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DOCTORAL SCHOOL OF LEGAL SCIENCES**

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**THE PARTICIPATION OF THE PROSECUTOR IN CRIMINAL
CASES IN COURTS OF APPEAL**

SUMMARY

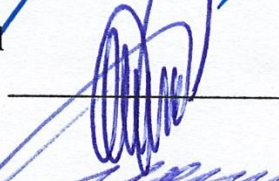
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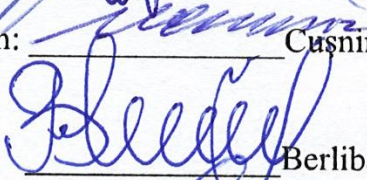
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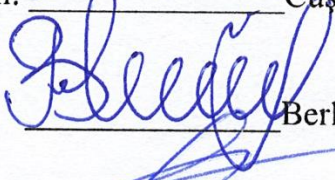


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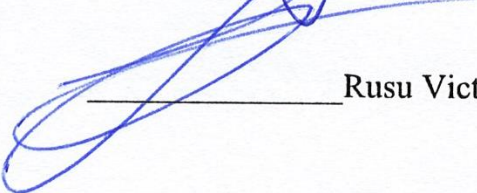
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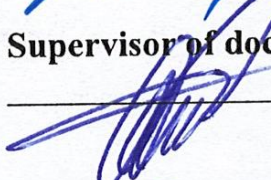
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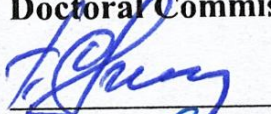
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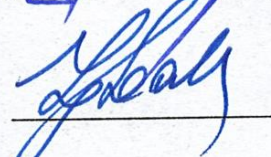
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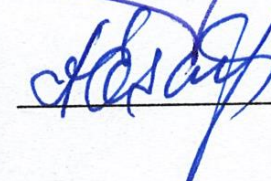
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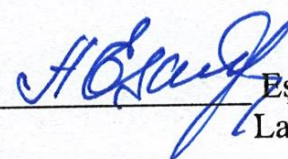
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The summary and the doctoral thesis can be consulted on in The National Library of Republic of Moldova, in the Library of the State University of Moldova and on the website of the National Agency for Quality Assurance in Education and Research (www.cnaa.md).

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CONCEPTUAL GUIDELINES OF THE RESEARCH

Topicality of theme. The Constitution expressly enshrines „The Republic of Moldova is a state governed by the rule of law, democratic, in which human dignity, his rights and freedoms, the free development of the human personality, justice and political pluralism are supreme values and are guaranteed.”¹

In the Association Agreement of 27.06.2014 between the Republic of Moldova, on the hand, and the European Union and the Member States, on the other hand: proclaims among the objectives of the association: „e) to support and enhance cooperation in the area of freedom, security and justice with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms ...”²

„(...) shall cooperate on the following areas:

(a) developing, consolidating and increasing the stability and effectiveness of democratic institutions and the rule of law;

(b) ensuring respect for human rights and fundamental freedoms;

(c) making further progress on judicial and legal reform, so as to secure the independence of the judiciary, strengthen its administrative capacity and guarantee impartiality and effectiveness of law enforcement bodies;”³

„(...) shall attach particular importance to the promotion of the rule of law, including the independence of the judiciary, access to justice, and the right to a fair trial.”⁴

Justice sector reform strategy was developed in order to create a common framework for all efforts to reform the justice sector in the Republic of Moldova in order to develop the sector as a whole through realistic and concrete actions.⁵

The reform of the justice sector in the Republic of Moldova has been extended by Decision of the Parliament of the Republic of Moldova no. 259 of 08.12.2016.⁶ Emphasizing the role and importance of the courts, highlighted the circle of issues facing participants in criminal

¹ *Constituția Republicii Moldova din 29.07.1994*, art.1 para.3. Republished in: Monitorul Oficial al RM no.78/140 from 29.03.2016.

² *Association agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, from 27.06.2014*, art. 1, para.2 lit.e). Into the: Monitorul Oficial al RM no.185-199/442 from 18.07.2014.

³ *Association agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, from 27.06.2014*, art. 4, lit.a)-c). Into the: Monitorul Oficial al RM no.185-199/442 from 18.07.2014.

⁴ *Association agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, from 27.06.2014*, art. 12, para.1, 2. Into the: Monitorul Oficial al RM no.185-199/442 from 18.07.2014.

⁵ *The concept of reform of the Prosecutor's Office* approved by Law no.122 from 03.07.2014. Into: Monitorul Oficial al RM no.275-281/593 from 19.09.2014.

⁶ *Hotărârea Parlamentului cu privire la asigurarea continuității reformelor în sectorul justiției, no.259 from 08.12.2016*. Into the: Monitorul Oficial al RM no.459-471/922 from 23.12.2016.

proceedings and, first of all, before the prosecutor's office and the prosecutor. As a result, the Prosecutor's Office was reformed by adopting the new law in 2016.

The topicality of the theme results from the inclusion of the permanent concerns of the authorities responsible for justice reform, including the prosecutor's office, in the action plans, the Government's action plans over the last ten years.

According to the Constitution and the Law of the Prosecutor's Office no.3 from 25.02.2016 „The Prosecutor's Office is an autonomous public institution within the judicial authority, which in criminal proceedings provided by law, contributes to the rule of law, the administration of justice, defending the legitimate rights and interests of the individual and of society”.⁷

According to art.124 of the Constitution of the Republic of Moldova, as well as art.5 of the Law on the Prosecutor's Office: The prosecutor's office represents the accusation in the courts, in accordance with the law. Thus, the representation of the accusation in the courts is one of the basic constitutional attributions of the prosecutors. The supreme law of our state stipulates in art. 119 – the right of a party to use the appeal.

The powers of the prosecutor in court are expressly indicated in the Code of Criminal Procedure. The prosecutor represents the accusation on behalf of the state and presents in the court hearing the evidence of the accusation; declares an appeal regarding the criminal side and the civil side of the case, withdraws them in the manner provided by law.

This activity is to be carried out at a high professional level, contributing real and efficient to the fair examination of criminal cases in order to protect the person, society and the state from criminal attacks, so that any person who has committed a crime is punished according to his guilt and no innocent person is convicted.

One of the main activities of the prosecutor in the trial of criminal cases is the finding and liquidation of judicial errors committed in the trial of cases on the merits. Prosecutors perform this activity by declaring appeals and by participating in the meetings of hierarchically superior courts.

Statistics show that the prosecutor actively uses his right to appeal against judgments that are not final.⁸

⁷ *Constituția Republicii Moldova din 29.07.1994*, art.124. Republished in: Monitorul Oficial al RM no.78/140 from 29.03.2016; *Legea cu privire la Procuratura no.3 from 25.02.2016*, art.1. In: Monitorul Oficial al RM no.67-77 from 25.03.2016.

