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CASE TRIAL PARTICULARITIES IN THE ABSENCE OF THE DEFENDANT

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THE CONCEPTUAL REFERENCES OF RESEARCH

The actuality and importance of the problem proposed for research: Respecting human rights remains the cornerstone of a democratic society and a condition of access to the international community. Thus, the European aspirations of the Republic of Moldova can be achieved only in accordance with the established and unanimously recognized standards of justice. In particular, this standard is to be respected in the criminal justice field, where there is in the most advanced way the risk of affecting rights and freedoms.

A special place among the principles of criminal procedural law is placed the principle of the right to a fair trial which also guarantees the right of the accused person in criminal matters to participate in his own trial knowing all the parts of the file.

On the other hand, the trial of the case in the absence of the defendant implies some derogations from the general norms of the criminal procedure, which limits the application of the principle of contradictory and equal arms, thus creating the risk of impairing the procedural rights. Therefore, ensuring a fair balance between the achievement of the purposes of the criminal process and the rights of the person absent at his trial is one of the fundamental problems of the contemporary criminal process.

Considering that one of the purposes of the criminal trial is both the defense of the person against the unjustified and illegal conviction, the defense of the victim's rights and freedoms, the procedure of judging the case in the absence of the defendant must be balanced so that both public and personal interests are realized.

Starting from the tendency of disappearance of the borders and the exclusion of any limitations in the movement of persons, the issue of the trial of the case in the absence of the defendant has gained scope and in the criminal procedural practice of the Republic of Moldova.

Fighting crime also implies respect for legality, democratic principles of justice and other guarantees provided by both the Universal Declaration of Human Rights (1948), the European Convention for Human Rights (1950) and the Constitution. The law enforcement bodies have the obligation not only to investigate the crimes committed, but also to do everything possible to ensure the protection of the legitimate rights and interests, the honor and dignity of the subjects involved in the criminal trial, especially in cases when the trial of the case takes place in the absence of the defendant who is absent from the trial.

It could be mentioned that theoretically there are two tendencies in the development of the institution of examining the case in the absence of the defendant, which are naturally

diametrically opposed. In a first perspective, the possibility of examining the missing case should be minimized in order to ensure the fairness of the criminal trial. On the other hand, starting from the evolution of the right to free movement, procedural mechanisms are needed that would ensure the achievement of a general purpose of the criminal process - establishing the truth and empowering the guilty.

Therefore, identifying a solution that would reconcile both sides is the only one that could ensure the fairness of the process on the one hand but also, on the other hand, the conviction of the persons guilty of committing an offense and which is avoided from the process and respectively the fulfillment of positive obligations of the state. In this sense, in the judicial theory and practice of the Republic of Moldova, there is no unanimously recognized concept that would ensure that both objectives are respected.

The aforementioned come to confirm the topicality of the treated subject, important both socially and legally, determining the choice of the topic for the scientific-practical study and establishing the basic directions of the research. This is also determined by the need to investigate the existing problems, in the criminal activity and to identify viable solutions that would ensure, in their finality, the fairness of the criminal process when examining the case in the absence of the defendant.

Description of the situation in the research field and identification of the research problems. During the investigation into the issue of the trial of the case in the absence of the defendant, it was found that the scientific problem addressed is a masterpiece for the science of criminal procedural law, so far not being fundamentally investigated.

Following the research of international standards, including the constant jurisprudence of the European Court of Human Rights, we come to the conclusion that if the internal law of the state admits the trial of the case in the absence of the defendant, the legislator is firstly obliged to indicate concretely in the content of the law the conditions for that such an examination is possible, secondly, it must ensure that all the constituent elements of a fair trial are respected and thirdly, to provide the defendant with a lack of compensatory procedural guarantees in the event of an unfair trial.

It should be mentioned that, even if in the last period the trial of the case in the absence of the defendant has gained scope, many procedural problems remain unresolved. Therefore, the objectives of the study involve the formulation of answers to the questions that arise in the adoption of the judgment of the case in the absence of the defendant, in the first court and the applicable procedure, establishing and analyzing the procedural guarantees of fairness and ensuring the right to participate in their own trial, the compensatory guarantees to be respected

during the trial in the absence of the defendant and after the adoption of the sentence of conviction *in absentia*, elucidation of the standards of legal summons and the conditions of official notification of the accusation as a premise attesting the legal notice about starting a criminal trial and granting a real possibility to the defendant to participate in his own trial, the obligation of the lawyer's participation in the case of lack of judgment.

In the context of the science of criminal procedural law, indigenous doctrines such as T. Vîzdoagă, D. Roman, T. Osoianu, V. Șterbeț, M. Poalelungi, I. Dolea, etc. analyzed the legal provisions regarding the trial of the criminal case with the participation of the defendant. Also, the visions and exegeses of the following authors have constituted the scientific-theoretical basis of the thesis: L. Clements, N. Mole, K. Reid, N. Volonciu, C. Bârsan, N. Volonciu, A. Vasiliu, G. Mateuț, M Udroiu, O. Predescu, B. Stefaneses, A. Cazacov, T. Trubnicov.

Purpose of the work: It is to study in detail the particularities and theoretical and practical problems of the institution of the trial of the case in the absence of the defendant in the first court. To research the legislation in the field, to examine the case law in the researched field. An essential element is the elaboration of some conclusions and concrete proposals regarding the improvement of the mechanism of the judgment of the case in the absence of the defendant. This purpose determined the need to set and solve the following tasks:

- to investigate the essence, the main characteristics, the importance, the types of the judgments of the case in the absence of the defendant;

- to analyze the theoretical and practical aspects, as well as the conditions for the adoption of the sentence in the judgment situation in the absence of the defendant;

- to analyze the specificity of the judicial investigation in the case of the trial in the absence of the defendant;

- to ascertain to what extent the rules governing the criminal prosecution are compatible with the achievement of the purpose of the examination in the absence of the defendant in the first court.

- to analyze and systematize the judicial practice on the causes judged in the absence of the defendant, both internal and of the European Court of Human Rights;

- to examine the legal provisions and the judicial practice regarding the reopening of the criminal case after the trial of the case in the absence of the defendant.

- to perform a comparative analysis of the domestic law in relation to the legislation of other states in the field of trial of the case in the absence of the defendant;

- to elaborate recommendations of law ferenda regarding the judgment in the absence of the defendant.

The objective of the research: It involves solving the problems that arise in the adoption of the judgment of the case in the absence of the defendant, in the first instance and the applicable procedure, elucidating the procedural guarantees of fairness and ensuring the right to participate in their own trial, the compensatory guarantees to be respected during the trial *in absentia*, establishing the standards regarding the legal summons and the conditions of official notification of the accusation as a premise attesting the legal notice about starting a criminal prosecution, the obligation of the lawyer's participation in the case of missing judgment, the analysis of the exceptions established by law from the general rule of judgment of the case with the participation defendant.

Synthesis of the research methodology: In order to carry out a complex investigation of the situations and the missing judgment procedure, different research methods were used, such as:

the logical method (deductive, inductive analysis, generalization - for examining and interpreting the legal framework and doctrinal material). Applying this method were analyzed the works of national and foreign scientists (Romania, Russian Federation, United States, Republic of Kazakhstan). And in total there are 301 sources.

the method of the synthetic analysis (which contributed to the formulation of general conclusions on the problem addressed and proposals of law ferenda in order to improve the internal legislation regulating the procedure of the missing judgment)

the historical method (used to analyze the way of regulating the cases of trial in absence during different periods, being studied the historical evolution of the institution of the missing trial.)

comparative method (carrying out analyzes of internal legal provisions in relation to those of other states and international treaties, as well as the doctrine of foreign states. Thus, the law systems of England, the United States, France, Germany, Romania, the Russian Federation were studied.

A special emphasis was placed on the use of the empirical method. In order to achieve the proposed objectives, the jurisprudence of the European Court of Human Rights in the matter of art. 6 of the European Convention has been extensively studied in 126 cases. In the same context, criminal cases examined by national courts from all levels of jurisdiction were analyzed. Thus, judgments of Ungheni-2, Calarasi-1, Cahul-1, Straseni-1, Bender-11, Chisinau-1, Balti-1, Causeni-1, Hincesti-1, Anenii Noi-1 courts were analyzed. Decisions of the Balti-2 and Chisinau-2 Courts of Appeal; The Supreme Court of Justice 16 cases. Two decisions of the CSJ

Plenum and 4 decisions of the Constitutional Court of the Republic of Moldova were also analyzed.

The novelty and the scientific originality. The work in question is the only research of the phenomenon of the judgment in the absence of the defendant, carried out in our country, in order to analyze the existing legal provisions, how to apply them in practice and the problems they raise. The paper includes the analysis and evaluation of the doctrinal visions in the matter both internally and of other states, as well as the elaboration of recommendations of the law and the jurisprudence for the efficiency of the judicial processes in case of the lack of the defendant in the context of respecting the fairness of the criminal process.

