, cf. art. 49, for the provisions except those of art. 41 ; on March 28 for the provisions of art. 41. Ratified by Parliament Decision no. 217-XII of 28.07.90, in force for the Republic of Moldova from 25.02.1993*. Available: https://www.legis.md/cautare/getResults?doc_id=115567&lang=ro [accessed: 10.08.2022].

The Convention for the Defense of Human Rights and Fundamental Freedoms[3] comes with effective guarantees regarding ensuring the right to defense. Thus, in accordance with the provisions of art. 6 para. (3) lit. b) and c) ECHR, "*Any accused person has, above all, the right: to have the time and facilities necessary to prepare his defense; to defend himself or to be assisted by a defender chosen by him and, if he does not have the necessary means to pay a defender, to be assisted free of charge by an ex officio lawyer, when the interests of justice require it*."

"The norm in question (art. 6 para. (3) letter b) ECHR) is closely related to the right to be fully informed, guaranteed by art. 6 para. (3) lit. a) and the right to be represented by a lawyer guaranteed by art. 6 para. (3) lit. c)."[4]

The Constitution of the Republic of Moldova ensures the right to defense. Thus, in accordance with art. 26 of the Constitution, " *The right to defense is guaranteed. Every person has the right to react independently, by legitimate means, to the violation of rights and his liberties. Throughout the process, the parties have the right to be assisted by a lawyer, elected or appointed ex officio. Interference in the activity of persons exercising defense within the prescribed limits is punishable by law*."

The right to defense is an essential element of the right to a fair trial. According to art. 26 of the Constitution, the person's right to defense is guaranteed. Every person has the right ***to react independently,*** by legitimate means, to the violation of rights and his liberties; the parties have the right to be assisted by a lawyer, chosen or appointed ex officio throughout the process. Thus, the right to defense is a fundamental, guaranteed right that can be exercised by any person independently and freely. The same interpretation results from the ECtHR jurisprudence regarding the application of art. 6 of the Convention, by which it was established that the freedom of the person to exercise his own defense is guaranteed. Enshrining the fundamental desire regarding the right to defense, the state guarantees all persons professional legal assistance under the law. The standards developed by the ECtHR include the freedom of the person to choose the form of defense, and the obligation to provide the defender rests with the state, being exercised only in the interest of justice.[5]

Regarding the incidence of Article 26 of the Constitution, the Court emphasizes that the right to defense represents all the prerogatives and possibilities that, according to the law, individuals have in order to defend their interests. This right is restricted in the situation where the person cannot use all the procedural means necessary for his defense (HCC no. 31 of September 23, 2021, § 32; DCC no. 40 of March 29, 2022, § 27).[6]

Art. 17 CPC resumes the constitutional idea of guaranteeing the right of defense of the parties in the criminal process. According to art. 17 para. (1) CPP, "*During the entire criminal process, the parties (the suspect, the accused, the defendant, the injured party, the civil party, the civilly responsible party) have the right to be assisted or, as the case may be, represented by a chosen defender or*

[3] Convention for the Defense of Human Rights and Fundamental Freedoms, signed in Rome, 4.11.1950. Available: https://www.echr.coe.int/documents/convention_ron.pdf [accessed: 10.08.2022].

[4] Gomien Donna, Guide (Vade-mecum) of the European Convention on Human Rights, Chisinau, 3rd Edition, 2006, p. 69.

[5] HCC of 29.07.2005 Regarding the control of the constitutionality of some provisions of art. 421, 433 par. (1), art. 452 para. (1) and art. 455 para. (3) from the Criminal Procedure Code of the Republic of Moldova (point 5). Available: https://www.legis.md/cautare/getResults?doc_id=16022&lang=ro [accessed: 10.08.2022].

[6] DCC no. 83 of 17.06.2022 on the inadmissibility of notification no. 56g/2022 regarding the exception of unconstitutionality of the text "is invited" from article 127 para. (2) of the Criminal Procedure Code (inviting the representative of the executive authority of the local public administration to conduct the search) (point 24). Available: https://www.constcourt.md/ccdocview.php?tip=decizii&docid=1199&l=ro [accessed: 11.08.2022].

a lawyer who provide assistance legal status guaranteed by the state. "That provision guarantees the right to defense for accused persons (suspect, accused, defendant) and, at the same time, guarantees the right to legal assistance for other participants in the criminal process, which denotes a "mature" and correct regulation in this regard. However, most of the parties in the process do not possess legal knowledge and, respectively, do not know their rights and cannot fully exercise them. Practice proves this. For example, the injured party in the criminal process, in most cases, is not assisted by a defense attorney, his interests are ensured by the criminal investigation body. However, if this party does not agree with the decisions made (for example, the suspect was removed from criminal prosecution), in order to ensure his right to challenge the decisions, there is a need to seek qualified legal advice, even for the simple complaint, which must meet certain form and content requirements.

In another vein, we would like to analyze the provisions of art. 6 point 3) CPC, which regulates that, "*defense - procedural activity carried out by the defense for the purpose of combating, in whole or in part, the accusation or mitigating the punishment, defending the rights and interests of persons suspected or accused of committing a crime, as well as the rehabilitation of persons illegally subject to criminal prosecution*." From the analysis of the concerned norm, it can be deduced that the benefit of the defense is only available to persons under criminal charges (suspect, accused), as well as those rehabilitated when they were illegally subjected to criminal prosecution. Thus, the idea would be created that this definition would be contrary to the provisions of art. 26 of the Constitution, because the right to defense must be guaranteed not only to the mentioned persons, but to all parties in the process.

However, we consider that the respective definition is correct and does not contravene art. 6 para. (3) lit. b) and c) of the ECHR, which specifically refer to persons under criminal charges. The effective guarantees for the other parts of the criminal process are stipulated in art. 17 para. (1) CPP. Analyzing the respective criminal procedure norm, we note that, the legislator by indicating the provision "... *to be assisted or, as the case may be, represented by a chosen defender or a lawyer who provides legal assistance guaranteed by the state*", distinguishes between assistance and representation, which in our view is correct and logical. Therefore, we consider that ensuring the right to defense rests with the person under criminal charges, and the other parties have the right to legal assistance and/or to be represented in the criminal process according to art. 79 CPP. In that order of ideas, procedural norms correspond to constitutional and international norms.