⁸ *Rapoarte publice de activitate a Procuraturii Republicii Moldova 2004-2020*. [Access 18.08.2021] Available: <http://procuratura.md/md/d2004/>

Description of the situation in the field of research and identification of the research problem. In the Republic of Moldova, several publications, researches, analyzes were made regarding the role of the prosecutor's office in society, the status and attributions of the prosecutor. The analysis of the doctrine of our state regarding the participation of the prosecutor in the appellate court showed that the subject regarding the prosecutor's attributions at the examination of criminal cases in the first instance is not new in the research in the science of law the criminal process compared to the prosecutor's duties in examining criminal cases in the appellate court, a subject that was not investigated separately. We can mention the local authors who, through their scientific works and researches, analyzed in principle the attributions of the prosecutor when examining criminal cases in the first instance: Dolea I., Vizdoagă T., Covalenco E., Eșanu E., Holban V., Gribincea V., Osoianu T., Roman D., Rusu V., Serbinov I., Ursache P. However, in the Republic of Moldova there are practically no works on the analysis of the prosecutor's participation in the examination of criminal cases in the appellate court.

It was found that there are several works by foreign authors on various issues facing prosecutors in participating in the examination of criminal cases in the appellate court, as well as scientific articles, practical guides and doctoral theses on the participation of prosecutors in the examination of criminal cases in the courts of appeal. The publications of the doctrinaires from Romania had an essential contribution to the theoretical substantiation of the thesis: - Volonciu N., Tulbure A. and Tatu A., Păvăleanu V., Neagu I., Pinteia A., Buneci P., Paraschiv C., Papadopol V. and Turianu C., Gr.Teodoru, Gh.Mateuț, Udroiul M., Kuglay I. and others; from the Russian Federation - Gutcenco C., Smirnov A., Bojiev V., Radcenco V., Lupinscaya P., Gheldibaev M. and Vandishev V., Golovco L., Haliulin A., Rezinkina A., Reshetova N., Sevastianic I.; from Ukraine - Grosheviy Iu., Kaplina O., Kuchinsca O.P. and Kuchinsca O.A. and others.

Motivation to research the topic *The participation of the prosecutor in the examination of criminal cases in the courts of appeal* - it considers several aspects, first of all, professionally. Working in the prosecutor's office since 2006, I participated in the trial of several criminal cases. For a period of ten years I participate in the trial of criminal cases at the Cahul Court of Appeal. Secondly, the object of study is the participation of the prosecutor as a state accuser in the trial stage of the criminal case, in order of appeal, characteristics to be considered by those representing the state prosecution in the appellate court, procedural issues that sometimes arise in practice, but the main thing - the legal solution that must be taken to solve the problems. Thirdly, gaps in criminal procedural legislation can be highlighted, as well as proposals for *lege ferenda*.

The important scientific problem of research is the elaboration of a complex conceptual framework and the theoretical substantiation of the prosecutor's attributions when examining criminal cases in the courts of appeal. This fact generated premises for the completion of the functional competencies of the state prosecutor in this appeal in order to correctly and efficiently apply the criminal procedural regulations.

The purpose and objectives of the thesis. The purpose of the paper consists in the scientific research of the doctrinaire conceptions, the jurisprudence, the procedural-criminal and institutional norms, regarding the accomplishment of the prosecutor's attributions when examining the criminal cases in the appellate court.

In order to achieve the goal, following objectives are outlined:

- studying the theoretical and practical problems caused by the examination of criminal cases in the appellate court, as well as the role of the prosecutor at this stage;
- analysis and systematization of the judicial practice regarding the examination of criminal cases tried in the order of appeal, both internal and the jurisprudence of the European Court of Human Rights;
- outlining the role of the prosecutor in the preparatory part of the hearing in the appellate court;
- analysis of the prosecutor's support for the state accusation in the judicial investigation process in the appellate court;
- examination of judicial debates in the appellate court seen in the context of the prosecutor's participation in this stage;
- analysis of the prosecutor's actions after the decision of the appellate court;
- substantiation of scientifically substantiated proposals regarding the improvement of the legislation regarding the participation of the prosecutor in the criminal appeal.

The research hypothesis is outlined on the highlighting of the active role of the prosecutor at the stage of judging the criminal case in order of appeal. In the present doctoral thesis we have made a synthesis of scientific papers, of the judicial practice both at national level, as well as internationally in connection with the researched topic. We did not find an analysis of the prosecutor's functions in the courts of appeal, the exercise of specific duties, ex. declaring the additional call, supporting the appeal of the defense party or waiving the prosecutor's appeal, but also to the independent status of the prosecutor in court, to form one's own conviction based on the researched evidence, independent of the opinion formed by the criminal investigation body and the prosecutor participating in the first instance, in the sense of respecting the law and defending the rights and freedoms of the defendant and the injured party,

as well as other participants in the proceedings. The prosecutor participating in the examination of criminal cases in the courts of appeal must be other than the participant in the previous stages of the criminal proceedings. Representation of the accuser on behalf of the state and representation of the general interests of society seeks to respect the rights of individuals and the interests of society.

Scientific research methodology. A number of methods were used to achieve the proposed goal and objectives:

The logical method - for examining and interpreting the legal framework and doctrinal materials.

The comparative method was required to perform an analysis of legal provisions and national doctrine in relation to foreign ones.

As a reference point for conducting the research served the legislation of the Republic of Moldova, the Code of Criminal Procedure and the Law on the Prosecutor's Office. I also used the legislation of other states by making a comparative analysis.

The research is based on the study of doctrine, legislation and judicial practice in the Republic of Moldova, the Constitutional Court, the European Court of Human Rights, as well as the Romanian judicial practice. The judgments of the Courts of Appeal, the Supreme Court of Justice and the Constitutional Court were analyzed.

Also, representing the accusation on criminal cases at the Cahul Court of Appeal, over 1000 criminal cases were studied, from which were selected the issues in the activity of the prosecutor, procedural errors, including those of the courts. Some theoretical and practical provisions have been applied in practice at the level of the Cahul Court of Appeal.

The synthetic analysis method contributed to the formulation of conclusions and proposals to improve national legislation as well as the acts regulating the activity of the prosecutor.

Scientific novelty and originality. The thesis we are discussing, it is the first paper at the national level that addresses the issue of prosecutor's participation in the examination of criminal cases in the appellate court, being performed a comprehensive analysis of legal provisions and practice both domestically and abroad. The originality of the problem consists in the scientific substantiation of the way of practical application of the legal provisions regarding the prosecutor's participation in the examination of criminal cases in the appellate court, possible errors admitted in practice to the prosecutor and the judicial one when judging the appeals and analysis of legislation, resulting in substantiated proposals for the improvement of legislation and jurisprudence.

The main scientific results submitted for support.