Theoretical significance: represents the analysis of the legal provisions pertaining to the prosecution, the summoning of the defendant to the trial and the cases admissible by law judging the case in the absence of the defendant, only after the execution of the legal conditions stated.

The scientific problem of major importance solved by the researched theme consists in the scientific analysis of the practical application of the legal provisions regarding the trial of the case in the absence of the defendant, the possible judicial errors admitted in this respect and of the compensatory guarantees that come to supplement the admitted violations, the conditions to be ensured for the adoption of a legal judgment of default, in relation to the legal provisions, aiming at the contribution to the correct and uniform application of the criminal-procedural law, but also to the improvement of the national normative regulations in this field. Through the analysis and recommendations made, we proposed to exclude the admission of interference with the rights of the defendant, the victim and other participants in the criminal process through the trial procedure when the defendant is absent at trial.

Theoretical importance: The subject of the paper is a quite important research topic in the criminal procedural law. This represents the analysis of the legal provisions pertaining to the prosecution, the relativity of the right to participate in the trial, the fairness of the criminal case in the absence of the accused, the summoning of the defendant to the trial and the cases admissible by law judging the missing case, only after the execution of the legal conditions stated. The paper analyzes the domestic and international practice in the field and offers the possibility to establish uniform practical rules for the trial of the case in the absence of the defendant, as well as to provide solutions in situations where the legal provisions are ambiguous. This fact, in turn, should contribute to strengthening the safeguards of the legitimate rights and interests of the defendant absent in the criminal trial, as well as in situations when he is subsequently present at other stages of the criminal trial.

The applicative value of the work. Based on the results of the investigation, the legal omissions in the part concerning the procedure of the trial of the case in the absence of the defendant are revealed, the judicial errors admitted in practice in this respect, being prepared preliminary versions for solving them. The work can be used efficiently in the activity of applying the legal provisions in practice. The conclusions and recommendations made in the present research can be used by the teaching staff and students when studying the trial of the case in the absence of the defendant in the institutions of higher education, course supports, as well as any other scientific work that will be elaborated in the case. It is also of practical importance as it will facilitate and form a uniform practice of practitioners regarding the decision to judge the case in the absence of the defendant.

The research carried out is welcomed for training both students and practitioners regarding the trial of the criminal case, the provisions of the special criminal procedural norm to be respected in case the defendant is not present at the trial.

Implementation of the scientific results: They can serve as a basis for amending the procedural - criminal law in the field, for training students, masters in law institutions, as well as for practical application by law bodies and courts.

Approval of the results: The conclusions and recommendations formulated have been dealt with in the content of several scientific works of the author and can serve as a theoretical-methodological basis for further research conducted in the field. Some ideas have been published in communications at national and international conferences, as well as in domestic and foreign scientific journals, such as:

1. The right of the accused to participate in the trial of the case. ”Dreptul” magazine, Union of Jurists of România, year CXLVII, new series year XXIX, no.5 / 2018.

2. The right of the accused to know the accusation in the light of the ECtHR jurisprudence, Journal of the National Institute of Justice, no. 1 (44) 2018.

3. The right to a fair trial in the absence of the defendant. The materials of the International Scientific Conference "Actual scientific research in the modern world", Pereyaslav-Khmelnitsky, 26-27 december 2017.

4. The problem of the citation, the way of resorting to the trial of the case in the absence of the person. The materials of the National Conference with international participation "Science in the North of the Republic of Moldova: achievements, problems, perspectives" (second edition), Bălți, September 29-30, 2016.

5. Forced entry and search announcement - ensuring the presence of the defendant in the court. Journal of the National Institute of Justice, no.2 (49) 2019.

6. "Procedural guarantees regarding the respect of the rights of the defendant absent from trial", Journal of Philosophy, Sociology and Political Science no.3 (178) 2018

7. Citation of the defendant - comparative analysis and judgment of the case in his absence, the Scientific Bulletin of the State University“ Bogdan Petriceicu Hasdeu” from Cahul, Social Sciences Series, no. 2 (6) / 2017

8. "The fairness of the trial in the judgment of the case in the absence of the person", the international scientific conference "The Perspectives and Problems of Integration in the European Space of Research and Education", the State University "B.P. Hasdeu ” from Cahul, June 7, 2016.

9. "The right of access to evidence of the absent defendant", Conference " Contemporary trends in the development of science: visions of young researchers" 5th edition.

10. "Respecting procedural rights in the trial of the case in the absence of the defendant", The 6th edition of the "Smart Cities" Conference.

Thesis publications - 5 publications and 5 communications at conferences and other scientific forums.

Volume and structure: Due to the established standards, this thesis has the following structure: 180 pages basic text, annotation in Romanian, English and Russian languages, list of abbreviations, introduction, four chapters divided into paragraphs, general conclusions and recommendations, bibliography, statement regarding the responsibility and the author's CV.

Keywords: judgment of the criminal case in the absence of the defendant, knowledge of the accusation, the right to participate in the trial, reopening of the criminal trial, resumption within the term of appeal, legal summons, announcement in search, forced entry.

THE CONTENT OF THE THESIS

The present paper is preceded by an **Introduction**, which argues the topicality and importance of the researched topic, specifies the purpose and objectives of the thesis, reflects the scientific novelty of the obtained results, as well as the important scientific problem in the research field. Also in the same order of ideas are determined the theoretical significance and the applicative value of the paper, the research hypothesis and the synthesis of the research methodology, the approval of the results was highlighted and the summary of the chapters of the thesis was described.

In Chapter I **"Analysis of the situation in the field"** consisting of two paragraphs, there is presented an examination of the scientific materials published in the Republic of Moldova and abroad, concerning the issue of the judgment of the case in the absence of the defendant, thus

highlighting the contribution of the doctrine in this regard. The conclusions of this chapter, in order to achieve the proposed scientific purpose, have met certain objectives, among which, the research of the scientific materials regarding the right to participate in the trial, the particularities of the trial procedure in the absence of the defendant, the analysis of the procedure for the adoption of the judgment in absentia, the compensatory guarantees and the procedural standards in the case of the missing judgment, published in the Republic of Moldova, Romania, the Russian Federation, and in other states, thus identifying the place of the research carried out in the scientific investigations undertaken so far.

As a result, the first paragraph called - *Analysis of the doctrine of the Republic of Moldova on the issue of the trial of the case in the absence of the defendant*, represents the results of the research in the Republic of Moldova related to the issues that are related to causation with the problem of judging the case in the absence of the defendant, or as it was established following the research carried out, papers on the subject were not found in the Republic of Moldova, which is why there was a pressing need to carry out in-depth studies in the field. In order to achieve the proposed scientific purpose, an impressive number of studies and scientific elaborations were carried out, which deal with direct topics, related to the judgment in the absence of the defendant, such as: effective defense, the importance of the defendant's participation in the trial through his hearing, ensuring the respect of the right to be present in the trial, elucidating the standards of the right to a fair trial, the role of the lawyer and the state prosecutor. In this regard we could mention the works of the following authors:

Ig.Dolea, in his work "The rights of the person in the criminal probation", carries out an analysis of the accusation in criminal matters, the importance of the right to participate in the debates in the hearings of the defendant through the prism of the European Convention, as well as the national practice, thus from this work. Deduced the necessity of the defendant's participation in the trial, in order to respect the right to a fair trial, by listening to it and granting the possibility to question the witnesses. At the same time, in terms of the elements of the principle of equality of arms in the perspective of strengthening the rights of the accused, the author addresses the question of his participation in the criminal probation, indicating that it has to be examined through the prism of two aspects: by the actual participation by the accused in the carrying out of the procedural actions by the accused party, firstly, and in the second, the participation in the independent procedural actions carried out by the defense. [1]

[1] Dolea, I. The rights of the person in the criminal probation. Chișinău: Juridical Book Ed., 2009. 416p. ISBN 978-9975-9927-7-0

Tatiana Vîzdoagă in the work "The essence, structure and importance of the accusation" analyzes the notion of accusation, the semantic components of the given term, and indicates its purpose of accusing a concrete person, who consequently must be informed about the beginning and object of the accusation activity, as well as about all subsequent changes in the factual and legal indications of the wrongful act imputed to him. [2]

D. Ojindovschii indicates that the criminal procedural law, based on the principle of objectivity, indicates that the criminal prosecution body has the obligation to take all the measures provided by law for investigating in all aspects, complete and objective, the circumstances of the case, to highlight both the circumstances. Which prove the guilt of the suspect, the accused, as well as those who blame him, as well as the circumstances that mitigate or aggravate his responsibility. [3]

Vasile Mihoci in "Listening to the accused and the accused regarding the facts and the accusation that is brought to him - guarantee of the right to defense in the Romanian criminal trial", indicates that the statements of the accused or the defendant constitute a means of proof and a means of defense. [4]

By means of the statements the suspect, the accused and the defendant defend themselves against the accusations brought to him, fact indicated by Lucian Furnică in "The notion and importance of the statements of the suspect, the accused and the defendant".[5]