Another important aspect in our view emerges from the provisions of art. 6 point 30) CPC, which regulates that, "*the defense party - persons authorized by law to carry out defense activity (the suspect, the accused, the defendant, the civilly responsible party and their representatives)*". Analyzing the respective norm, we deduce that the legislator gave the notion of the defense party, and later, in parentheses, indicated concretely who these persons are. Regrettably, this rule does not also refer to the defender, who, in fact, carries out the defense activity. That is why we are intervening with the proposal to complete and modify the analyzed procedural rule, as it should also indicate the defender as part of the defense.

Once we referred to the notion of defense, it should be mentioned that, "The right to defense consists of all the means established by law for invoking and ascertaining the circumstances that support the defense, as well as for the application of legal provisions favorable to the party that supports its interests. These means of defense consist of procedural rights

granted to the parties in the process, procedural guarantees for the exercise of these rights and the provision of quality legal assistance."[7]

At the same time, "*the Court emphasizes that the right to defense, as a guarantee of the right to a fair trial, includes all the rights and procedural rules, which give the person the opportunity to defend himself against the accusations brought against him and to contest the accusations, in order to prove his innocence. The right to defense must be ensured throughout the criminal process.*" [8]

As for ***the procedural rights,*** they are legal means by which the parties in the process support their positions and interests before the judicial bodies (detection body, criminal investigation body, prosecutor, court of law). These rights are regulated in different procedural rules depending on the procedural quality of the party (the rights of the victim are regulated in art. 58 of the CPP, of the injured party in art. 60 of the CPP, of the civil party in art. 62 of the CPP, of the accused in art. 66 CPP etc.). Next, we want to give an example of the means by which the suspect supports his positions and interests before the criminal investigation body. Thus, the suspect has the right: to know why he is suspected (art. 64 par. (2) point 1) CPP); in case of detention, to receive legal advice, under conditions confidential, from the defender until the beginning of the first hearing as a suspect (art. 64 par. (2) point 4) CPP); from the moment when he was informed of the procedural document assigning the quality of being a suspect, to have the assistance of a defender chosen by him, and if he does not have the means to pay the defender, to be assisted free of charge by a lawyer who provides legal assistance guaranteed by the state, as well as, in the cases allowed by law, to waive the defender and defend himself (art. 64 par. (2) point 5) CPP); to have meetings with his defender under the conditions confidential, without limiting their number and duration (art. 64 par. (2) point 6) CPP); And so on.

It should be noted that the regulation of certain rights in criminal procedural legislation does not ensure an effective defense until the law provides guarantees in this regard. Otherwise, this position would be limited to merely presenting a list of rights, which would become only theoretical. These ***procedural guarantees*** are legal means thanks to which the parties are given the full possibility to benefit from these rights, by imposing the judicial bodies to ensure and respect the rights of the parties in the process. For example, the criminal investigation body provides the suspect with the opportunity to exercise his right to defense by all means and methods that are not prohibited by law (art. 64 para. (1) CPP); the suspect has the right to receive explanations of all his rights from the criminal investigation body (art. 64 par. (2) point 2) CPP); the accused has the right to be informed by the criminal investigation body about all the decisions adopted that refer to his rights and interests, to receive, at his request, copies of these decisions, as well as copies of the enforcement ordinances regarding him of preventive measures and other coercive procedural measures, copies of the indictment or of another act of completion of the criminal investigation, of the civil action, of the sentence, appeal and appeal, of the decision by which the sentence became final, from the final decision of the court that judged the case by way of extraordinary appeal (art. 66 par. (2) point 26) CPP) etc.

In this sense, the Constitutional Court has expressed itself, stating that, "*In order to exercise his right to defense, the accused person must be allowed to effectively benefit*

[7] Grigore Gr. Theodoru, Criminal Procedural Law Treaty, 3rd Edition, Hamangiu Publishing House, 2013, p. 72.

[8] HCC no. 30 of 22.11.2018 regarding the exception of unconstitutionality of some provisions of article 521 para. (2) of the Criminal Procedure Code (point 41).Available: https://www.constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=677 [accessed: 11.08.2022].

from legal assistance from the initial stages of the proceedings, which can prove decisive for the chances of the defense in any subsequent criminal proceedings.” [9]

ECtHR case, Artico v Italy[10], “*The Court recalls that the Convention is intended to guarantee not theoretical or illusory rights, but practical and effective rights; this is especially true of defense rights, given the prominent place in a democratic society the right to a fair trial, from which it derives* .”

The judicial bodies have the obligation to notify the accused or the defendant, before the first statement is taken about the right to be assisted by a defense attorney elected or appointed ex officio, this being recorded in the hearing report.

“The non-fulfillment of this obligation by the judicial bodies seriously affects the right of defense of the accused or the defendant, which leads to the absolute nullity of the criminal prosecution, which can be invoked throughout the criminal process even ex officio.”[11]

At the same time, as procedural guarantees are the obligations imposed on the criminal investigation bodies and the prosecutor to act based on art. 100 para. (1) CPP, i.e. to administer evidence also in favor of the accused or the defendant. The criminal procedural law also provides other guarantees, for example: explaining the rights of the parties in the process; the complete, objective investigation and under all aspects of the circumstances of the case; the conditions and forms of carrying out the criminal investigation and trial of the case; compliance with the principles of the criminal process; the right to contest the decisions of the criminal investigation body and the prosecutor; the right to file complaints in accordance with art. 298, 299/1 and 313 of the CPP; cancellation of procedural documents by the prosecutor, etc.

Effective guarantees in order to ensure the right to defense are also regulated in art. 17 para. (2) CPP, whereas, “*The criminal prosecution body and the court is obliged to ensure the participants in the criminal trial the full exercise of their procedural rights, under the conditions of this code.* “From the analysis of the respective norm, we observe that the criminal procedural law obliges only the criminal investigation body and the court to ensure the exercise of rights. Therefore, it is necessary to modify and complete the relevant rule, so as to oblige the prosecutor in this regard.

As procedural guarantees regarding ensuring the right to defense, the rules oblige or forbid not only the judicial bodies to act or limit themselves in some actions, but even defenders and lawyers. Thus, in accordance with the provisions of art. 68 para. (3) CPC, “*The defender is not entitled to undertake any actions against the interests of the person he is defending and to prevent him from realizing his rights. The defender cannot, contrary to the position of the person he is defending, admit his participation in the crime and the guilt of committing the crime. The defender is not entitled to disclose the information that was communicated to him in connection with the exercise of the defense if this information can be used to the detriment of the person he is defending*.” And in accordance with art. 68 para. (4) CPP, “*The lawyer is not entitled to give up the defense without reason. The defender is not entitled to independently terminate his powers as a defender, to prevent the invitation of another defender or his participation in this case. The defender is not entitled to transfer*

[9] HCC no. 30 of 22.11.2018 regarding the exception of unconstitutionality of some provisions of article 521 para. (2) of the Criminal Procedure Code (point 43). Available: https://www.constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=677 [accessed: 11.08.2022].