- The appeal involves the verification of the legality and validity of the sentence adopted by the court of first instance, which is not final and it is a procedure for a new trial of the case, with a new judicial investigation, debates, the last word and the adoption of the judgment;

- In the appellate court, the prosecutor participates as a party in the trial, exercising the function of state accuser, but also fulfills the obligations granted by the Prosecution Law and the Code of Criminal Procedure, and one of the prosecutor's priority activities is to protect the rights and freedoms of the person

- Procedural status of the prosecutor does not change at all stages of the criminal proceedings and depends on the functions, duties and procedural methods used;

- In the exercise of his duties before the appellate court, the prosecutor is independent and obeys only the law being obliged to have an active role in the trial of the case, presents in the court hearing the evidence of the accusation, new evidence, participates in the examination of the evidence presented by the defense, takes steps and expresses its opinion on the issues that arise in the hearing of the court of appeal, expresses the opinion during the debates regarding the application of the criminal law and the punishment towards the defendant for the committed deed;

- The procedural independence of the prosecutor participating in the appellate court is also expressed by the fact that he may not support the appeal declared by another prosecutor, may express support for the arguments of another party's appeal, to request the modification or complete annulment of the sentence in case of detecting the violations of the requirements of the norms of the criminal and procedural laws;

- Collaboration is needed with prosecutors who have conducted criminal proceedings, the representatives of the criminal investigation agency who carried out the criminal investigation in the concrete cases in order to elucidate all the circumstances that appeared in the appellate court, especially in case of presentation of new evidence, and the use of information obtained in accordance with the criminal procedural law;

- It is necessary to elaborate proposals regarding the improvement of normative and institutional acts.

The theoretical significance of the paper represents the analysis of legal provisions and judicial practice related to the preparation and participation of the prosecutor in the examination of criminal cases in the court of appeal, systematization of the results of national and foreign scientific thinking in the field of research of the institute for performing the duties of the prosecutor in the criminal appeal; arguing the conclusions following theoretical and practical research.

The applicative value of the paper. The paper contributes to the solution of the important scientific problems that reside in the elucidation of the concrete actions to be executed by the prosecutor in the trial of criminal cases on appeal. The research will contribute to the evolution of national normative standards in the field of prosecutor's participation in the appellate court. The thesis answers some practical problems regarding the unitary application of the standards of participation of the prosecutor in the court of appeal considering the individual particularities of the criminal case. Finally, the research comes to contribute to the improvement of the didactic training process within the higher education institutions, in the course of criminal proceedings, to the audience of the National Institute of Justice, in preparing prosecutors for participation in the trial of cases in the first instance and in the court of appeal. Based on the results of the investigation, the omissions of the legal provisions in the part related to the prosecutor's participation in the criminal appeal are revealed, the procedure of judging the case in the appellate court, the errors of the prosecutor and the judicial ones admitted in practice in this respect, being elaborated methods for solving them. The paper is based on a vast number of scientific papers and empirical material, which gives it theoretical and practical value. The results can serve as a basis for amending the criminal procedural legislation, training of students, master students from law institutions, as well as for practical application, primarily by prosecutors, as well as other participants in the trial, but also by the judges of the courts of appeal.

Implementation of scientific results. Some theoretical and practical provisions, the results obtained have been applied and are used in the practice of judging concrete criminal cases in the order of appeal, for the unification of the judicial practice in certain fields at the level of the Cahul Court of Appeal, submission through the courts of the notifications regarding the control of the constitutionality of some provisions of the Code of Criminal Procedure⁹.

Results approval. The results of the study were presented and approved at several scientific forums, as follows:

⁹ *Sesizarea privind excepția de neconstituționalitate a unor prevederi din articolele 81, 77 și 315 din Codul de procedură penală*, no. 151g from 24.09.2020 [Access 23.04.2021] Available: <https://www.constcourt.md/ccdocview.php?tip=sesizari&docid=1359&l=ro>; and *Hotărârea CC a RM privind excepția de neconstituționalitate a articolelor 77, 81 și 315 din Codul de procedură penală (omisiunea includerii sofului ca succesor al părții vătămate sau al părții civile) (sesizarea no. 151g/2020)*, no. 12 from 06.04.2021. [Access 30.04.2021] Available: <https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=768&l=ro>; *Sesizarea privind excepția de neconstituționalitate a prevederilor articolului 422 din Codul de procedură penală*, no. 52g from 09.03.2021. [Access 23.04.2021] Available: <https://www.constcourt.md/ccdocview.php?tip=sesizari&docid=1500&l=ro> and *Hotărârea CC privind excepția de neconstituționalitate a articolului 422 din Codul de procedură penală (data de la care începe să curgă termenul de declarare a recursului ordinar) (sesizarea nr. 52g/2021)*, no. 23 from 05.08.2021. [Access 16.08.2021] Available: <https://constcourt.md/ccdocview.php?tip=hotariri&docid=779&l=ro>

- National scientific conference with international participation „Contemporary trends in the development of science: visions of young researchers”, 2017, 2018, 2019 and 2020 editions, in Chisinau, Republic of Moldova;

- International Scientific Conference „Prospects and problems of research and education integration into the European area”, 2016, 2017, 2018, 2019 and 2020 editions, in Cahul, Republic of Moldova;

- Scientific conference „The role of science in reforming the legal and political-administrative system.”, 2016, 2017, 2018, 2019 and 2020 editions, in Cahul, Republic of Moldova;

- International Scientific Conference „ Science, education, culture”, 2017, 2018, 2019, 2020 and 2021 editions, in Comrat, Republic of Moldova;

- VIII-th international competition on behalf of Professor E.G.Martîncic „Administration of justice in criminal cases through the prism of criminal procedural, forensic, operational-search and forensic expertise” from 24.12.2018 organized by the Southeastern State University of Kursk, Russian Federation, with the obtaining of the first-degree laureate diploma.

Thesis publications: 26 scientific papers.

Content of the thesis. The thesis consists of annotation, list of abbreviations, introduction, three chapters, general conclusions and recommendations, bibliography from 500 sources, 184 pages of basic text.

Keywords: criminal proceedings, appeal, prosecutor, court of appeal, representation of the state prosecution, judgment of the appeal, preparation and participation in the appellate court.

CONTENT OF THE THESIS

The thesis consists of introduction, three chapters, general conclusions and recommendations, bibliography. Each chapter ends with a summary conclusion of the issues addressed and the results obtained.

The introduction reflects the topicality and importance of the proposed research issue, the purpose and tasks of the doctoral thesis. We also focused on the introduction of the research, the research hypothesis, we reviewed the synthesis of the research methodology, we described the situation in the field of research, the novelty and scientific originality of the doctoral thesis, and the most important main thesis we presented for support. Among the important components reflected in its content are listed: the scientific problem of major importance solved by the researched topic, the theoretical importance and the applicative value of the paper, approval and implementation of scientific results obtained.

In Chapter I - „*Analysis of the doctrine regarding the participation of the prosecutor in the examination of criminal cases in the appellate court*” reviews the list of scientific materials published in the Republic of Moldova related to the topic of the doctoral thesis.

Concluding on the scientific concepts formed in the Republic of Moldova, we can mention that the analysis of the institute's performance of the prosecutor's duties in the court of appeal for the examination of criminal cases was not found in the existing publications. But some peculiarities of it have been mentioned in a series of works, which in one way or another refer to some problems in the context of the object of the research established in the present paper. However, publications on the functions and responsibilities of the prosecutor, the tactics of the prosecutor's participation in the examination of criminal cases in the appellate court in the Republic of Moldova are missing.

The prosecutor's attributions to the examination of criminal cases in the first instance is not a new topic in the research in the science of law compared to the prosecutor's duties in examining criminal cases in the appellate court. That subject has not been practically subjected to theoretical investigations separately. We can mention the local authors who, through their scientific works and researches, analyzed in principle the attributions of the prosecutor when examining criminal cases in the first instance: Dolea I., Vizdoagă T., Covalenco E., Eșanu E., Holban V., Gribincea V., Osoianu T., Roman D., Rusu V., Serbinov I., Ursache P.