In his monograph "The right to a fair trial - guarantor of individual freedom and personal safety" Constantin Olteanu, in addition to the guarantees deriving from the provisions of art. 6 of the Convention also mentions that the right of the person to appear personally at trial, although not guaranteed as such by the Convention, cannot be ignored in order to ensure a fair trial. [6]

Performing a Comparative Analysis of the European Human Rights Handbook: Filing a Case Based on the Convention by Luke Clements, Nula Mole, Alan Simmons, [7] in connection

[2] Vîzdoagă T. The essence, structure and importance of the accusation. In: Scientific Annals of the State University of Moldova. Legal Sciences. Current issues of jurisprudence: achievements and perspectives. New series no. 6. Chișinău, 2002. pp.317-327

[3] Ojindovschii, D. Contradictoriality of the parties in the criminal case. National Law Magazine no. 4 / 2001. p. 73-76. ISSN 1811-0770

[4] Mihoci, V. Listening to the accused and the defendant regarding the facts and the accusation brought to him - guarantee of the right to defense in the Romanian criminal trial. National Law Magazine, no. 7 / July 2005. p. 21-24. ISSN 1811-0770

[5] Furnică, L. The notion and importance of the statements of the suspect, the accused and the defendant. Scientific annals of the State University of Moldova. Socio-humanities series. Vol.I. Chisinau: 2006.683 p. (618-621p.)

[6] Olteanu, C. The right to a fair trial - guarantor of individual freedom and personal safety. National Law Magazine no. 6/2013. pp. 37-40. ISSN 1811-0770

[7] Clements, L., Mole, N., Simmons, A. European human rights: bringing a case under the Convention. Chisinau: Ed. Cartier juridic, 2005, 543 p. ISBN 9975-79-367-3

with the work of Karen Reid's Specialist in the European Convention on Human Rights[8], I found that in fact the first paper analyzes very vaguely the problem of the judgment in the absence of the defendant, being analyzed the situation of judgment in the absence of the person in both civil and criminal cases, with the establishment that the court has the obligation to find an equivocal renunciation of participation in the trial, with the guarantee of guarantees as far as importance. Instead, the second monograph carries out a more detailed analysis of the defendant's presence before the court, being given general notions in this regard, conditions for renouncing to participate in the trial, the causes of exclusion from participation and the possibility of a re-trial on the merits. Very detailed is analyzed the procedure of informing about the accusation brought, the fact that this should not only include the cause but also the legal framework, so that the accused can prepare his defense, this fact being necessary to respect the fairness of the procedures.

It should be noted that the phenomenon of the trial of the case in the absence of the defendant is investigated substantially, and regarding the summons of the defendant, the procedural measures to ensure its presence, such as the forced bringing or the announcement in the search, the reopening of the criminal trial after the missing trial, some theoretical treatments were not found.

The second paragraph - *The analysis of the doctrine from the countries abroad*, represents an analysis of the research from the countries abroad related to the problem of the judgment in the absence of the defendant, such as Romania, the Russian Federation, France, United States of America. Also, an analysis of the regulations of the international treaties was made, regarding the lack of judgment procedure and ensuring the observance of the procedural rights of the absent defendant. In some countries, from abroad, the issue of the trial of the case in the absence of the defendant absent at trial, is analyzed in more detail, with the elucidation of concrete problems or solutions on a case, research on the procedural action of summoning and assuring the right of the defendant to participate in the trial, with the existence of a predetermined practice on the reopening of the procedure after a missing trial and guaranteeing the right to defense of the defendant absent at trial.

In this sense we could mention the following works:

Ion Neagu in the work "Criminal Procedural Law Treated" mentions that regarding the presence of the defendant in the criminal trial, special provisions are found in Romanian law, so

[8] Reid, K. The specialist's guide to the European Convention on Human Rights. Chisinau: Cartier Juridic Publishing House, 2005. 669 p. (.83, 145, 178p.) ISBN 978-9975-79-395-7

that the summons will be handed to him three days before the trial, so that he can organize defense. [9]

Nicolae Volonciu in the work "Treaty of Criminal Procedure", indicates only in general lines that the absence of the legally cited parties does not in itself constitute a hindrance of the judgment. It is mentioned about the possibility of bringing the defendant's initial compulsion, in the absence of a summons, as well as the compulsory participation in the trial of the defendant who is under arrest.[10]

Andrei Viorel Iugan, indicates that if he is evaded and is not present before the court, the escape of the defendant is an act by which he renounces the presence in the trial, in this case it is not obligatory to resume the procedure. [11]

Corneliu Bîrsan addresses the issue regarding the trial of the case in the absence of the defendant, from the point of view of ensuring the right to defense, reiterating the obligation of the state regardless of the situation to ensure the right to defense of the defendant absent at trial.[12]

Lucian Stanescu concludes that there is no impediment to carrying out the criminal prosecution in the absence of the defendant, and implicitly of his sending to trial in default, provided that all the methods of forensic search and legal summons have been exhausted before the criminal prosecution body, because this phase of the criminal trial is unpublished and without contradictory nature. [13]

Boico E. N in the publication "Realization of the principle of legality in the trial of the criminal case in the absence of the defendant", indicates that the judgment of the criminal case in the absence of the defendant is a derogation from the rules of the criminal process that establish the obligatory participation of the defendant in the judicial investigation. The author considers that observance of the principle of legality is a mandatory condition to be respected by the courts, noting that the procedure of judging the case in the absence of the defendant is derogation from the general rules. [14]

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[9] Neagu, I. Criminal procedural law. Treaty. Bucharest: Global Lex Publishing House, 2002. 885 pages ISBN 973-85116-5-8

[10] Volonciu, N. Treaty of criminal procedure. The special part. Vol. II. Bucharest: Paiadeia Publishing House, 1996. 513 pp. ISBN 973-9131-24-7

[11] Iugan, A.V. The reopening of the criminal case. Bucharest: Universul Ed., 2016. pag.7. ISBN 978-606-673-777-7

[12] Bîrsan, C. European Convention on Human Rights. Comment on articles. 2nd edition. Bucharest: C. H. Beck Publishing House, 2010. p. 559 ISBN 978-973-115-676-7

[13] Stănescu, L. Trial of the defendant in default. Journal of criminal law of the Romanian Association of Criminal Sciences. Year XII, no. 1 January-March. Bucharest, 2005. p. 117-121. ISSN 1223-0790

[14] Boyko, E.N. Implementation of the principle of legality in absentia criminal cases in a court of first instance. publicated in “Bulletin of SUSU”, issue No. 40, 2009. Series “Law” issue 20. pag.21-23.ISSN 2412-0588

Cazacov Alexandr in the work "Judicial investigation in the absence of the defendant", defines the trial of the case in the absence of the defendant as an institute of the criminal trial, which involves the trial of the case by the judges and courts of appeal in the absence of the defendant, which is characterized by the existence of derogations of the general principles and rules of the criminal trial, and consequently to a complex set of distinctive features in relation to the general procedure of judging the case. [15]

Tukiev Aslan, considers that the trial of the missing case is admissible with respect to the order and conditions established by the law, the special way of investigating and judging the criminal case, as well as of the investigation of the evidence, with the granting of the special right to the defendant to challenge the decision adopted in default. [16]

Rabţevici Olesea, indicates that the importance of judging the case in the absence of the defendant implies the attention of both theorists and practitioners on the grounds that the given procedure implies the maximum respect of the rights of the defendant on the one hand, and on the other hand is the respect of public interests, namely of the execution, justice, including restoring social equity and respecting the rights of the injured party. [17]

Following the research of the scientific works, we concluded that the criminal procedural theory from the countries abroad compared to that of the Republic of Moldova, records detailed analyzes of the issue of the trial of the case in the absence of the defendant.

Chapter II "Substantive conditions in the trial of the case in the absence of the defendant" consists of four paragraphs. This chapter analyzes the procedural guarantees for the fairness of the criminal procedure in the absence of the defendant, the assurance of his right to participate in the trial, the official notification regarding the accusations brought, as a premise attesting to the accused's notification about starting a criminal case regarding him and the obligation to participate in the trial, as well as the compensatory procedural guarantees available to the defendant who did not participate in the trial.

The first paragraph entitled - *Generalities regarding the mandatory procedural standards in the absence trial*, describes the principles of the right to a fair trial, as well as the principle of contradictory, equality of arms adjusted at trial in the absence of the defendant. When examining

[15] Kazakov, A.A. Absentee trial of criminal cases. Abstract of a dissertation on law. Yekaterinburg, 2009. [quote 23 ianuarie 2017] Disponibil: http: //lawtheses.com/zaochnoe-sudebnoe-razbiratelstvo-ugolovnyh-del#ixzz4WZZl9uWob.