[10] ECtHR decision, Artico v. Italy case, dated 13.05.1980 (§33). Available: https://hudoc.echr.coe.int/eng?i=001-57424 [accessed: 11.08.2022].

[11] V. Mihoci, Obligations of judicial bodies in the Romanian criminal process regarding the granting of legal assistance to the accused or the defendant // National Law Review, 2005, no. 1, p. 31.

to another person his powers to participate in that case." In this regulatory manner, the criminal procedural rules come to fully ensure the right to defense and impose effective guarantees in this regard even on the part of those who defend their rights and interests in the process.

If the defender or the lawyer does not honor their obligations provided by the law, they bear liability in accordance with the law, implicitly their activity can be suspended or even the lawyer's license withdrawn under the terms of the Law on Advocacy[12].

Ensuring the right to defense must be viewed much more broadly. An effective defense tool is the exception of unconstitutionality of the rules. Thus, according to point 54) of the CC Decision of 09.02.2016[13], "*The exception of unconstitutionality is a means of defense, by which the party summoned before a court invokes the unconstitutionality of a legal norm." The exception of unconstitutionality, with its particularities, represents a means of indirect access for people to the constitutional court through the court.*"

In another ruling[14], the CC emphasized that, "... *the exception of unconstitutionality represents a procedural defense action, through which the Constitutional Court is referred to the inconsistency with the provisions of the Constitution of some legal provisions applicable in the case brought before the court.*"

As mentioned, the right to defense is not only ensured to the suspect, the accused or the defendant, but also to the other parties. A guarantee in this sense is the provision of art. 17 para. (4) CPP, which obliges the criminal investigation body not to prohibit the presence of the lawyer as a representative invited to the hearing by the injured party and the witness. Although it is an effective insurance, we still believe that this provision limits the procedural guarantee to other participants, such as for example the victim. From this point of view, we consider it appropriate to amend and supplement art. 17 para. (4) CPP, so as to oblige the criminal investigation body, the prosecutor and the court not to prohibit the presence of the lawyer as an invited representative at the hearing of the parties.

At the same time, the parties have the right to ensure their ***legal assistance qualified***. This implies the guarantee that the parties can be assisted by an elected or appointed defender, who, being qualified by law, gives these parties appropriate legal advice. Regardless of whether the party in the process knows the laws or not, the state guarantees them this right anyway, as the parties benefit from quality legal assistance.

According to art. 17 para. (3) CPP, "*The criminal prosecution body and the court is obliged to ensure the suspect, the accused, the defendant the right to qualified legal assistance from a defender chosen by him or a lawyer who provides legal assistance guaranteed by the state, independently of these bodies*."

In accordance with Art. 2 of the Law on state-guaranteed legal assistance [15], "Qualified legal *assistance is the provision of legal consulting services, representation and /or defense in the criminal investigation bodies, in the courts courts on criminal cases ....*".

[12] Law no. 1260 of 19.07.2002 regarding the legal profession. Available: https://www.legis.md/cautare/getResults?doc_id=129643&lang=ro# [accessed: 11.08.2022].

[13] H CC no. 2 of 09.02.2016 for the interpretation of article 135 para. (1) lit. a) and g) of the Constitution of the Republic of Moldova (point 54) (exception of unconstitutionality) (Referral no. 55b/2015). Available: https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=556&l=ro [accessed: 09.08.2022].

[14] HCC of 23.02.2016 regarding the exception of unconstitutionality of paragraphs (3), (5), (8) and (9) of article 186 of the Code of Criminal Procedure (pre-trial detention term) (Report no. 7g/2016) (pt. 29). Available: https://www.constcourt.md/public/ccdoc/hotariri/ro-h323022016ro2aa9d.pdf [accessed: 09.08.2022].

[15] Law no. 198 of 26.07.2007 regarding legal assistance guaranteed by the state. Available:https://www.legis.md/cautare/getResults?doc_id=132474&lang=ro# [accessed: 11.08.2022].

“*The criminal investigation body or the court is not entitled to recommend to someone the invitation of a certain defense attorney* (art. 70 para. (2) CPP). At the same time, *the suspect, the accused, the defendant can have several defenders.* It should be noted that “procedural *actions that require the participation of the defender cannot be considered as having been carried out in violation of the rules of criminal procedure if all the defenders of the party in question did not participate in their performance*“ (art. 70 par. (6) CPP).

An important aspect is the waiver of the defender, which “*means the will of the suspect, the accused, the defendant to exercise his own defense, without resorting to the legal assistance of a defender. The request to waive the defense counsel is attached to the case materials* (art. 71 para. (1) CPP). According to art. 71 para. (2) CPC, “*The prosecutor or the court has the right not to accept the waiver of the suspect, the accused, the defendant to the defense in the cases provided for in art. 69 para. (1) point 2)-13), as well as in other cases where the interests of justice require it.*“

Determining the fact that the interests of justice require the mandatory assistance of the defense attorney is within the competence of the prosecutor or the court and depends on:

1) the complexity of the case;

2) the capacity of the suspect, the accused, the defendant to defend himself;

3) the seriousness of the act, the commission of which the person is suspected or accused, and the sanction provided by law for its commission.

In the ECtHR case, Benham v. United Kingdom[16], the Court held that, “*The only issue before the Court is, therefore, whether the interests of justice required that Mr. Benham benefit from free legal representation at the hearing before the magistrates.”To answer this question, one must take into account the gravity of the punishment at stake and the complexity of the case (see Quaranta v. Switzerland judgment of 24 May 1991, Series A no. 205, p. 17-18, para. 32- 38)*.” At the same time, in that case, the Court mentioned that, *where deprivation of liberty is at stake, the interests of justice in principle require legal representation*.”

In the ECtHR case, Quaranta v. Switzerland[17], the Court stipulated that, “*An additional factor is the complexity of the case. ... The participation of a lawyer in the trial would have created the best conditions for the defense of the accused, especially considering the fact that the Court had a wide range of measures at its disposal.* In that case, the Court also noted the fact that *such questions, which are complicated in themselves, were all the more ... because of his personal situation: a young adult of foreign origin, from a disadvantaged background, did not have a real professional training and had a long criminal record ...*” Therefore, the Court also draws special attention to the personal situation, implicitly the possibility and ability to defend oneself.