The scientific research published in the Republic of Moldova, which we analyzed, had as object of researching the theoretical and practical problems of the criminal process regarding the participation of the prosecutor in the examination of criminal cases in the first instance. The most complex and close to the indicated topic are the researches mentioned in the doctoral thesis with the name „Exercising the accusation in the court of first instance: problems and perspectives” supported by Vizdoaga T. in 2002,¹⁰ based on the draft criminal law that was subsequently adopted and is currently in force which is still relevant today and the doctoral thesis defended by L. Stadnitsky on January 28, 2017- „Duties of the prosecutor for the examination in the first instance of criminal cases”,¹¹ work that is based on the Code of Criminal Procedure in force.

It is found that there are several works by foreign authors on various issues which welcomes prosecutors in participating in the examination of criminal cases in the appellate court, such as scientific articles, practical guides and doctoral theses on the participation of prosecutors in the examination of criminal cases in the courts of appeal

¹⁰ Vizdoagă T. *Exercitarea acuzării în instanța de fond: problem și perspective*. Doctoral thesis in law. Chișinău, 2002, p.147.

¹¹ Stadnițki L. *Atribuțiile procurorului la examinarea în prima instanță a cauzelor penale*. Doctoral thesis in law. Chișinău. [Access 21.09.2017] Available: <http://www.cnaa.md/thesis/50963/>

The investigation carried out of the institution of the prosecutor's participation in the first instance highlighted the need to conceptualize the institution of the prosecutor's duties in the appellate court, of a no less important stage of the criminal process, as a result of which the activity of the prosecutor is optimized and ensures the lifting of the effectiveness of the criminal process.

It is necessary to carry out research in order to complex analysis of theoretical concepts, jurisprudence and procedural-criminal norms, including compared to other countries, regarding the criminal appeal and the powers of the participants in the examination of criminal cases in the appellate court for establishing the efficiency and necessity of the amendments or completions of the criminal procedural norms in force and for existing judicial practice.

Also, in this chapter were exposed and analyzed the works and investigations with direct implications on the participation of the prosecutor in the examination of criminal cases in the courts of appeal. the way of treating this subject was highlighted in the vision of different foreign researchers from Romania, Ukraine, Russian Federation, Kazakhstan, which have proved to be considerable following the analysis of relevant scientific materials published abroad.

In the second chapter with the name „*General considerations regarding the appeal in criminal cases and the participation of the prosecutor in the appellate court*” the theoretical considerations regarding the criminal appeal are analyzed, the regulations regarding the participation of the prosecutor in the examination of the criminal appeal and the effects of the appeals declared by the prosecutor in criminal cases are analyzed.

Appeal, the origin of the appeal, the procedure for declaring the appeal, subjects, time limit, appeal procedure, decisions that may be taken by the appellate court, was analyzed with the elaboration of textbooks, monographs, lessons, etc. by several authors: Caminschi I. from Republic of Moldova, from Romania : Volonciu N., Tulbure A. and Tatu A., Păvăleanu V., Neagu I., Pinteana A., Buneci P., Paraschiv C., Papadopol V. and Turianu C., Teodoru Gr., Mateuț Gh., Udroiș M., Kuglay I. etc., from the Russian Federation, such as: Gutcenko C., Smirnov A., Bojiev V., Radchenco V., Lupinskaya P., Geldibaev M. and Vandshev V., Golovko L. etc., Rezinkina A., Haliulin A. and Reshetova N., Sevastianic I., from Ukraine: Grosheviy Iu., Kaplina O. etc., Kuchinsca O.P. and Kuchinsca O.A. etc.

According to the definitions given by these authors, *an appeal* is an ordinary remedy, in fact and in law, which can be used against judgments on the merits by a lower court after its withdrawal, for the case to be subjected to a new trial in fact and in law in order to reform the contested judgment with the possibility of adopting a new decision.

The institution of appeal is not a new one, having its origin in Roman law.

The need to verify a court decision has existed and exists, being an objective one. Verification of judgments is a necessary method to correct errors and appeal, it is one of the procedural institutes created by the legislator for the timely and effective detection of judicial errors and their correction.

The analysis of the legislation shows that, the purpose of the appellate court is to detect and remove errors admitted in the trial on the merits because the court decision that will remain final will be a legal one, motivated and grounded. The task of the appellate court is to verify the legality of the judgments of the first instance based on the arguments and evidence in the appeals. The tools and means necessary for the verification of the judgment and the removal of judicial errors and violations detected are: possibility of administering new evidence in the appellate court, direct verification of evidence, the adoption of a new decision by the appellate court.

The object of the appeal research is the discourses of the parties, the arguments and the evidence brought by them in support of their positions, the evidence investigated at appellate court hearings, as well as new evidence and materials confirming or refuting this position.

The object of the verification in the appellate court consists in the verification of the legality and validity of the court decision.

The peculiarities of the verification on appeal of a decision in the concrete criminal case consist in: a) indication in the appeals of the reasons showing, in the appellant's view, the illegality and unfoundedness of the contested judgment; b) reasons for correcting the decision.

The object of the evidence on appeal involves an accumulation of factual circumstances related to the verification of the legality of the decision, reasons and arguments of the appellant which requires the investigation of evidence and the conduct of evidence in the appellate court. The limits of the evidence on appeal involve a totality of evidence investigated in the appellate court, the content and quality of which can respond to the arguments and evidence of the participants in the process, remove ambiguities and doubts about factual circumstances and adopt the relevant legal decision. The evidence, in the appellate court, consists in the activity of the court carried out with the evidence when it is necessary to establish the correctness and fullness of the factual circumstances established and based on the sentence.

The need for evidence depends on the errors and violations admitted by the first instance it also influences the actions to be taken by the prosecutor in the court of appeal to find violations and remove them and which is dependent on the arguments mentioned in the appeal.

In this chapter, the regulations regarding the participation of the prosecutor in the examination of the criminal appeal were analyzed (to be seen §. 2.2.), the effects of the appeals

declared by the prosecutor in criminal cases were analyzed (to be seen §. 2.3.), the issue related to the modification and waiver by the prosecutor of the accusation at the trial stage of the appeal was analyzed (to be seen §. 2.4.).

The prosecutor, participating in the appellate court, must prepare in advance a tactic to judge the case in the appellate court based on the peculiarities of the appeal procedure, having regard to the object of the judgment on appeal and the object of the verification on appeal which depends on the requirements and arguments of the appellant, the prosecutor. The tactics of supporting the accusation at the trial of the criminal appeal in the Republic of Moldova is not practically analyzed and described.

The attorney, being part of the prosecution, he has the same rights as the defense but has several bonds. In the court of appeal the prosecutor is a state accuser, represents the state accusation, and supports the accusation by all possible means granted by law.

As in the court of first instance, the prosecutor appears as a guarantor of the rights and obligations of the defendant but also of the other participants in the trial and of the citizens involved in the criminal trial by which it exercises the function of protecting the rights of the person. The appeal is an independent stage of the criminal process respectively the prosecutor participating in one stage has a status independent of the prosecutor participating in another stage of the criminal process.