[16] Tukiev, A. S. Problems of the Procedural Form of Correspondence Criminal Procedure. Abstract of diss. juridical sciences. Republic of Kazakhstan Karaganda, 2005. [quote 28 noiembrie 2017] Disponibil: http://kalinovsky-k.narod.ru/b/avtoref/rk/tukiev.htm - 29 noiembrie 2017.

[17] Rabtsevich, O. Correspondence trial in criminal cases: in search of a compromise between the protection of public interests and human rights. Journal Law No. 1, January 2011. pag. 188-195. ISSN0869-4400

the criminal case in the absence of the defendant, the determining rule "of play" is to ensure the respect of the substance of the right to a fair trial. Also, a summary analysis of the guarantees listed in art.6 par.1) is to be ensured during the criminal trial in the absence of the accused, in order to respect the right to a fair trial.

The right of the person to attend the trial is not expressly provided for in the Convention, even in criminal matters, as opposed to the law of the vast majority of the Member States, but it has been recognized by the courts established by the Convention in certain situations. Taking into account the fact that the right of the accused to be present in court is recognized in the International Covenant on civil and political rights and that art. 6 § 3 of the Convention recognizes to the accused "the right to defend himself", "the right to question witnesses" and "the right to be assisted free of charge by an interpreter", the Court held that the presence of the defendant is, in principle, mandatory at the trial of the case. [18]

Following the analysis of the principles and guarantees of the fair trial, it has been concluded that it is possible, in certain exceptional circumstances, to admit that a criminal trial may take place in the absence of the accused or a party.
In this case, the authorities, in spite of their efforts, should have been unable to notify the person concerned of the summons [19] or that this way of acting would have corresponded to the need for a proper administration of justice.

A party may waive its right to attend the hearing, but only if such a waiver is unequivocally established and "a minimum of guarantees appropriate to its severity is ensured."[20]

When examining the criminal case in the absence of the defendant, the realization of the principle of contradictory nature manifests itself in the activity of the defender, who will use all the possible levers and present, usually without the consent of the absent client, all the existing evidence, which would ensure an effective defense, having an active role in process framework.

Contradictoriality should not be understood strictly as a difference of opinion expressed by the parties of the process but also as the possibility of each party to express their point of view, to support and prove the hypothesis most advantageous to themselves. [21] But in order to be able to do so, the party must know the existence of the process, the parts of the file, and the position

[18] International Covenant on Civil and Political Rights adopted and opened for signature by the General Assembly of the United Nations on December 16, 1966.
[19] Colozza v. Italy, no. 9024/80, para. 28, ECHR, of February 12, 1985. [quote May 15, 2016] Available: http://hudoc.echr.coe.int/eng?i=001-100633.
[20] Poitrimol v. France, no. 14032/88, s. 31, ECHR, November 23, 1993. [quote May 15, 2016] Available: http://hudoc.echr.coe.int/eng?i=001-94588.
[21] High Court of Cassation and Justice. Decision no. 3245 of October 5, 2004, in the Bulletin of the Cassation no. 1/2005. p. 56. ISSN 1584-8590

of the other parties. This obligation is not fulfilled, in full, if the accused escapes from the law enforcement bodies and the case is remanded to the court in his absence.

The court will determine the culprit of the defendant only after the investigated evidence, despite the fact that the defendant is absent at trial and does not present his evidence on the non-involvement in committing the crime, but until his guilt will not be proven in a trial contradictory, it is presumed innocent.

The second paragraph is entitled - *Knowledge of the accusation as one of the substantive conditions when examining the case in the first instance*, the content of which implies the analysis of the notion of accusation in criminal matters. According to the case law of the European Court, if this is unclear or it is impossible to establish the date on which the accusation is made known to the suspect, the examination starts from the date on which the accused's situation was seriously affected as a result of the suspicion against him. Determining the moment from which one can speak of a criminal prosecution is of importance because from that moment the right of access to a court is guaranteed. [22] The criteria for determining whether a certain procedure falls within the criminal domain of art. 6, according to the jurisprudence of the European Court, namely: the qualification from the national law of the state concerned, the nature of the act incriminated and the nature and degree of severity of the sanction, these three criteria being alternative. [23] Following the analysis of the European Court's judgments on the causal link between the acquaintance of the accused and the missing judgment, such as Coniac v. Romania, it has been established that in principle a defendant cannot be tried in his absence since he has not been officially informed, the fact of starting a criminal case regarding him, as well as the accusations brought to him, thus being deprived of the right to defense and a fair trial. [24] However, starting from the relativity of the right to participate in the examination of their own cause, especially when the person escapes from the trial, the indictment in the absence of the person is an approach in the context of European standards.

The notification of the accused regarding the accused brought includes his information about the correct legal classification of his deed, so that in case he is convicted, he knows the facts and law of the deed for which he was convicted. Naturally, if the charge is made in the absence of the person, the respective information will be made available to the defender.

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[22] Reinhardt and Slimane-Kaid v France, par. 93, ECHR, March 31, 1998. [cited August 20, 2018] Available: //hudoc.echr.coe.int/eng?i=001-58149.

[23] Engel v Netherlands, para. 35, ECHR, dated June 08, 1976. [quote February 4, 2017] Available: //hudoc.echr.coe.int/eng? I = 001-57478.

[24] Cognac vs Romania, ECHR, from October 6, 2015. [cited November 13, 2017] Available: https: //legeaz.net/monitorul-oficial-281-2016/hotarare-cedo-coniac-vs-romania.

By initiating a criminal action in respect of a defendant who is not legally informed about this fact, he creates the condition of impossibility to present his arguments and evidence on the accused's accusation which could be subsequently detained and investigated by the court. So the case will be examined in its absence to form an impartial opinion on the case brought.

At the same time, it is considered that in principle a defendant cannot be tried in his absence since he has not been officially informed of the fact of starting a criminal case, as well as the accusations brought against him, thus being deprived of the right to defense and a fair trial.

Third penultimate paragraph, called - *Relativity of the right to participate in the trial of his own case*, reflects the importance of the defendant's participation in the trial and the relativity of his right to appear before the court, Mircea Bădilă indicating that after hearing the defendant the motive can be established. Determined on the defendant when committing the criminal act, the way he conceived and committed the criminal act. [25]

The European Court has decided that the states have the obligation to perform reasonable diligence in order to verify, in the absence of the accused, the reason for not presenting it to the magistrates, as there may be a violation of art. 6 and when the states judged the defendant in default, believing that he fled, without verifying the validity of the given hypothesis. [26]

It was analyzed that a defendant must be able to participate effectively in the proceedings in order to present his arguments and evidence before the magistrates. However, this right is a relative one, and if the defendant through his actions of disinterestedness with regard to the participation in the criminal trial in which he is involved, he points out the rights of the other participants involved, as well as the purpose of carrying out the justice, the possibility of conducting the judicial investigation is attested and of examining the cause in its absence.

The trial of the case in the absence of the defendant in the investigation was evaluated, depending on the social purpose and their legal role in the criminal justice system of the Republic of Moldova. First of all, from the position of the prosecution party and the state, the lack of judgment could be appreciated as a tool for realizing the principle of the inevitability of the release of criminal liability of the persons who dodge from the law enforcement bodies.

Second, the missing trial can be viewed from the defense point of view as a way of indirectly realizing its right to defense. The significance of the missing judgment in this case lies in the possibility of the defendant, who considers that the accusation against him is illegal and /

[25] Bădilă, M. Knowledge of the defendant in order to be heard in court. In the Criminal Law Magazine of the Romanian Association of Criminal Sciences. Year VII, no. 4 October - December. Bucharest, 2000. p. 105-106. ISSN 1223-0790

[26] *Medenica v. Switzerland*, para. 53-58, ECHR, June 14, 2001. [cited June 28, 2016] Available: http: //hudoc.echr.coe.int/eng? I = 001-59518.

or unfounded, to realize his right to remote defense through his defender, and to try to prove his innocence in place to hide from the authorities.

The trial of the case in the absence of the defendant directly affects both the rights of the defendant, so that he must have the possibility to participate in the trial, to defend himself or through a lawyer, as well as the injured party is interested to be punished the guilty person and the sentence to be put into execution.

The particular case specific to the political situation in the Republic of Moldova, as well as the situation of the Transnistrian region, was analyzed, so the practice raises question marks about the impossibility of ensuring the right to participate in the criminal trial of the defendant who, during the substantive examination, is arrested by the non-constitutional bodies of Dniester, or executes the prison sentence in the penitentiaries of the Transnistrian region, a separatist region over which the Republic of Moldova has no control, at least since the end of 1991. There are unconstitutional institutions operating in this territory, including armed and police structures, a state of fact held by the European Court in the case of Ilascu and others against Moldova and Russia. [27]

In the conditions regarding the trial of the criminal cases with the defendants who are arrested on the left bank of the Dniester and the impossibility of ensuring their right to participate in the trial, it is confirmed that it is the positive obligation of the authorities of the Republic of Moldova to take positive actions in order to ensure and respect the rights of the person who have the status of defendants in the criminal cases that are examined by the courts, but for political reasons it is impossible to ensure their presence in the court hearings.