Analyzing what has been exposed and emerging from the practice of the ECHR, we consider that art. 71 para. (2), the CPP must be amended and supplemented, so that as a criterion for establishing cases when the interests of justice require it, the mandatory assistance of the defender must also depend on the preventive measure of freedom. Otherwise, in the mentioned chapter, the CPP corresponds to international norms, guaranteeing qualified legal assistance.

In accordance with Art. 17 para. (4) and (5) CPC, “*From the moment of acceptance of the waiver of defense counsel, it is considered that the suspect, the accused, the defendant exercises his defense independently. The*

[16] ECtHR judgment, Benham v. the United Kingdom, dated 10.06.1996 (§ 60, 61). Available: https://hudoc.echr.coe.int/eng?i=001-57990 [accessed: 11.08.2022].

[17] ECtHR decision, Quaranta v. Switzerland, dated 24.05.1991 (§ 34). Available: https://hudoc.echr.coe.int/eng?i=001-57677 [accessed: 11.08.2022].

suspect, the accused, the defendant who waived the defense attorney has the right, at any moment of the criminal process, to revert to the waiver and invite a defense attorney or request the appointment of a lawyer who provides legal assistance guaranteed by the state, who will be admitted from the moment he was invited or requested."

"The European Court emphasized that one of the most important "facilities" for preparing one's own defense is the possibility to consult a legal advisor (*Campbell and Fell v. the United Kingdom*)."[18]

"It has been shown in the specialized literature that the necessary facilities for preparing the defense include a varied range of facts and actions such as: access of the investigated or judged person to the file, the possibility of an expertise, the possibility to communicate freely with his lawyer, etc."[19]

"If legal problems arise in the given case that require the application of a certain level of professional experience, the State cannot ask the accused to solve such problems by himself (Pakelli v. Germaniei, 1983)[20] and Artico v. Italy, 1980)."[21]

"The principle of guaranteeing the right to defense correlates with the legality of the process, which sets its limits and sanctions in case of violation, with finding out the truth, which ensures the requirement of establishing innocence or favorable circumstances, with the active role of obliging the criminal investigation bodies and the court of the court to act in favor of the defense, with the presumption of innocence on which the defendant's procedural position as a party to the trial is based."[22]

From the content of the legal texts that regulate legal assistance in the criminal process, we can distinguish that it can be optional or mandatory.

Optional legal assistance. "This category of assistance constitutes the rule in the matter of legal assistance, because the right to defense, conceived as a fundamental right of the person in the criminal process, is exercised by the interested party in the way he deems appropriate."[23]

The expression used by the legislator in art. 26 para. (1) from the Constitution of the Republic of Moldova[24] *Throughout the process, the parties have the right to be assisted by a lawyer, chosen or appointed...* - must be understood as a possibility for the parties to request legal assistance in cases where they cannot defend themselves directly and personally.

"When one or more parties to the criminal legal relationship request legal assistance, the judicial bodies are obliged to grant the interested party or parties the opportunity to hire a defense attorney and allow him to fully exercise the rights conferred on him by the criminal procedure law. In such cases, those interested are left to decide whether or not to choose a lawyer to support their interests.[25]

[18] Gomien Donna, Guide (Vade-mecum) of the European Convention on Human Rights, Chisinau, 3rd Edition, 2006, p. 69.

[19] C. Dima, G. Positutu, The right to defense. In: Law, 2003, no. 3, p. 169.

[20] European Court of Human Rights. Selected solutions. Том 1, Изд. NORMA. Moscow. 2001, p. 422-429.

[21] European Court of Human Rights, Selected Decisions, Volume 1, Edition. NORMA, Moscow, 2001, p. 318-327.

[22] Grigore Gr. Theodoru, Criminal Procedural Law Treaty, 3rd Edition, Hamangiu Publishing House, 2013, p. 74.

[23] Tudor Osoianu, Ivan Vesco, The normative and doctrinal consecration of the right to defense. People's Advocate, no. 12, 2008, p. 8. Available: http://www.uam.md/media/files/files/consacrarea_noramtiva_si_doctrinara_a_dreptului_la_aparare_6361553.pdf [accessed: 07.09.2022].

[24] Adopted on July 29, 1994, published in the Official Gazette of the Republic of Moldova no. 1 of 18.08.1994.

[25] "*The waiver of defense counsel can be accepted by the court only if it is submitted by the defendant voluntarily, on his own initiative, in the presence of the lawyer who provides legal assistance guaranteed by the state. The admission or non-admission of the waiver of the defense counsel is decided by the court through a reasoned decision. The defendant's exercise of the rights at his disposal or his renunciation of these rights cannot be interpreted to his detriment and cannot have unfavorable consequences for him. During the examination of the appeal, the presence of the defender is mandatory. If the appellate court judged the case in the absence of the defense counsel, its decision is quashed with*

Assistance being optional, not requesting it and not granting it by the judicial bodies does not prevent the normal and legal development of the criminal process."[26]

"*The European Court has consistently held that national authorities must take into account the grievances of the accused person relative to his legal representation, as well as that these grievances can be overridden when there are relevant and sufficient reasons to establish that they are necessary in the interests of justice (Meftah and others v. France [MC], 26 July 2002, § 45, Mayzit v. Russia, 20 January 2005, § 66; Vitan v. Romania, 25 March 2008, § 59; Zagorodniy v. Ukraine, 24 November 2011, § 52). Where these reasons are absent, the restriction of the free choice of counsel amounts to a violation of Article 6 § 1 in conjunction with paragraph 3 (c), if the applicant's defense is adversely affected, considering the proceedings as a whole.*" [27]

Mandatory legal assistance. "In certain cases provided by law, in order to ensure a real defense of some persons who, due to the situations in which they find themselves, cannot defend themselves, the right of defense is no longer optional, but becomes a necessary legal condition for the normal development of the process criminal, legal assistance becoming mandatory."[28]

Art. 69 CPP regulates the cases when the participation of the defender is mandatory. From the analysis of the respective norm, we deduce the fact that it corresponds to international requirements and largely ensures the right to defense.

"So, in such situations, the parties no longer have the right to be assisted by a defense attorney, but, if they have not chosen a lawyer, one will be appointed ex officio. The legal provisions that impose the obligation of legal assistance for the given cases, are imperative conditions for the validity of the acts performed and any deviation from these rules is sanctioned by absolute nullity."[29]

"Mandatory legal assistance of the suspect, the accused and the defendant is the direct consequence of the concept that the defense is an institution of social interest, which is carried out not only in the interest of the suspect or accused, but also in the interest of a good conduct of the criminal process."[30]

According to art. 17 para. (5) CPP, "*If the suspect, the accused, the defendant do not have the means to pay the defender, they are assisted free of charge by a lawyer who provides legal assistance guaranteed by the state*."