The third chapter entitled „*Procedural regulations regarding the participation of the prosecutor in the appellate court*” highlights the participation of the prosecutor in the stage of preparatory measures for the conduct of the court hearing in the appellate court in criminal cases which includes verifying the correctness of the appeal to the appellate court, if the declared appeal belongs to the person who is the legal holder of the right to appeal and is declared only once, if the appeal was lodged within the legal time limit, checking the legality of the composition of the court panel.

Increased attention must be paid to the quality and reasoning of the appeal requests, the correctness of the accusation, in order to prepare an additional call, or change the accusation within the permitted limits, or need to withdraw the appeal declared by the prosecutor.

In this chapter was analyzed the actions of the prosecutor to be taken in the stage of the judicial investigation, in verbal supports and after the pronouncement of the decision of the appeal in criminal cases, the verification of the decision of the appellate court, in terms of content, factual and legal grounds, and the reasons for adopting the solution. Of particular importance for the activity of the prosecutor is the verification of the minutes of the court

hearing in the court of appeal, the declaration of the ordinary appeal regarding the criminal side and the civil side of the case.

The analysis and systematization of the national judicial practice was carried out and the jurisprudence of the ECHR on the trial of criminal cases on appeal for each of the mentioned stages of the appeal procedure, being highlighted some judicial errors admitted by the first instance and solutions to correct these errors.

Was drawn up the model of the participations of the prosecutor on criminal cases, it has been applied in practice, proving its effectiveness (to be seen annex no. 3).

Some theoretical and practical provisions and their results discussed in this chapter were applied at the level of the Cahul Court of Appeal.

Thus, the analysis of the described actions and their results can be used as indicators to guide prosecutors involved in the examination of criminal cases in the courts of appeal and for other participants in the process.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The innovative scientific results reflected in the content of the doctoral thesis lie in following:

- The appeal involves verifying the legality and validity of the sentence adopted by the court of first instance, which is not final and is a new trial procedure, with the development of a new judicial investigation, the debates, the last word and the adoption of the decision;¹²

- In the appellate court, the prosecutor participates as a party in the trial, exercising the function of state prosecutor, but also fulfills the obligations granted by the Law on the Prosecutor's Office and the Code of Criminal Procedure, having one of the priority activities of the prosecutor – defending the rights and freedoms of the person;¹³

- Procedural status of the prosecutor does not change at all stages of the criminal proceedings and depends on the functions, duties and procedural methods used;¹⁴

- In the exercise of his duties before the appellate court, the prosecutor is independent and obeys only the law being obliged to have an active role in the trial of the case, presents in the court hearing the evidence of the accusation, new evidence, participates in the examination of the evidence presented by the defense, takes steps and expresses its opinion on the issues that arise in the hearing of the court of appeal, expresses the opinion during the debates regarding the application of the criminal law and the punishment towards the defendant for the committed deed;¹⁵

- The procedural independence of the prosecutor participating in the appellate court is expressed by the fact that he may not support the appeal declared by another prosecutor, may express the support of the arguments of the appeal of another party, to request the modification

¹² **Calendari D.** *Conceptul participării procurorului la examinarea cauzelor penale în instanța de apel prin prisma obiectului apelului.* In: Rolul științei în reformarea sistemului juridic și politico-administrativ. Secția: Științe juridice. The „Bogdan Petriceicu Hasdeu” tate University from Cahul. 4th ed., 10.12.2019, Cahul, Publishing house „Centrografic”, 2019, p. 34-43.

¹³ **Календарь Д.** *Особенности участия прокурора при рассмотрении уголовных дел в суде апелляционной инстанции.* In: Integrarea Europeană: aspecte economico-juridice. Conferință Internațională Științifico-Practică (Culegere de articole științifice), ed. 4, 21.12.2018, University of European Studies of Moldova. Chișinău, Publishing house „Lira”, 2018, p. 427-436.

¹⁴ **Calendari D.** *Unele aspecte privind participarea procurorului la examinarea cauzelor penale în instanța de apel.* In: Buletinul științific al Universității de Stat „Bogdan Petriceicu Hasdeu” din Cahul, Social sciences series. 2017, nr. 2(6), p.121-130.

¹⁵ **Calendari D.** *Probleme ale tacticii participării procurorului la etapa cercetării judecătorești în instanța de apel pe cauzele penale.* In: Tendințe contemporane ale dezvoltării științei: viziuni ale tinerilor cercetători. 8th Ed. 8, Vol.2, 15.06.2019, The „Dimitrie Cantemir” State Universitu from Chișinău, Publishing house „Biotehdesign”, 2019, p. 146-152.

or complete annulment of the sentence in case of detecting the violations of the requirements of the norms of the criminal and procedural laws;¹⁶

- Was identified the opportunity for the prosecutor to participate in the court of appeal with the prosecutors who conducted the criminal investigation and the representatives of the criminal investigation body who carried out the criminal investigation in the concrete cases, in order to elucidate all the circumstances that appeared in the appellate court, especially in the case of the presentation of new evidence, and the use of information obtained in accordance with criminal law;¹⁷

- the elaboration of proposals regarding the improvement of normative and institutional acts is argued.

Generalizing on the research carried out in the doctoral thesis, starting from the fact that the objectives of the paper, the important scientific problem has been demonstrated relation to the research hypotheses, we draw the following conclusions.

I. In the appellate court, the prosecutor participates as a party in the trial, exercising the function of state prosecutor, but also fulfills the obligations granted by the Law on the Prosecutor's Office and the Code of Criminal Procedure, having one of the priority activities of the prosecutor – defending the rights and freedoms of the person.¹⁸

II. In the exercise of his duties before the appellate court, the prosecutor is independent and obeys only the law being obliged to have an active role in the trial of the case, to take action and express an opinion on the issues that arise in the hearing of the appellate court. The prosecutor is a professional participant in the criminal process, which represents the public interests of society and having this right, among the subjects of the criminal appeal, it occupies a special procedural status.¹⁹

¹⁶ **Calendari D.** *Conceptul participării procurorului la examinarea cauzelor penale în instanța de apel prin prisma obiectului apelului.* In: Rolul științei în reformarea sistemului juridic și politico-administrativ. Secția: Științe juridice. The „Bogdan Petriceicu Hasdeu” tate University from Cahul. 4th ed., 10.12.2019, Cahul, Publishing house „Centrografic”, 2019, p. 34-43.

¹⁷ **Календарь Д.** *Особенности участия прокурора при рассмотрении уголовных дел в суде апелляционной инстанции.* In: Integrarea Europeană: aspecte economico-juridice. Conferință Internațională Științifico-Practică (Culegere de articole științifice), ed. 4, 21.12.2018, University of European Studies of Moldova. Chișinău, Publishing house „Lira”, 2018, p. 427-436.

¹⁸ **Calendari D.** *Participarea procurorului la etapa măsurilor pregătitoare pentru desfășurarea ședinței de judecată în instanța de apel pe cauzele penale.* In: Revista Procuraturii Republicii Moldova, no. 6/2020, p.76-88; no. 7/2021, p. 55-67.