The last, fourth paragraph, entitled - *Compensatory procedural guarantees in the trial of the case in the absence of the defendant*, involves the analysis of three institutions, which constitute procedural guarantees that would ensure the fairness of the trial in the absence of the defendant, namely: the right to the defense, the reopening of the criminal trial and restart within the call time. It was established that in theory and in the law there are no notions of the compensatory guarantees, but the European Court in its practice operates with the given term, so in the Valdhuter case against Romania, he mentioned the need to establish the existence of the compensatory elements, especially the solid procedural guarantees, sufficient to counterbalance

[27] *Ilaşcu and others against Moldova and Russia*, ECHR of July 08, 2004. [cited September 10, 2018] Available: http: //hudoc.echr.coe.int/eng? I = 001-112650.

the difficulties caused by the defense as a result of admitting such evidence and to ensure the fairness of the procedure as a whole. [28]

In the case of Bimer SA vs Moldova, the Court stated that the existence or lack of compensatory clauses in the relevant legislation can be an important factor in assessing the fact that the contested measure respects the right balance and, in particular, if it imposes a disproportionate burden on the applicant. [29]

The Criminal Procedure Law of the Republic of Moldova, as a compensatory guarantee, prescribes that in the case of the defendant's absence from the criminal trial and the adoption of a decision to adjudicate the case in his absence, the legal bodies according to art.321 CPP have the obligation to ensure representation interests during the process by a defender granted on behalf of the statute, or the defender chosen by him. Even if the defendant at the initial stage of the criminal trial has renounced the defender this renunciation being admitted by the court, and subsequently avoids from the presentation at trial, the court has the obligation to appoint a lawyer. Non-observance of the right to legal assistance cannot be compensated for by other procedural protections, such as the subsequent assistance of a lawyer or the contradictory nature of the subsequent proceedings, the necessity of strictly enforcing the obligation to defend the acussed with the defendant at the initial stage of the criminal prosecution, in order to avoid subsequent procedural collapses in case of its avoidance from the presentation to the trial of the case. The court will be unable to admit the statements of the defendant, and the evidence collected by the criminal prosecution body in the case of the trial in the absence of the defendant, due to the lack of involvement in the procedural actions of the lawyer, or this constitutes an interference with the fairness of the process.

According to the ECtHR, legal assistance must be effective, and the state has the obligation to provide the lawyer with the information needed to organize a proper defense. [30] If a certain lawyer is inefficient, the state is obliged to insure another lawyer, [31] the positive obligation of the statute is revealed in order to insure it in case of a judgment in the absence of the defendant, in order to avoid the subsequent finding of interference in the rights of the accused inefficient defenses. However, the Court has been reluctant to hold states accountable for the failures of lawyers who, being members of independent and liberal professions, should organize

[28] *Valdhuter v. Romania*, ECHR of June 27, 2017. [cited January 18, 2019] Available: http: //hudoc.echr.coe.int/eng? I = 001-183006.
[29] *Bimer SA v Moldova.* ECHR, July 10, 2007. [cited January 18, 2019] Available: http: //hudoc.echr.coe.int/eng? I = 001-112740.
[30] *Ocalan v. Turkey*, no. 46221/99, para. 146, ECHR of May 12, 2005. [cited February 24, 2017] Available: http: //hudoc.echr.coe.int/eng? I = 001-182659.
[31] *Arctic vs Italy*, no. 6694/74, para. 33, ECHR of May 13, 1980. [cited April 29, 2017] Available: http: //hudoc.echr.coe.int/eng? I = 001-57424.

themselves. The ECtHR has frequently found that: A State cannot be held responsible for any deficiency on the part of a lawyer appointed for the purpose of providing legal assistance ... (States) are required to intervene only when the failure of the defense to provide effective assistance is obvious or is made known to a sufficient extent. [32]

Another compensatory guarantee analyzed in the content of the thesis is the re-examination procedure after an examination in the absence of the defendant, the purpose of which is to guarantee the right of the person to a fair trial, while respecting the right to defense, which attests the possibility of the convicted person to be heard, interrogate witnesses, to administer evidence in defense of the state of affairs as well as the circumstances, while ensuring compliance with all the principles governing the criminal trial in a rule of law. The purpose of the trial is to offer the possibility of the convicted person to exercise his right to defense and at the same time to benefit from a criminal trial that respects the principle of contradictory and the principle of finding out the truth, which can receive consistency through the new data and elements that the one requesting re-judging may present to the judicial bodies, data and information that may reveal new aspects regarding the state of fact and the criminal activity that was the subject of the case. The procedure of re-judging a case of a convicted judge is a necessary procedure, which comes to ensure the existence of a fair trial for each person, but this procedure should not be used automatically and not as a consequence of the guilty or abusive attitude of the defendant, but it is necessary that its applicability be examined by the court in a contradictory procedure and in accordance with the requirements of a fair trial.

Another compensatory guarantee that arises in the case of trial in the absence of the defendant is the over-term appeal, regulated in art. 404 CPP of the Republic of Moldova, being indicated that the participant in the trial who was absent both at the trial and at the pronouncement of the sentence and was not informed about the adoption of the sentence may declare an appeal over time, but not later than 15 days from the date of the execution of the execution the punishment or collection of material damages.

Chapter III with the generic "**Form conditions in the trial of the case in the absence of the defendant"**, is divided into four paragraphs. It involves the analysis of the procedural actions to be carried out by the law enforcement bodies to ensure the presence of the defendant in the trial and the adoption of a legal judgment decision in his absence, such as the legal notification, the necessary actions to be taken in the case of the defendant's intentional refusal to

[32] *Orlov v. Russia,* no. 29653/04, par. 108, ECHR of June 21, 2011. [cited November 29, 2016] Available: http: //hudoc.echr.coe.int/eng? I = 001-105273.

appear to the trial or its avoidance, a study of the exceptions established by the criminal procedural law from the rule of the trial of the case with the participation of the defendant.

The first paragraph entitled - *Citation as a compulsory procedural condition*, examines the summons procedure for the trial term, or Mihaela Laura Pamfil, indicates that there can be no contradiction between the parties in which the parties are not present at the trial. [33] Thus, the conditions, place and manner of summoning the defendant are analyzed, the content of the summons with the elucidation of the judicial errors appeared in practice in this regard. It was mentioned that the importance of the institution of the summons lies in the fact that the given procedure aims to ensure that the accused is effectively aware of the procedural actions that take place in his or her case and can voluntarily decide whether or not to participate. The lack of legal summons of the defendant to the trial, constitutes an infringement of his rights, which deprives him of the possibility to participate in the trial, to defend himself and to present his evidence on the accusation brought, and such an error cannot be compensated by providing him with a defender who will represent his interests.

Regardless of the legal system of the entities, each state in its legislation regulates the institution of the citation, given that its purpose implies ensuring the presence of the defendant in order to guarantee his rights to a fair trial, only that the way of treating this institution differs from a state to another.

The trial of the case in the absence of an accused in respect of which the summons procedure was not carried out in the manner established by the law is, in our opinion an illegality, because it could lead to the impossibility of executing the court decision and to annul the decision taken. It follows that the law requires the actual and non-formal knowledge of the parties regarding the deadlines set by the criminal investigation bodies or the courts, in order to carry out the legal procedural documents; moreover, it is necessary to assure the quoted person the real possibility to become acquainted with the citation, with all the data that it must contain. Therefore, the trial is vitiated if there is no evidence of effective notice of the interested party regarding the deadline set for the trial, because only in this sense can the right of any accused to benefit from the time and facilities necessary to prepare his defense be allowed. No restriction on the exercise of this right, as enshrined in Article 6 paragraph 1 and paragraph 3 of the European Convention.

The second paragraph referred to the *Procedural measures applied after the summons* - analyzes the procedural actions of forced bringing and announcement in the search to be ordered

[33] Pamfil, M.L. Call. Citation. In the Criminal Law Magazine of the Romanian Association of Criminal Sciences. Year XII, no. 4 October - December. Bucharest, 2005, pages 56-65. ISSN 1223-0790

by the court after completing the procedure for summoning the defendant. It was mentioned that the forced bringing and the announcement in search are additional procedural measures ordered by the court in order to ensure the presence of the defendant in the trial and discipline against his obligation to appear before the law body, after its legal summons, which provides the possibility of taking a legal decision on the case on the trial of the case in the absence of the defendant. Forced enforcement as a measure of coercion, is used to ensure the fulfillment of procedural obligations by the participants in the criminal process, as well as a means of influence in carrying out the procedural and investigative actions to ensure their proper functioning.