"The ECtHR *recognized the requirement the intervention of a lawyer during certain procedural phases as an adequate and proportionate means that states can have to ensure more guarantees and more rigor in the defense of the accused. In all the cases*

the referral of the case for retrial in the same court. Ignoring these legal provisions, the appellate court did not resolve, through a reasoned conclusion, the defendant's approach regarding the matter concerning the participation of the defense counsel and examined the defendant's appeal in the absence of an elected defense counsel or who provides legal assistance guaranteed by the state. It follows that the appellate court clearly violated the defendant's right to defense. "(Extract from DCP CSJ no. 1ra-122/2010 of 02.03. 2010. In: Jurisprudence of the Supreme Court of Justice in criminal matters (2008-2010). Collection. Ch., 2012, p. 530, 531).

[26] Tudor Osoianu, Ivan Vesco, The normative and doctrinal consecration of the right to defense. People's Advocate, no. 12, 2008, p. 8. Available: http://www.uam.md/media/files/files/consacrarea_noramtiva_si_doctrinara_a_dreptului_la_aparare_6361553.pdf [accessed: 07.09.2022].

[27] HCC no. 30 of 22.11.2018 regarding the exception of unconstitutionality of some provisions of article 521 para. (2) of the Criminal Procedure Code (point 48).

[28] Tudor Osoianu, Ivan Vesco, The normative and doctrinal consecration of the right to defense. People's Advocate, no. 12, 2008, p. 8. Available: http://www.uam.md/media/files/files/consacrarea_noramtiva_si_doctrinara_a_dreptului_la_aparare_6361553.pdf [accessed: 07.09.2022].

[29] Tudor Osoianu, Ivan Vesco, The normative and doctrinal consecration of the right to defense. People's Advocate, no. 12, 2008, p. 8. Available: http://www.uam.md/media/files/files/consacrarea_noramtiva_si_doctrinara_a_dreptului_la_aparare_6361553.pdf [accessed: 07.09.2022].

[30] Dolea I., collective, Criminal Procedure Code. Comment. ed. Neighborhood. Chisinau. 2005. p. 131.

examined by the ECHR in the issue of the monopoly of lawyers' pleadings specialize in the face The Court of Cassation in France has been constantly mentioned that any person can call on the services of these lawyers, regardless of their financial status, because needy people enjoy a viable system of ex officio legal assistance." [31]

The Court notes that in the jurisprudence of the European Court it was held that, beyond the importance of the relationship of trust between lawyer and client, the right to choose one's own lawyer cannot be considered absolute (Karpyuk and others v. Ukraine, October 6, 2015, § 144). Thus, the state authorities must take into account the will of the accused to choose his own lawyer, but they can go beyond the will of the accused when there are convincing and sufficient reasons to consider that the interests of justice require such a measure (Correia de Matos v. Portugal [MC], 4 April 2018, § 126).[32]

The ECtHR clearly states repeatedly that the lack or non-qualitative assistance (theoretical and illusory) raises doubts about the fair process.

In the ECtHR case, Artico v Italy[33], the Court mentioned that, "*Article 6 par. 3 (c) (art. 6-3-c) speaks of "assistance" and not of "nomination". Again, mere appointment does not ensure effective assistance, as the lawyer appointed for legal aid may die, become seriously ill, be prevented from acting for a long period of time, or evade his duties. If the situation is brought to their notice, the authorities must either replace him or make him fulfill his obligations. Adopting the Government's restrictive interpretation would lead to unreasonable and incompatible results both with the wording of paragraph (c) (art. 6-3-c) and with the structure of article 6 (art. 6) taken as a whole; In many cases, free legal aid could prove to be worthless*."

Thus, the state's obligation to provide state-guaranteed legal assistance is not fulfilled by simply appointing a lawyer. It is necessary to take additional measures to ensure that this right is practical and effective. If a particular lawyer is ineffective, the state is obliged to provide the suspect with another lawyer.

An important issue is the effectiveness of the defendant's defense in absentia at trial. Thus, at the trial of Sannino 's criminal case by the Italian court, the defender declared abstention from participating in the trial, along the way Sannino's defense was carried out by various lawyers appointed by the court, who during the trial in absentia never filed requests for postponing the trial of the case in order to get acquainted with the materials of the case, they did not try to establish contacts with the defendant. As a result, the witnesses whose hearing was previously requested by the defendant were not heard. The European Court, considering that the state cannot be held liable for unqualified legal assistance, nevertheless concluded that, in cases where the omissions of the defense are obvious, the court must take appropriate measures." [34]

"Regarding the provision of inappropriate legal assistance, as well as the failure of the court to get involved in resolving such behavior, we could invoke the ECtHR case Ananiev v. Russia, according to which a person accused of a crime does not lose the

[31] HCC of 29.07.2005 Regarding the control of the constitutionality of some provisions of art. 421, 433 par. (1), art. 452 para. (1) and art. 455 para. (3) from the Criminal Procedure Code of the Republic of Moldova (point 5).

[32] DCC no. 59 of 25.04.2019 on inadmissibility of notification no. 55g/2019 regarding the exception of unconstitutionality of some provisions contained in articles 52, 53 [1], 67 paragraphs (5) point 5) and (6) point 3) and article 72 paragraph (4) of the Criminal Procedure Code (removal of the defense attorney from the trial) (pt. 21).

[33] ECtHR ruling Artico v. Italy, dated 13.05.1980, (§ 33). Available: https://hudoc.echr.coe.int/eng?i=001-57424 (accessed: 15.08.2022); ECtHR ruling Daud v. Portugal, dated 21.04.1998, [§ 38]. Available: https://hudoc.echr.coe.int/eng?i=001-58154 (accessed: 15.08.2022).