¹⁹ **Осоян Т., Календарь Д.** *Особенности участия прокурора при рассмотрении уголовных дел в суде апелляционной инстанции.* In: Revista Institutului Național al Justiției. 2019, no. 4(51), p. 26-35; 2020, no.1(52), p. 23-31.

III. The prosecutor's appeal has effects that may be distinct from the effects of appeals made by other participants.²⁰ The procedural independence of the prosecutor participating in the appellate court is expressed by the fact that he may not support the appeal declared by another prosecutor,²¹ may express the support of the arguments of the appeal of another party, to request the modification²² or complete annulment of the sentence in case of detecting the violations of the requirements of the norms of the criminal and procedural laws.²³

IV. Based on the results of the investigation, omissions of the legal provisions in the part related to the prosecutor's participation in the criminal appeal are revealed, the procedure for judging the case in the appellate court, the errors of the prosecutor and the judicial ones admitted in practice in this respect, being developed methods for solving them, and the results and conclusions of this paper could be used by the legislator, judges and participants in criminal proceedings, and by educational institutions.

V. As a result of the research undertaken, we formulate the following recommendations to amend and supplement the Code of Criminal Procedure, the decisions of the Plenum of the Supreme Court of Justice no.22 from 12.12.2005 „Regarding the practice of judging criminal cases on appeal”, no. 5 from 19.06.2006 „about the court sentence”, no.9 from 30.10.2009 „Regarding the trial of the ordinary appeal in the criminal case”, no.12 from 24.12.2012 „On some issues concerning the participation of the prosecutor in the trial of the criminal case”, the Order of the Attorney General no. 2/21 from 02.01.2018 „regarding the organization of the activity of prosecutors in the field of representation of the accusation in the courts”.

VI. In the thesis it was argued the need for some recommendations of *lege ferenda*.

1) Amending and supplementing the Code of Criminal Procedure as follows:

- Art.53 paragraph (1) pt.7) at the beginning of the text the words „*quote and*” shall be introduced;

- Article 81 para. (1) after the text „*is recognized*” the text „*surviving spouse or*” shall be inserted;

²⁰ **Calendari D.** *Efectele apelului procurorului pe cauzele penale.* În: Știință, educație, cultură. Vol.2, 15 februarie 2020, Comrat, Universitatea de Stat din Comrat, 2020, p. 349-353.

²¹ **Календарь Д.** *Прения сторон в апелляционной инстанции по уголовным делам.* În: Știință, educație, cultură. Vol.2, 15 februarie 2020, Comrat, Universitatea de Stat din Comrat, 2020, p. 242-246.

²² **Calendari D.** *Renunțarea procurorului la învinuire în instanța de apel.* In: Buletinul științific al Universității de Stat „Bogdan Petriceicu Hasdeu” din Cahul, Social sciences series. 2016, no. 2(4), p. 149-154; **Calendari D.** *Probleme ale tacticii participării procurorului la etapa cercetării judecătorești în instanța de apel pe cauzele penale.* In: Tendințe contemporane ale dezvoltării științei: viziuni ale tinerilor cercetători. 8th Ed. 8, Vol.2, 15.06.2019, The „Dimitrie Cantemir” State University from Chișinău, Publishing house „Biotehdesign”, 2019, p. 146-152.

²³ **Календарь Д.** *Участие прокурора при рассмотрении уголовных дел в суде апелляционной инстанции.* In: Știință, educație, cultură . Vol.1, 15.02.2019, Comrat, Comrat State University, 2019, p. 279-284.

- Art. 315 the text *„The prosecutor, the injured party, the civil party, the defense counsel, the defendant, the civilly responsible party and their representatives”* to be reproduced in the following wording *“The prosecution party and the defense party”*;

- In para. (2) art. 332 it is necessary to exclude the word *„administrative”*;

- Repeal of art. 341 and para. (1) of art.342;

- In art.350 paragraph (3) the text *„order of appeal”* to be replaced with the text *„term of appeal”*;

- In para. (2) art. 391 is necessary to replace the word *„administrative”* with the word *„contraventions”*.

- Article 401 para. (2) the text *„their legal representative”* to be reproduced in the following wording *“their representative or successor”*.

- The modification of paragraph (5) art.413, namely: *„(5) The judicial debates are carried out according to the rules provided in art.377-378 of the present Code. The chairman of the hearing gives the floor to the appellant, the respondent, the defendant, the defense counsel, the injured party, the civil party, their representatives, and then the prosecutor. If between the declared appeals there is also the prosecutor's appeal, he has the first word”*.

- The complete art. 414 para. (2) after the word *„reading”* the words *„and examination”* shall be introduced.

- In art. 418 para. (6) after the text *„After the pronouncement of the decision”* to insert the word *“integral”*.

- Art. 422 to be completed at the end with the word: *„integrals”*.

2) At the same time, in order to uniformly apply the judicial practice, it is necessary to introduce the respective changes in the decisions of the Plenum of the Supreme Court of Justice no.22 from 12.12.2005 *„ Regarding the practice of judging criminal cases on appeal”*, no. 5 from 19.06.2006 *„ about the court sentence”* and in the decision of the Plenum of the Supreme Court of Justice no.9 from 30.10.2009 *„Regarding the trial of the ordinary appeal in the criminal case”*, into paragraph 35/1 and to explain that the judgments handed down by the Court of First Instance at preliminary hearings may be challenged only once on appeal (recurs).

3) To modify a decision of SCJ plenum *„On some issues concerning the participation of the prosecutor in the trial of the criminal case”*, no.12 from 24.12.2012, as follows:

- In pt.13, the second thesis will be presented in the next edition: *„The hierarchically superior prosecutor or the prosecutor participating in the appellate court are not related to the reasons given in the basic appeal being limited to act within 15 days from the date of receipt of the copy of the declared appeal. They have the right to change some grounds of appeal relied on*

in the first appeal. The parties will be notified of this fact, with the delivery of the copies of these appeals and the granting of the necessary time for the preparation for the trial of the appeals.”

- In pt.17 the text – „*as well as by the hierarchically superior prosecutor*” to be excluded.

- In pt.18, the second thesis, the phrase „*hierarchically superior prosecutor*” to be replaced by the term „*subsequent*”.

4) To modify the HP SCJ no. 22 of 12.12.2005 „On the practice of judging criminal cases on appeal”, with subsequent amendments, according to annex no. 4 to the doctoral thesis.

5) To amend the Order of the General Prosecutor no.2 / 21 of 02.01.2018 „On the organization of the activity of prosecutors in the field of representation of the accusation in the courts”, according to annex no.2 to the doctoral thesis, annex no.1.

In the context of the above, the major scientific issue has been resolved which lies in the elaboration of a complex conceptual framework and the theoretical substantiation of the prosecutor’s duties in examining criminal cases in the courts of appeal. This fact generated premises for the completion of the functional competencies of the state prosecutor in this appeal in order to correctly and efficiently apply the criminal procedural regulations.

As perspectives for further research may be:

- Carrying out research in order to establish theoretical concepts, essential characteristics and the importance of criminal appeal, the place of this institution in the legal system, the effects of declaring the appeal in criminal cases, which the categories of decisions that can be taken by the courts of appeal, accumulation and analysis of judicial practice regarding the examination of criminal cases in the order of appeal in order to unify judicial practice, identify gaps and shortcomings in the regulation of the appeal procedure.