This paragraph contains the exposition on the mode of application according to a pre-established judicial practice of the institutions of compulsion and the search announcement. Thus, initially the defendant is quoted by the court at the addresses indicated in the documents of the criminal case, and later in the case of not handing the summons, depending on the reason indicated for not receiving the summons, by order the conclusion is ordered to be sent to the police in his domicile radius for execution, or obliging the state accuser to present to the court information regarding his domicile according to the Population Record Registry. If the information regarding the impossibility of enforcing the conclusion of the forced arrest by the police is reached, the state prosecutor submits to the court if he has additional evidence on the accused's avoidance, after which he submits his request to announce in search of establishing a preventive measures depriving or not of freedom depending on the seriousness of the crime for which he is accused. In most cases, if the defendant is accused of committing a crime with a higher social danger, the deprivation of liberty measure is applied, but if he is accused of committing a minor or less serious crime, a non-custodial measure is applied. In case of adopting the decision to announce the search for the defendant, the court decision is remitted to the internal affairs bodies for execution, which in turn has the obligation to submit to the court the information regarding the start of the search file, after which the court adopts the missing judgment and proceeds, when examining the cause thoroughly.

The penultimate paragraph, the third, called - *The procedure for finding the avoidance from the criminal process* - involves the analysis of the criteria that are the basis for the decision of the court decision regarding the trial of the case in the absence of the defendant through the legal provisions. According to the preamble to Resolution no. 75 (11) regarding the criteria to be respected in the proceedings of the trial in the absence of the defendant, it was reiterated that the presence of the accused in his trial is of vital importance, in order to rule both on his right to be

heard, as well as on the need to establish the facts and, the adoption of a legal sentence in the case; derogations to this effect should only be allowed in exceptional cases. [34]

Following the analysis of the legal provisions of the Russian Federation and Romania regarding the trial of the case in the absence of the defendant, it has been established that the law of all the states admits the trial of the case in the absence of the person, with or without his consent, based on the seriousness of the criminal act, with respect for the right to defense and other guarantees procedures established by law in this regard.

The judicial investigation in the absence of the defendant does not contravene the principle of contradictory and assuring the right to its defense, but implies difficulties in realizing the principles given in the criminal trial. In the paper I concluded that for the adoption of the missing examination decision, the court will have to deal with the following presumptions: that the defendant does not have any real and justified reasons for submitting the objection and that he was responsible at the time of the crime and during he was not ill with any mental illness that creates the impossibility of establishing a punishment.

The following conditions must be taken into consideration when adopting the default judgment: the intentional eviction of the defendant; the fact that he was not brought to criminal liability for the same act; the possibility of solving the merits of the case in the absence of the defendant and listening to his position; request by the parties to examine the missing case; the realization by the competent bodies of the necessary and real measures to ensure the presence of the defendant in the trial; mandatory participation of the defender in the trial.

The opinion of T. Trubnicov was also analyzed, regarding the lack of a trial of the case in the absence of the defendant as a separate procedure and the need to regulate the trial of the case in the absence of the defendant in a separate procedure of Russian criminal procedural law. [35] I have opined for the fact that this is an independent procedure in the criminal trial, which has its role and cannot be assigned to the category of proceedings with a higher degree of procedural guarantees, because the intended defendant is avoided from the trial, but not to the category of simplified procedures, because in this case it would tend towards a superficial and quick examination of the case, involving some violations of the rights of the accused absent at trial.

Following the research, it was concluded that the right to participate in the trial is treated as a relative one and can be restricted in the following circumstances:

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[34] Resolution no. 75 (11) of May 21, 1975, of the Committee of Ministers of the Council of Europe. [cited January 29, 2018] Available: https: //rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent? documentId = 09000016804f7581.

[35] Trubnikov, T.V. Consideration of the case in the absence of the defendant in the simplified judicial criminal procedure of the Russian Federation. În revista Bulletin of Tomsk State University, 2008. nr. 315. pag. 127 - 133. ISSN 1561-803X

- Limitation of the right to participate in the trial in cases where the accused interrupts the court proceedings to the extent that the court considers it impossible to continue the trial in his presence. The defendant may be temporarily excluded from the trial if his presence violates the victim's right to privacy. Or, such restrictions aim to prevent intimidation and re-trauma of the victim by involving her in a confrontation with the accused and resulting from balancing the rights of the defendant with those of the victim.

- The trial of the case in the absence of the defendant if he renounces his right, but in this case the renunciation must be unequivocal and contain a minimum protection that reflects its significance. [36]

If the defendant refuses to attend the trial, before making the decision to postpone the hearing or the decision to examine the case in the absence of the defendant, the court will examine each situation in particular, especially:

- Reason for refusing to attend court hearings - as a reason it may serve the defendant's will not to exercise his procedural rights, at the same time, the defendant's refusal may be motivated by the intention to protest against alleged violations of his rights. In this case, the defendant's refusal is determined not by the will not to participate in the trial, but by the alleged non-performance of the state's obligations.

- The importance of the defendant's participation in the trial - it must be assessed whether the defendant's participation is imperative, in order to ensure his right to a fair trial;

- The aspect of the violation of the rights of other participants in the trial by the absence of the defendant - the obligatory presence of the defendant in the trial will be appreciated also in the context of ensuring the respect of the procedural rights of the other participants in the process;

After analyzing the problems that arise in practice, it has been established that the court order in the absence of the defendant must, be subject to modifications and should follow the following objectives:

- to exclude the excessive simplification of the proceedings carried out in the absence, by superficial investigation of the evidence and the formation of the guilt conclusion by simply avoiding the defendant;

- taking into account the defendant's behavior when deciding on the extent of the punishment and on recovering the legal costs. Forming a system for executing sentences in absentia on the part of deprivation of liberty and collecting damages;

[36] *Poitrimol v. France*, no. 14032/88, s. 31, ECHR, November 23, 1993. [cited May 15, 2016] Available: http://hudoc.echr.coe.int/eng?i=001-94588.

- introduction of a clear procedure for annulment of the sentence adopted in the absence of the defendant.

The last, fourth paragraph, entitled - *Procedures for judging the case in the absence of the defendant*, presupposes the analysis of the exceptions deduced from the internal law from the general rule that the trial of the case is carried out with the participation of the defendant, namely:

- Judgment of the case at the request - for the trial of the case in the absence of the defendant, the following conditions can be elucidated at his request: the existence of a criminal case regarding the commission of a minor crime; the defendant's request regarding the trial of the criminal case in his absence and the obligatory participation of the lawyer. At the same time, the request is to comply with the following requirements: it is to consent to the free sense of the defendant regarding the trial of the case in his absence, and should not be taken under the influence of the criminal prosecution body or the court; the request cannot be addressed to the court at any stage of the judicial inquiry. We consider that the legislator is going to establish a procedural deadline by which the request can be addressed to the court, or the necessity of establishing such a regulation results from the disciplining of the parties, the way of establishing the order of the judicial inquiry.

Especially in the internal practice, the manner given for the trial of the case does not raise any question because the demand of the defendant persists, which presumes his free consent and the consequences for not participating in the trial by depriving him of some procedural guarantees.

- In case of dodging. It should be noted that the law admits the trial of the case in the absence of the defendant if he knows about the initiation and examination of a criminal case but intentionally refuses to appear at trial. The reference point for the application of the provisions starts from the fact that the court must have confirmatory evidence attesting to the legal summons, the defendant's knowledge of the trial of a criminal case on his behalf, or the court from the presentation of the defendant at the hearing cannot judge the cause in the absence his for dodge motive.

As conditions for the adoption of the decision to judge the case in the absence of the defendant, we could mention the following: the existence of a criminal case before the court; absence of defendant at trial; undertaking all possible measures to notify the defendant; the request of the state prosecutor to announce the search, as well as requesting a party to examine the case in the absence of the defendant; mandatory participation of the lawyer. If one of the

conditions is not met, it is presumed that the court decision of the case in the absence of the defendant is contrary to the law and implies interference with the rights of the defendant.

- When the arrested defendant refuses to be brought to court and this refusal is confirmed by his defender or the administration of his detention institution. Thus the law admits the trial of the case in the absence of the defendant when he, being in arrest, refuses to be brought in court for the trial of the case and his refusal is confirmed also by his defender or the administration of the institution of his detention.

The possibility of judging the case in the absence of the defendant, when he refuses to be escorted, is criticized by Trofimova Elena, as unfounded, which contravenes the principle of publicity, or his will regarding the participation in the trial does not have to be a decision-making factor. The defendant's participation in the trial is a guarantee of the objectivity of the judicial investigation, as well as the subsequent avoidance of some unfounded complaints of the defendant regarding the violation of the right to defense. The injured party does not have the right to refuse participation in the trial, and granting such a right to the defendant contravenes the principle of contradictory. This behavior of the accused denotes a lack of respect for the court. [37] It is attested that the defendant's refusal to appear at trial in the most frequent cases implies difficulties for the court, by postponing the trial of the case, and if witnesses and injured parties are present as a result, their opinion about their lack of confidence in the court is also formed. Given that it gives priority to the abusive behavior of the defendant over the manner of carrying out justice and the obligation to participate in the trial, as well as a possible failure to present them at subsequent court hearings, which involve other necessary procedural actions.