[34] ECtHR judgment, Sannino v. Italy, dated 27.04.2006, final on 13.09.2006. Available: http://hudoc.echr.coe.int/eng?i=001-75213 (accessed: 15.08.2022).

advantages of the right to a defense merely because of his absence from the hearing. The Court reiterated that during the trial the applicant was removed from the courtroom for his conduct and returned to give the last word, but the evidence was examined in his absence and in the absence of counsel, as he refused his services on the grounds that the way of defense did not coincide, but the court was going to explain to him the consequences of his behavior and of giving up the defender." [35]

The presence of a lawyer who has no opportunity to intervene to ensure the respect of the defendant's or suspect's rights does not bring him any benefit.[36]

For example, the authorities have the obligation to replace the lawyer who provides free legal assistance when he is *clearly ineffective* (in this case, the suspect must not take any action) or when the authorities are informed about his inefficiency and this fact is demonstrated by the suspect.[37]

ECtHR, in the case of Beuze v. Belgium[38], states that "art. 6 par. 3 lit. c) of the ECHR does not specify the conditions for exercising or the content of the right of access to a lawyer. Or, leaving it up to the states to choose the means to ensure that their legal system contains the necessary guarantees, they (the states) should define the contours and normative content based on the purpose of the ECHR, in particular to protect concrete rights and efficient (...). (...). It is most worrying that this disappointing radical change is taking place in the sphere of procedural rights – the heart of the rule of law. As we know from Plutarch, a garden that is often replanted will not bear fruit.

In that case, the Court explained that, "the purpose pursued by guaranteeing the right to be assisted by a lawyer involves: preventing miscarriages of justice, equality of arms between prosecution and defense, counterbalancing the vulnerabilities of suspects in police custody, protection against coercion and evil treatment of suspects, ensuring respect for the suspect's right not to incriminate himself and the right to remain silent. At the same time, the European Court of Human Rights also showed that immediate access to legal assistance can prevent unfairness that could arise from the lack of adequate information of the accused about his rights."[39]

Also in this case, the Court ruled two minimum conditions regarding the right of the suspects (the suspect, the accused and the defendant) to be assisted by a lawyer, namely:

"*Suspects must be able to contact a lawyer from the moment they are taken into custody. It must therefore be possible for a suspect to consult with his lawyer before an interview (see Brusco, cited above, § 54, and AT v. Luxembourg, cited above, §§ 86-87), or even if there is no interview (see Simeonovi, cited above, §§ 111 and 121). The lawyer must be able to speak with his client in private and*

[35] ECtHR decision, Ananyev v. Russia, dated 30.07.2009 (§ 41). Available: http://hudoc.echr.coe.int/eng?i=001-150432 (accessed: 15.08.2022).

[36] ECtHR decision, Aras v. Turkey (no. 2), judgment of 18.11.2014, final on 18.02.2015 (§ 41): " *Only when the applicant detained and questioned by the police was brought before the investigating judge, the judge allowed the lawyer to enter the hearing room without being allowed to speak or advise the applicant. The ECtHR held that the "mere presence" of the lawyer was not sufficient for the right under Article 6 (3) (c) to be an effective one. The applicant should have been given access to a lawyer right from the first questioning. The passive presence of the applicant's lawyer in the hearing room could not be considered sufficient according to Convention standards*. " Available: https://hudoc.echr.coe.int/eng?i=001-148095(accessed: 15.08.2022).

[37] ECtHR decision, Imbrioscia v. Switzerland, dated 24.11.1993 (§ 41). Available: https://hudoc.echr.coe.int/eng?i=001-57852 (accessed: 15.08.2022); ECtHR, Judgment of Daud v. Portugal, judgment of 21.04.1998 (§ 38). Available: https://hudoc.echr.coe.int/eng?i=001-58154 (accessed: 15.08.2022).

[38] ECtHR decision, Beuze v. Belgium, dated 09.09. 2019. Separate opinion of judges: Yudkivska, Vučinić, Turković and Hüseynov [§ 28]. Available: https://hudoc.echr.coe.int/eng?i=001-187802 (accessed: 15.08.2022).

[39] Anca Ioana Negru, Administration and evaluation of evidence in criminal proceedings, Universul Juridic, Bucharest, 2022, p. 90. ECtHR judgment, Beuze v. Belgium, (§ 125-130). Available: https://hudoc.echr.coe.int/eng?i=001-187802 (accessed: 15.08.2022).

receive confidential instructions (see Lanz v. Austria, no. 24430/94, § 50, 31 January 2002; Öcalan, cited above, § 135; Rybacki v. Poland, no. .52479/99, § 56, 13 January 2009; Sakhnovskiy, cited above, § 97; and M v. the Netherlands, cited above, § 85);" [40]

Suspects *have the right to have their lawyer physically present during initial police interviews and whenever they are questioned in subsequent preliminary proceedings (see Adamkiewicz v. Poland, no. 54729). /00, § 87, March 2, 2010; Brusco, cited above, § 54; Mađer v. Croatia, no. 56185/07, §§ 151 and 153, 21 June 2011; Šebalj v. Croatia, no. 4429/09, §§ 256-57, 28 June 2011 and Erkapić v. Croatia, no. 51198/08, § 80, 25 April 2013). Such physical presence must enable the lawyer to provide effective and practical, rather than merely abstract, assistance (see AT v. Luxembourg, cited above, § 87), and in particular ensure that the rights of the defense of the interviewed suspect are not prejudiced (see John Murray, cited above, § 66, and Öcalan, cited above, § 131).*" [41]

Although in that case it was unanimously found that there had been a violation of the right to the defense, however, judges Yudkivska, Vučinić, Turković and Hüseynov had a separate opinion. They consider " *that it is essential to distinguish between systematic defects and particular defects that are found in individual cases as a result of specific and context-specific restrictions (for example, in cases of terrorism) or as a result of mistakes and deficiencies in individual cases. It is not right for the Court to consider the general fairness of an individual applicant's case when there is a systematic prohibition, which affects anyone else in the position of the applicant and in the absence of any assessment by the competent national authorities (§ 22). The wording of the exception is extremely clear: any derogation must be justified by compelling reasons relating to an urgent need to avoid danger to the life or physical integrity of one or more persons. In addition, any derogation must respect the principle of proportionality, which implies that the competent authority must always choose the alternative that least restricts the right of access to a lawyer and must limit the duration of the restriction as much as possible. According to the Court's jurisprudence, no derogation may be based solely on the type or seriousness of the offense and any derogation decision requires a case-by-case assessment by the competent authority. Finally, exemptions can only be authorized by a reasoned decision of a judicial authority* (§ 23).

The Court must apply a strict approach to the general prohibition of the right to legal aid; otherwise, we will come into conflict with the general direction of both the Court's jurisprudence and EU law (§ 24)."