- Investigating the tactical-forensic methods of the prosecutor's participation in the second level court.

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ADNOTARE

Calendari Dumitru „Participarea procurorului la examinarea cauzelor penale în instanțele de apel”, teză de doctorat în drept. Școala doctorală de Științe Juridice a Universității de Stat din Moldova. Chișinău, 2022.

Structura tezei: 184 de pagini text de bază, adnotare în limbile de stat, engleză și rusă, lista abrevierilor, introducere, trei capitole, concluzii generale și recomandări, bibliografie din 500 titluri, anexe.

Cuvinte cheie: procuror, proces penal, reprezentarea învinuirii de stat, instanța de apel, judecarea apelului, pregătirea și participarea în instanța de apel.

Domeniul de studiu: drept procesual penal; derivă din analiza importanței problemelor pe care le implică participarea procurorului la judecarea cauzei penale în ordinea de apel.

Scopul și obiectivele lucrării: *Scopul:* analiza științifică a concepțiilor doctrinare, normelor procesual-penale și a jurisprudenței privind realizarea atribuțiilor procurorului la examinarea cauzelor penale în instanța de apel, pentru a evalua oportunitatea de a perfecționa această activitate. *Obiectivele lucrării:* studierea problemelor teoretice și practice privind examinarea cauzelor penale în instanța de apel, precum și rolul procurorului la această etapă; conturarea rolului procurorului în partea pregătitoare a ședinței în instanța de apel; analiza reprezentării de către procuror a învinuirii de stat în procesul cercetării judecătorești în instanța de apel; examinarea dezbatelor judiciare în contextul participării procurorului; analiza acțiunilor procurorului după pronunțarea deciziei de către instanța de apel; elaborarea propunerilor științific-întemeiate privind perfecționarea legislației în domeniul reglementării participării procurorului în apelul penal.

Noutatea și originalitatea științifică: derivă din faptul că este prima lucrare la nivel național ce abordează participarea procurorului la examinarea cauzelor penale în instanța de apel, fiind realizată o analiză amplă a prevederilor legale și practicii atât interne, cât și de peste hotare. Originalitatea problemei constă în fundamentarea științifică a modului de aplicare în practică a prevederilor legale privind participarea procurorului la examinarea cauzelor penale în instanța de apel, eventualele erori admise în practica procurorului și cea judiciară la judecarea apelurilor, precum și analiza legislației cu efectuarea propunerilor de rigoare în vederea îmbunătățirii acestora.

Rezultatele obținute: prin cercetarea efectuată au fost atinse obiectivele propuse. Lucrarea contribuie la soluționarea problemelor științifice importante ce rezidă în elucidarea acțiunilor concrete ce urmează a fi executate de către procuror în cadrul judecării cauzelor penale în ordinea de apel. Cercetarea va contribui la opera de evoluție a standardelor normative naționale în domeniul participării procurorului în instanța de apel. În cercetare se dă răspuns la unele probleme practice privind aplicarea unitară a standardelor de participare a procurorului în instanța de apel, luând în calcul particularitățile individuale ale cauzei penale. În sfârșit, cercetarea vine să contribuie la perfecționarea procesului de instruire didactică în cadrul instituțiilor de învățământ superior, în cadrul cursului de procedură penală, în pregătirea procurorilor pentru participarea în instanța de apel.

Semnificația teoretică: reprezintă analiza prevederilor legale ce țin de pregătirea și participarea procurorului la examinarea cauzelor penale în instanța de apel, sistematizarea rezultatelor gândirii științifice naționale și de peste hotare în domeniul de cercetare a institutului de realizare a atribuțiilor procurorului în apelul penal; argumentarea concluziilor urmare a cercetărilor teoretice și practice.

Valoarea aplicativă a lucrării: în baza rezultatelor cercetării, sunt relevate omisiunile prevederilor legale în partea ce ține de participarea procurorului în apelul penal, procedura judecării cauzei în instanța de apel, erorile procurorului și cele judiciare admise în practică în acest sens, fiind elaborate metode pentru evitarea și soluționarea acestora. Lucrarea se bazează pe un număr vast de lucrări științifice și materiale empirice ce vor implica valoare teoretică și practică. Rezultatele pot servi drept teme de modificare a legislației procesual – penale în domeniu, de instruire a studenților, masteranzilor din cadrul instituțiilor de drept, precum și pentru aplicare în practică, în primul rând, de către procurorii, precum și alți participanți în proces, dar și judecătorii din instanțele de apel.

Implementarea rezultatelor științifice: Rezultatele obținute sunt publicate în 26 lucrări științifice. Unele dispoziții teoretice și practice a tezei au fost prezentate și discutate la conferințele științifico-practice naționale și internaționale, precum și prezentate la al VIII-lea concurs internațional în numele profesorului E.G.Martîncic cu tema „*Отправление правосудия по уголовным делам через призму уголовно-процессуального, криминалистического, оперативно-розыскного и судебно-экспертного опыта*”, organizat de către Universitatea de Stat de Sud-Est din or.Kursk, Federația Rusă, cu obținerea diplomei de laureat de gradul I. Unele dispoziții teoretice și practice, rezultatele obținute au fost aplicate și sunt utilizate în practica judecării cauzelor penale concrete în ordinea de apel, pentru unificarea practicii judiciare în anumite domenii la nivelul Curții de Apel Cahul.

ANNOTATION

Calendari Dumitru „The participation of the prosecutor in criminal cases in courts of appeal”. PhD thesis in law. Doctoral School of Legal Sciences of the State University of Moldova. Chişinău, 2022.

Structure of the thesis: 184 pages of basic text, annotation in state language, english and russian, list of abbreviations, introduction, three chapters, general conclusions and recommendations, bibliography, including 500 titles, appendices.

Keywords: attorney, criminal procedure, maintenance of public prosecution, court of appeal, judgment of appeal, preparation and participation in trial in court of appeal.

Field of study: the criminal proceedings, derives from the analysis of the importance of the issues that involve the court of appeal proceedings.

Purpose and objectives of the thesis: *Purpose of the thesis:* the scientific analysis of the theoretical concepts, the criminal procedural rules and law, regarding realization of powers of the Prosecutor in criminal cases in the court of appeal to determine their effectiveness and feasibility improvement. *Objectives of the paper:* to analysis the theoretical and practice problems caused in criminal cases in court of appeal and the role of the prosecutor at this stage, to examine the role of the prosecutor in the preliminary court hearing, in the preparatory part and in the inquire hearing of the court of appeal, to consider judicial debates in the context of the public prosecutor's participation in them; to analyze maintaining of the official prosecution by the prosecutor in the course of judicial proceeding; to analyses the actions of the prosecutor after pronouncement of the decision of the court of appeal; to develop scientifically-based recommendations for improvement of the current legislation regulating the institute of prosecutor's participation in the court of appeal.

Scientific novelty and originality: derives from the fact that it is the first national paper that deals with the issue of the case about participation of prosecutor in criminal cases in court of appeal, with a comprehensive analysis of the legal provisions and both internal and international practice. The important scientific problem solved in the respective field consists in the scientific foundation of the way in which the legal provisions regarding the participation of the prosecutor in criminal cases in court of appeal are applied in practice, the possible legal errors admitted in prosecutors practice, as well as the analysis of the legislation with making the appropriate proposals for their improvement.