- Is released from the presence in the room due to discipline. The modality given for judging the case in the absence of the defendant is not stipulated in the criminal procedural norm that regulates the participation of the defendant in the trial and the legal conditions for judging the case in his absence. In fact, this implies a sanction that is applied to the defendant for the non-observance of the order and solemnity in the trial by him and to end his abusive behavior manifested by the lack of respect for the court being stipulated in the legal norm that regulates the measures that are taken against those who violates the order of the hearing.

[37] Trofimova, E. Correspondence litigation of criminal cases: regulatory regulation and practice. Voronej 2009. [citated 10 august2018] Available: http: //lawtheses.com/zaochnoe-sudebnoe-razbiratelstvo-ugolovnyh-del-normativnoe-regulirovanie-i-praktika-primeneniya#ixzz5Nn7dN6x9. [citat 10 august2018].

Ig. Dolea indicates that a disciplinary sanction does not apply to the defendant other than to warn of the need to respect the discipline, which is a preventive measure rather than a procedural sanction. [38]

In its case-law, the European Court has ruled that for the proper administration of justice the order and solemnity of the court hearing are defining elements of the judicial procedure. The defendant's flagrant failure to comply with the elementary rules of proper conduct cannot and should not be tolerated. [39] According to art. 63 paragraph (1) and (2) of the Statute of the International Criminal Court, establishes that if the accused, present before the Court, constantly disturbs the conduct of the trial, the Trial Chamber may order his evacuation from the courtroom, taking care to follow the trial and to give instructions to his lawyer. [40]

Respectively, the removal of the defendant from the ward constitutes a sanction for the non-observance of the order of the trial by not obeying the legal provisions and is to be treated as a sanction due to his fault. In such conditions, the court must give priority to the principle of officiality and necessity of justice, rather than the possibility of ensuring the defendant's presence in person in the trial and the free access to justice, by carrying out actions by him to prevent the execution of justice and disrespect. The basis for removing the defendant from the courtroom is to serve the repeated violation of the discipline and the refusal to submit to the court's decision, provided that it was previously warned about the unacceptability of such behavior during the trial and the consequences that may occur. The trial of the case in the absence of the defendant in case he is removed from the trial is in direct causal relation with his abusive and aggressive behavior, which intentionally induces a violation of the order at the hearing and shows a lack of respect for the court and the other participants. The court returning the obligation of correct application of the provisions prescribing its sanction by depriving the right to participate in the trial.

- Hearing one defendant in the absence of the other. It is admitted only at the request of the parties, on the basis of a reasoned conclusion, when this is necessary to establish the truth. It should be noted that such a situation is quite rare in practice.

The given situation is different from the ones mentioned above, because in the given case the absence of the defendant to the trial is expressly regulated by law, being admissible for carrying out procedural actions by the court, and the will of the defendant in the case is not taken

[38] Dolea, I. Application commentary of the Criminal Procedure Code. Chisinau: The Legal Book, 2016. p.761 ISBN 978-9975-3111-3-7.
[39] Ananyev v Russian Federation, par. 44, ECHR, July 30, 2009. [cited September 12, 2016] Available: http: //hudoc.echr.coe.int/eng? I = 001-150432.
[40] The Rome Statute of the International Criminal Court, adopted on July 17, 1998, ratified by the Republic of Moldova by Law no. 212 of 09.09.2010, published in the Official Monitor no. 190 on 29 September 2010

into account, so that it will be considered submit to the decision of the court. In this case, the absence of the defendant in the trial has a significant character, and implies minor restrictions of his rights, or he is not deprived of the right to request the hearing of the participants in the trial, to present evidence, is not excluded from the participation in the procedure of questioning, to participate in the debates. This situation does not fall in the case of the abovementioned regarding the existence of exceptions to the general principles and conditions of the trial that take place in the trial of the missing case, for which reason this temporary absence of the defendant is not sufficient to qualify it as a pure judgment of of the cause in the absence of the defendant.

Following the analysis of the topic I found that the trial of the case in the absence of the defendant persists for a long time, but both the theorists and practitioners of the given problem is not given a vague importance and has not been investigated in the criminal trial, despite the fact that due to its complexity and ambiguity, it involves many consequences and question marks.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Following the analysis of the topic addressed it can be found that the judgment in the absence of the defendant is an institution characteristic of the criminal procedure, however due to its complexity it creates problems in the judicial activity. Theoretically, this issue was not analyzed by the national doctrine, even though there is currently an upward flow of judgment in the absence of the defendant. The objectives of the paper were focused on the analysis of the particularities of judgment in the absence of the defendant, the emphasis being put on trial in the first instance. However, in order to ensure a complex investigation, aspects of criminal prosecution and appeal were examined tangentially, these being not included in objectives. I also found that the trial of the case in the absence of the defendant persists for a long time, but both theorists and practitioners of the given problem are not given a vague importance, despite the fact that it involves many consequences and question marks. At present, there is a tendency to judge several cases formally by the court in the absence of the defendant, as well as to avoid them more often from the trial. We would like to point out that this phenomenon creates a situation and opinion within the society that justice is not performed because the sentences adopted in the case are not executed.

I. Conclusions:

Starting from the objectives of the paper, as well as the fact that the current scientific problem of major importance has been demonstrated in relation to the research hypothesis, we formulate the following conclusions:

1. If the national law of the state admits the trial of the case in the absence of the defendant, then the legislator is obliged, first of all, to indicate concretely in the content of the law the conditions for which such an examination is possible, secondly, he must ensure compliance to all the constituent elements of a fair trial, and thirdly, to provide for the defendant the missing judge with compensatory procedural guarantees. [41]

2. A prerequisite for the trial of the case in the absence of the defendant is his legal notification about the initiation of a criminal case in his case, and the consequences of not appearing in the trial, so we consider it appropriate to include in the content of the summons for the defendant, stipulating the obligation to appear at the calls of the judicial bodies, being informed that in case of non-fulfillment of this obligation, the summonses and any other documents communicated to the first address remain valid and it is presumed that he became aware of them, being possible to judge the case in his absence.

3. In the context of ensuring the right to defense, we consider that art. 69 paragraph (1) CPP shall indicate as the reason for compulsory participation of the defender in the trial, the absence of the defendant.

4. It should be mentioned that the national law does not regulate the possibility of the dismissal of the criminal case regarding two defendants when during the trial one of them does not appear in court, there is no real evidence about the avoidance or refusal to appear at trial.

5. We consider it necessary to come up with regulations regarding the indictment in the absence of the person.

6. For the existence of an additional evidence attesting the legal summons of the defendant to the trial and the refusal to appear before the court, it would be appropriate to summon the defendant who is abroad of the republic under the conditions of art. 539 par. (1) CPP.

7. The basis for removing the defendant from the courtroom is to serve the repeated violation by him of the discipline and the refusal to submit to the court's decision, provided that previously he was prevented regarding the unacceptability of such behavior during the trial and the consequences that can happen. A useful thing would be to issue a reasoned conclusion to remove the defendant from the trial which can be challenged in order to avoid further interference with his rights.

8. We also consider that the legislator is to provide for the possibility of prosecuting the case in the absence of the defendant summoned legally (against signature), excluding the

[41] Ialanji A. "The right of the accused to participate in the trial of the case". Dreptul Magazine, Union of Jurists of Romania, year CXLVII, new series year XXIX, no.5 / 2018, pages 121-131.

procedure for announcing his search, if he is accused in committing a crime, for which the law does not establish the prison sentence. [42]

9. It would be appropriate to operate the modifications by the legislator in the Section 5 Chapter IX of the CPP of the Republic that regulates the re-judging in the case of extradition, adjusting it to the situations of re-judging the criminal case in the case of the convicted judge, by regulating conditions for the submission of the re-examination request, the measures to be taken by the court, the trial procedure and the actions to be taken according to the judicial document to be issued (admitting or rejecting the application).

II. Recommendations:

As a result I propose the following legislative recommendations:

1.Art. 281 paragraph (1/1) CPP is to be supplemented with the phrase: "An order for placing the person under indictment is issued in the case of the intentional eviction of the accused from the criminal case."

2. Art.282 CPP is to be supplemented by paragraph (5) with the following content: The prosecution in respect of the accused who is evicted from the criminal prosecution is performed in the presence of the lawyer within 48 hours from the issuing of the ordinance.

3. Article 287/1 paragraph (1) point.1) CPP shall be completed with the following content: "The criminal prosecution shall be suspended in the event that the accused has disappeared, unless the criminal prosecution can be carried out in the absence thereof."

4. Article 321 CPP in the following content:

"Participation of the defendant and the effects of his non-presentation"

1) The trial of the case is obligatory with the participation of the defendant.