"The *Salduz judgment led to a revolution for due process rights, firmly stating that any restriction of the right of access to a lawyer must be exceptional and capable of justification: "Article 6 § 1 requires that, as a general rule, access to a lawyer. He should be provided with a lawyer from the first questioning of the suspect by the police' and that, as further clarified in Ibrahim and others, 'restrictions on access to legal advice are permitted only in exceptional circumstances, must be of temporary nature and must be based on an individual assessment of the particular circumstances of the case". The* ***Beuze judgment in this sense represents a regrettable counter-revolution*** *: it annulled the requirement "as a rule" - already repeated in over a hundred judgments widely known as the " Salduz jurisprudence" - and dramatically relativized it to the detriment of the procedural guarantee* (§ 25)."

However, even serious deficiencies in the conduct of a fair procedure cannot constitute

[40] ECtHR judgment, Beuze v. Belgium, (§ 133). Available: https://hudoc.echr.coe.int/eng?i=001-187802 (accessed: 15.08.2022).

[41] ECtHR judgment, Beuze v. Belgium, dated 09.10.2019 (§ 134). Available: https://hudoc.echr.coe.int/eng?i=001-187802 (accessed: 15.08.2022).

a violation of the procedural provisions, if the suspect or defendant does not raise this aspect in the appeal.

It was found that the guarantees provided by Article 6 regarding access to a lawyer are applicable to *habeas corpus procedures* (see, for example, the ECtHR Decision Winterwerp v. the Netherlands, from 24.10. 1979, § 60). In the ECtHR Decision Bouamar v. Belgium of 29.02.1988, § 60), the Court found that it is essential not only that the person in question has the possibility to be heard in person, but also that he benefits from the effective assistance of his lawyer.

"*The Court emphasizes that Article 26 of the Constitution guarantees the right to defense. The right to defense presupposes the possibility of each person to react independently, by legitimate means before a court, to the violation of his rights and freedoms. Thus, the Court emphasizes that the right to defense, as a guarantee of the right to a fair trial, includes all the rights and procedural rules that give the person the opportunity to defend himself against the accusations brought against him and to contest them, in order to demonstrate his innocence. Therefore, the right to defense must be ensured throughout the criminal process.*" [42]

"*The Court held that the right to defense represents all the prerogatives and possibilities that people have, according to the law, in order to defend their interests. When the person does not have the opportunity to present all his legitimate evidence and prove his innocence, he cannot use all the procedural means necessary for his defense.*" [43]

"*There is a connection between letters a) and b) of Article 6 § 3 of the European Convention: the right to be informed about the nature and cause of the accusation must be analyzed through the prism of the right of the accused to prepare his defense (see Drassich v. Italy (No. 2), 22 February 2018, § 65 and § 66). Therefore, the right of a person to effectively prepare his defense is inextricably linked with the right to be informed both about the imputed facts and their legal framework (see DCC no. 63 of June 11 2020, §§ 23-24).*" [44]

"The right to defense is considered as a model of guarantee, necessary to achieve a harmonious balance between the interests of the person and society."[45]

Based on the above, we support the opinion that "... legal assistance is conceived as an important component of the right to defense, which consists in defending, assisting and representing the parties in the process."[46]

Conclusions

From the above, we will conclude that the right of defense has a complex content and is manifested under the following aspects:

Ex officio administration by judicial bodies of defense evidence;

Self-defense of the suspect, the accused and the defendant;

assistance granted to the suspect, the accused and the defendant.

From the analysis of what has been invoked, we note that, "the right to defense should not be understood and confused with the right to legal assistance from the lawyer, it being a complex right, including all the prerogatives granted to the people involved in the process to defend their rights."[47]

[42] HCC no. 22 of 06.08.2020 regarding the exception of unconstitutionality of some provisions of article 226 [16] para. (11) of the Fiscal Code, adopted by Law no. 1163 of April 24, 1997 (presentation of tax information to courts and criminal investigation bodies as evidence) [pt. 44].

[43] HCC no. 22 of 06.08.2020 [pt. 29].

[44] DCC no. 63 of 11.06.2020 on the inadmissibility of notification no. 39g/2020 regarding the exception of unconstitutionality of some provisions from articles 332 para. (2) and 391 para. (2) of the Criminal Procedure Code (termination of the criminal process when the act constitutes a misdemeanor and the resolution of the case according to the provisions of the Misdemeanor Code) (pt. 23-24).

[45] Iurie Mărgineanu, The principles of criminal justice in the Republic of Moldova, Comparative exegesis of criminal procedural law, Chișinău, 2006, p. 89.

[46] Nicu Jidovu, The right to defense of the accused and the accused, ROSETTI, Bucharest, 2004, p. 22.

[47] V. Dongoroz and others, Theoretical explanations of the

We support that position and infer that the right to defense includes:

The procedural rights of the parties in the process, which are means by which they support their positions and interests before the judicial bodies;

Procedural guarantees, which allow the parties to effectively and genuinely benefit from their procedural rights, in particular legal assistance;

Consultancy services, representation and / or defense in the criminal investigation bodies, prosecutor's office and in the courts courts on criminal cases.

Bibliographical references

1. The Universal Declaration of Human Rights, adopted and proclaimed by the UN General Assembly through Resolution 217 A (III) of December 10, 1948. Available: https://www.legis.md/cautare/getResults?doc_id=115540&lang=ro [accessed : 10.08.2022].

2. International Covenant on Civil and Political Rights, adopted and opened for signature by the General Assembly of the United Nations on December 16, 1966. Entered into force on March 23, 1967, cf. art. 49, for the provisions except those in art. 41 ; on March 28 for the provisions of art. 41. Ratified by Parliament Decision no. 217-XII of 28.07.90, in force for the Republic of Moldova from 25.02.1993. Available: https://www.legis.md/cautare/getResults?doc_id=115567&lang=ro [accessed: 10.08.2022].

3. Convention for the Defense of Human Rights and Fundamental Freedoms, signed in Rome, 4.11.1950. Available: https://www.echr.coe.int/documents/convention_ron.pdf [accessed: 10.08.2022].

4. The Constitution of the Republic of Moldova, adopted on July 29, 1994, published in the Official Gazette of the Republic of Moldova no. 1 of 18.08.1994.

5. The Criminal Procedure Code of the Republic of Moldova.

6. Law no. 1260 of 19.07.2002 regarding the legal profession. Available: https://www.legis.md/cautare/getResults?doc_id=129643&lang=ro# [accessed: 11.08.2022].

7. Law no. 198 of 26.07.2007 regarding legal assistance guaranteed by the state. Available: https://www.legis.md/cautare/getResults?doc_id=132474&lang=ro# [accessed: 11.08.2022].