Results: the autor in the research are resolved the objective proposes. The research contributes to the solution of an important scientific problem that resides in conceptualization of prosecutor's participation in the court of appeal and in optimization of the prosecutor's activity in the court of second instance. Secondly, the research will contribute to the development of national normative standards in the field of participation of the prosecutor in court of appeal. Research seeks to address some practical issues concerning the unitary application of examination standards of prosecutor's participation in the court of appeal, taking into account the individual peculiarities of the criminal case. Finally, the research aims to contribute to the improvement of the teaching process in the higher education institutions, within the framework of the criminal procedure, the training of the prosecutors to participate in court of appeal.

Theoretical significance: it is the analysis of the legal provisions related to the training and participation of prosecutor in examination of criminal cases in court of appeal, systematization of the results of scientific thought existing of national both and in some foreign countries in the field of the institute of realization of the prosecutors powers in the court of appeal, conceptualization of conclusions that are the results of both theoretical and practical sources.

Applicative value of the thesis: as the result of the research, the omissions of the legal provisions regarding the procedure of the prosecutor's participation in the court of appeal, the judicial errors admitted in practice in this respect, are revealed, the methods for resolving that errors. The paper is based on a large number of scientific papers that will involve theoretical and practical value. The results of the research can serve as a basis for amending procedural legislation- criminal law into the field, training of students, master students in law institutions, as well as for practical application by prosecutors, participats to the process and by judges in the court of appeal.

Implementation of scientific results: the results obtained are published in 26 scientific papers. Some theoretical and practical provisions of the research were discussed at the nationals and internationals conferences, and presented at the VIII international competition on behalf of Professor E.G.Martinchik with the slogan „Отправление правосудия по уголовным делам через призму уголовно-процессуального, криминалистического, оперативно-розыскного и судебно-экспертного опыта”, organized by the South East State University from Kursk, Russian Federation, get the 1st degree laureate. Some theoretical and practical provisions, the results of our research implement in practice of the examination of criminal cases in Cahul Court of Appeal.

АННОТАЦИЯ

Календарь Дмитрий. «Участие прокурора при рассмотрении уголовных дел в апелляционных инстанциях». Диссертация на соискание ученой степени доктора права. Докторальная школа юридических наук Государственного университета Молдовы. Кишинэу, 2022

Структура диссертации: 184 основных текстовых страниц, аннотации на государственном, английском и русском языках, список сокращений, введение, три главы, общие выводы и рекомендации, библиография из 500 названий, приложения.

Ключевые слова: прокурор, уголовное судопроизводство, представление обвинения, апелляционная инстанция, рассмотрение апелляционной жалобы, подготовка и участие в апелляционной инстанции.

Область исследования: уголовный процесс, исходит из анализа важности вопросов связанных с участием прокурора при рассмотрении уголовного дела в апелляционной инстанции.

Цель и задачи исследования: *Целью* исследования является научный анализ теоретических концепций, уголовно-процессуальных норм и юриспруденции, относительно реализации полномочий прокурора при рассмотрении уголовных дел в апелляционной инстанции для определений эффективности и целесообразности совершенствования. *Задачи* – изучение теоретических и практических проблем, возникающих при рассмотрении уголовных дел в апелляционной инстанции, а так же роль прокурора на этом этапе; обосновать роль прокурора в предварительном заседании апелляционной инстанции; проанализировать представление прокурором обвинения в ходе судебных разбирательств апелляционной инстанции; рассмотреть судебные прения в контексте участия в них прокурора; проанализировать действия прокурора после вынесения определения апелляционной инстанцией; разработать научно-обоснованные рекомендации по совершенствованию действующего законодательства в области регулирования института участия прокурора в апелляционном производстве.

Научная новизна и оригинальность: она исходит из факта, что это первая национальная работа, которая рассматривает вопрос участие прокурора при рассмотрении уголовных дел в апелляционной инстанции с всесторонним анализом правовых положений, внутренней практики и зарубежной. Оригинальность исследования состоит в научном обосновании того, как на практике применяются правовые нормы, касающиеся участия прокурора при рассмотрении уголовных дел в апелляционной инстанции, возможных юридических ошибок допущенных прокурором и судебной инстанцией на практике в этом отношении, а также в анализе законодательства с внесением соответствующих предложений по их совершенствованию.

Результаты: в ходе работы были выполнены задачи исследования. Проведенное исследование способствуют решению важной научной проблемы, которая заключается в выяснении конкретных действий, которые должны быть исполнены прокурором при рассмотрении уголовных дел в апелляционном производстве. Исследование будет способствовать разработке национальных нормативных стандартов в области участия прокурора в апелляционном производстве. Исследование направлено на решение некоторых практических вопросов, касающихся единого применения стандартов при участии прокурора в апелляционном производстве, с учетом индивидуальных особенностей уголовного дела. Наконец, исследование содействует улучшению учебного процесса в высших учебных заведениях в рамках уголовного процесса, в подготовке прокуроров для участия в апелляционном производстве.

Теоретическая значимость: это анализ правовых положений, связанных с подготовкой и участием прокурора при рассмотрении уголовных дел в апелляционной инстанции; систематизация результатов научной мысли, существующей как в Республики Молдова, так и в ряде зарубежных государств, в сфере исследования института реализации полномочий прокурора в уголовном апелляционном производстве; аргументирование выводов, явившихся результатом теоретических и практических исследований.

Прикладная ценность работы: на основании результатов исследования выявлены упущения правовых норм, касающихся участия прокурора в апелляционном производстве по уголовным делам, процедуры апелляционного производства по уголовным делам, допущенные на практике судебные и прокурорские ошибки в этом отношении, разрабатывая предварительные версии для их разрешения. Работа основана на большом количестве научных работ, которые будут иметь теоретическую и практическую ценность. Результаты работы могут служить основой для внесения изменений в уголовно-процессуальное законодательство в этой области, для подготовки студентов, магистров в юридических учреждениях, а также для применения на практике прокурорами, другими участниками процесса и судьями апелляционных инстанций.

Внедрение научных результатов: Результаты исследования опубликованы в 26 научных работах. Отдельные теоретические и практические положения диссертации были представлены автором и обсуждались на национальных и международных научно-практических конференциях, а так же представлены на VIII-ом Международном открытом конкурсе на лучшую научную работу среди студентов-бакалавров, магистрантов и аспирантов «Отправление правосудия по уголовным делам через призму уголовно-процессуального, криминалистического, оперативно-розыскного и судебно-экспертного опыта» имени профессора Е.Г.Мартынчика», организованным Юго-западным государственным университетом, г.Курска, Российской Федерации, будучи награжден дипломом лауреата I степени. Отдельные теоретические и практические положения диссертации и полученные результаты были применены и используются в практике рассмотрения конкретных уголовных дел в апелляционном производстве, для единого применения судебной практики Апелляционной Палаты Кахула.

CALENDARI Dumitru

**THE PARTICIPATION OF THE PROSECUTOR IN CRIMINAL
CASES IN COURTS OF APPEAL**

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