8. Gomien Donna, Guide (Vade-mecum) of the Convention European for Rights, Chisinau, 3rd Edition, 2006.

9. THEODOR, Grigore. *Criminal Procedural Law Treaty.* 3rd edition, Hamangiu Publishing House, 2013.

10. MIHOCI, V. *The obligations of the judicial bodies in the Romanian criminal process regarding the provision of legal assistance to the accused or the defendant.* // National Law Review, 2005, no. 1, p. 31.

11. DIMA, C., POTRIVITU, G. *The right to defense.* In: Law, 2003, no. 3, p. 169.

12. European Court po i do the person Selected decisions _ Том 1, Изд. NORMA. Moscow. 2001.

13. OSOIANU, T., VESCO, I. *The normative and doctrinal enshrinement of the right to defense.* People's Advocate, no. 12, 2008. Available: http://www.uam.md/media/files/files/consacrarea_noramtiva_si_doctrinara_a_dreptului_la_aparare_6361553.pdf [accessed: 07.09.2022].

14. DOLEA, I., collective. *Criminal Procedure Code. Commentary.* Neighborhood Ed. Chisinau. 2005.

15. NEGRU, Al. *Administration and assessment of evidence in criminal proceedings.* Universul Juridic, Bucharest, 2022, p. 90.

16. MĂRGINEANU, I. *The principles of criminal justice in the Republic of Moldova. Comparative exegesis of criminal procedural law.* Chisinau, 2006, p. 89.

17. JIDOVU, N. *The right to defense of the accused and the defendant.* Bucharest, Ed. Rosetti, 2004.

18. DONGOROZ, V. and others, *Theoretical explanations of the Romanian Criminal Procedure Code.* The general part. Volume V. 2nd Edition. All Beck Publishing House, Bucharest, 2003.

19. HCC of 29.07.2005 Regarding the control of the constitutionality of some provisions of art. 421, 433 par. (1), art. 452 para. (1) and art. 455 para. (3) from the Criminal Procedure Code of the Republic of Moldova (point 5). Available: https://www.legis.md/cautare/getResults?doc_id=16022&lang=ro [accessed: 10.08.2022].

Romanian Criminal Procedure Code. The general part. Volume V. 2nd Edition. All Beck Publishing House, Bucharest, 2003, p. 349.

20. HCC no. 30 of 22.11.2018 regarding the exception of unconstitutionality of some provisions of article 521 para. (2) of the Criminal Procedure Code. Available: https://www.constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=677 [accessed: 11.08.2022].

21. HCC no. 2 of 09.02.2016 for the interpretation of article 135 para. (1) lit. a) and g) of the Constitution of the Republic of Moldova (point 54) (exception of unconstitutionality) (Complaint no. 55b/2015). Available: https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=556&l=ro [accessed: 09.08.2022].

22. HCC of 23.02.2016 regarding the exception of unconstitutionality of paragraphs (3), (5), (8) and (9) of article 186 of the Code of Criminal Procedure (*pre-trial detention term*) (*Report no. 7g/2016*) (pt. 29). Available: https://www.constcourt.md/public/ccdoc/hotariri/ro-h323022016ro2aa9d.pdf [accessed: 09.08.2022].

23. HCC no. 22 of 06.08.2020 regarding the exception of unconstitutionality of some provisions of article 226 [16] para. (11) of the Fiscal Code, adopted by Law no. 1163 of April 24, 1997 (presentation of tax information to courts and criminal investigation bodies as evidence) [pt. 44].

24. DCC no. 83 of 17.06.2022 on the inadmissibility of notification no. 56g/2022 regarding the exception of unconstitutionality of the text “is invited” from article 127 para. (2) of the Criminal Procedure Code (inviting the representative of the executive authority of the local public administration to conduct the search) (point 24). Available: https://www.constcourt.md/ccdocview.php?tip=decizii&docid=1199&l=ro [accessed: 11.08.2022].

25. DCC no. 63 of 11.06.2020 on the inadmissibility of notification no. 39g/2020 regarding the exception of unconstitutionality of some provisions from articles 332 para. (2) and 391 par. (2) of the Criminal Procedure Code (termination of the criminal process when the act constitutes a misdemeanor and the resolution of the case according to the provisions of the Misdemeanor Code) (pt. 23-24).

26. DCC no. 59 of 25.04.2019 on inadmissibility of notification no. 55g/2019 regarding the exception of unconstitutionality of some provisions contained in articles 52, 53 [1,] 67 paragraphs (5) point 5) and (6) point 3) and article 72 paragraph (4) of the Criminal Procedure Code (removal of the defense attorney from the trial) (pt. 21).

27. ECtHR judgment, Benham v. the United Kingdom, from 10.06.1996 (§ 60, 61). Available: https://hudoc.echr.coe.int/eng?i=001-57990 [accessed: 11.08.2022].

28. ECtHR decision, Quaranta v. Switzerland, dated 24.05.1991 (§ 34). Available: https://hudoc.echr.coe.int/eng?i=001-57677 [accessed: 11.08.2022].

29. The decision ECHR Artico v. Italy, from 13.05.1980, (§ 33). Available: https://hudoc.echr.coe.int/eng?i=001-57424 (accessed: 15.08.2022); The decision ECHR Daud v. Portugal, from 21.04.1998, [§ 38]. Available: https://hudoc.echr.coe.int/eng?i=001-58154 (accessed: 15.08.2022).

30. ECtHR judgment, Sannino v. Italy, dated 27.04.2006, final on 13.09.2006. Available: http://hudoc.echr.coe.int/eng?i=001-75213 (accessed: 15.08.2022).

31. ECtHR decision, Ananyev v. Russia, dated 30.07.2009 (§ 41). Available: http://hudoc.echr.coe.int/eng?i=001-150432 (accessed: 15.08.2022).

32. ECtHR judgment, Aras v. Turkey (no. 2), judgment of 18.11.2014, final on 18.02.2015 (§ 41). Available: https://hudoc.echr.coe.int/eng?i=001-148095 (accessed: 15.08.2022).

33. ECtHR decision, Imbrioscia v. Switzerland, dated 24.11.1993 (§ 41). Available: https://hudoc.echr.coe.int/eng?i=001-57852 (accessed: 15.08.2022); ECtHR, Judgment of Daud v. Portugal, judgment of 21.04.1998 (§ 38). Available: https://hudoc.echr.coe.int/eng?i=001-58154 (accessed: 15.08.2022).

34. ECtHR decision, Beuze v. Belgium, dated 09.09. 2019. Separate opinion of Judges: Yudkivska, Vučinić, Turković and Hüseynov. Available: https://hudoc.echr.coe.int/eng?i=001-187802 (accessed: 15.08.2022).