2) The trial of the case is admitted in the absence of the defendant in the following cases:

- at his request in the case of minor and less serious offenses, indicating the reason for the impossibility of participating in the trial, which can be considered as plausible at the discretion of the court;

- in case of his avoidance when the evidence of the legal summons and the refusal of the accused to appear at the court's office and after presenting the probable and conclusive evidence by the state prosecutor regarding the fact that he is not at home and has left abroad, is present; its location cannot be found;

[42] Ialanji A. ”The forced bringing and the announcement in search - ensuring the presence of the defendant in the court” Journal of the National Institute of Justice, no. 2 (49) 2019, p.28-33

- in case the defendant, being in arrest, refuses to be brought in court for the trial of the case and his refusal is confirmed by his defender or the administration of his detention institution;

- under the conditions of art. 344 CPP;

- in the case of the defendant abroad who is avoiding to appear at the trial, and whose extradition has been refused, with the existence of a confirmation regarding the explanation of the possibility of judging the case in his absence.

3). The participation of the chosen or appointed lawyer is compulsory.

4). In the case of the deliberate avoidance of the accused from the trial, at the prosecutor's or ex officio's request, the closing court orders the search for the defendant, which sends it to the police bodies at the defendant's domicile for execution, which must be completed within 2 months. It must inform the court about its execution, after which the court makes the decision to examine the case in the absence of the defendant.

5.Art.385 paragraph (1) CPP is supplemented by point 4/1) "the reasons for the refusal of the defendant to participate in his own trial".

6. Article 389 para. (1) CPP shall be supplemented with the phrase: "The sentence of conviction adopted in the absence of the defendant, contains the factual and legal grounds regarding the trial in default".

The advantages of the proposed elaborations derive from the results and conclusions obtained in the research of the theoretical-practical aspects of the problem of the trial of the case in the absence of the defendant and presents a series of solutions with theoretical and practical value. The theoretical significance of the research consists in the fact that it brings with it a detailed approach to the substantive conditions and form that would ensure the fairness of the criminal trial performed in the absence of the defendant, and as a result formulates a theoretical-practical prescription of the defendant's obligation to appear at trial, and the legal exceptions allowed by law from the given rule. Finally, the advantages of the elaboration also result from the lack in the specialized literature of a complex, methodological, theoretical-practical comprehensive study of the institution of a criminal trial in the absence of the defendant.

Perspective research plan. The problem of the trial conducted in the absence of the defendant is quite broad, complex and with a multitude of issues that cannot be fully examined within the limits of this study, including from the point of view of the violations found by the ECtHR, as well as the analysis of the internal practice. The research on topics related to the examination of other aspects will be carried out regarding the trial of the case when the persons are absent at the criminal trial. It is confirmed that this problem is a very current issue for the

Republic of Moldova at the present stage. The problems elucidated in the paper determine the necessity of investigating the criminal process carried out in the absence of the defendant in future work, such as a guide for judges, who will never lose their present.

ANNOTATION

Ialanji Arina "Case trial particularities in the absence of the defendant". PhD thesis in law. Doctoral School of Legal Sciences of the State University of Moldova. Chişinău, 2019.

Structure of the thesis: 180 basic text pages, annotation in romanian, english and russian, list of abbreviations, introduction, three chapters, general conclusions and recommendations, bibliography from 300 titles. The results obtained are published in 5 scientific papers.

Keywords: absent accused, fair trial, right to defense, legal citation, reopening of the criminal trial, announcement in search.

Field of study: derives from the analysis of the importance of the issues that involve the case trial in the absence of the defendant.

Purpose of the thesis: is to study in detail the theoretical and practical problems caused by the legal regulation and the practical implementation of the institute of the case in the absence of the defendant.

Objectives of the paper: issues arising in the decision to adjudicate the case in the absence of the defendant, conducting the judicial investigation, as well as the way of appeal of the decision taken on the case.

Scientific novelty and originality: it derives from the fact that it is the first national work that deals with the issue of the case in the absence of the defendant, with a comprehensive analysis of the legal provisions and internal practice and abroad. The important scientific problem solved in the respective field consists in the scientific substantiation of the way in which the legal provisions regarding the trial in the absence of the defendant are applied in practice, the possible legal errors admitted in practice in this respect, as well as the analysis of the legislation with making the appropriate proposals for their improvement.

Results: research primarily contributes to the solution of an important scientific problem that resides in the elucidation of the admissible cases of the case in the absence of the defendant. Secondly, the research will contribute to the development of national normative standards in the field of ensuring the fairness of criminal proceedings. Further, research seeks to address some practical issues concerning the unitary application of examination standards in the absence of the defendant, 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.

Theoretical significance: it is the analysis of the legal provisions related to the bringing of the accusation, the summoning of the defendant to trial and the cases admissible by the law of the case in the absence of the defendant, only after the fulfillment of the legal conditions.

Applicative value of the thesis: as the result of the research, the omissions of the legal provisions regarding the procedure of the trial in the absence of the defendant, the judicial errors admitted in practice in this respect, are revealed, preliminary versions being developed for their resolution. The paper is based on a large number of scientific papers that will involve theoretical and practical value.

Implementation of scientific results: they can serve as a basis for amending procedural legislation - criminal law in the field, training of students, master students in law institutions, as well as for practical application by law enforcement bodies and courts.

ADNOTARE

Ialanji Arina ”Particularitățile judecării cauzei în lipsa inculpatului”, teză de doctor în drept. Școala doctorală de științe juridice a Universității de Stat din Moldova. Chișinău, 2019.

Structura tezei: 180 pagini text de bază, adnotare în limbile română, engleză și rusă, lista abrevierilor, introducere, trei capitole, concluzii generale şi recomandări, bibliografie din 300 titluri. Rezultatele obținute sunt publicate în 5 lucrări științifice.

Cuvinte cheie: inculpat absent, proces echitabil, dreptul la apărare, citare legală, redeschiderea procesului penal, anunțare în căutare.

Domeniul de studiu: derivă din analiza importanței problemelor care le implică judecarea cauzei în absența inculpatului.

Scopul lucrării: este de a studia în detaliu problemele teoretice și practice cauzate de reglementarea legală și implementarea în practică a institutului judecării cauzei în lipsa inculpatului.

Obiectivele lucrării: problemele ce apar în cadrul adoptării deciziei de judecare a cauzei în lipsa inculpatului, efectuarea cercetării judecătorești, precum și modul de atac a hotărârii adoptate la caz.

Noutatea şi originalitatea ştiinţifică: derivă din faptul că este prima lucrare la nivel național ce abordează chestiunea judecării cauzei în lipsa inculpatului, fiind realizată o analiză amplă a prevederilor legale și practicii interne cât și de peste hotare. Originalitatea problemei constă în fundamentarea științifică a modului de aplicare în practică a prevederilor legale privind judecarea cauzei în lipsa inculpatului, eventualele erori judiciare admise în practică în acest sens, precum și analiza legislației cu efectuarea propunerilor de rigoare în vederea îmbunătățirii acestora.

Rezultatele obținute: cercetarea contribuie, în primul rând, la soluționarea problemelor științifice importante ce rezidă în elucidarea cazurilor admisibile de judecare a cauzei în lipsa inculpatului. În al doilea rând cercetarea va contribui la opera de evoluție a standardelor normative naționale în domeniul asigurării echității procesului penal. În continuare cercetarea caută a da răspuns la unele probleme practice privind aplicare unitară a standardelor de examinare în lipsa inculpatului, luând în calcul particularitățile individuale a 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.

Semnificaţia teoretică: reprezintă analiza prevederilor legale ce țin de înaintarea învinuirii, citarea inculpatului la proces și cazurile admisibile prin lege de judecare a cauzei în lipsa inculpatului, doar după executarea condițiilor legale enunțate

Valoarea aplicativă a lucrării: în baza rezultatelor cercetării sunt relevate omisiunile prevederilor legale în partea ce ține de procedura judecării cauzei în lipsa inculpatului, erorile judiciare admise în practică în acest sens, fiind elaborate versiuni preliminare pentru soluționarea acestora. Lucrarea se bazează pe un număr vast de lucrări științifice ce vor implica valoare teoretică și practică.

Implementarea rezultatelor ştiinţifice: pot servi drept temei de modificare a legislației procesual – penale în domeniu, de instruire a studenților, masteranzilor din cadrul instituțiilor de drept, precum și pentru aplicare în practică de către organele de drept și instanțele de judecată.

АННОТАЦИЯ

Яланжи Арина "Особенности разбирательство уголовного дела при отсутствии подсудимого", докторская диссертация. Докторская школа юридических наук Государственного Университета Молдовы. Кишинев, 2019г.

Структура диссертации: 180 основные текстовые страницы, аннотации на румынском, английском и русском языках, список сокращений, введение, три главы, общие выводы и рекомендации, библиография из 300 названий. Полученные результаты опубликованы в 5 научных работах.

Ключевые слова: отсутствие обвиняемого, справедливое судебное разбирательство, право на защиту, легальное извещение, возобновление уголовного дела, объявление в розыск.

Область исследования: исходит из анализа важности вопросов связанных с рассмотрением дела в отсутствие подсудимого.

Цель работы: состоит в том, чтобы детально изучить теоретические и практические проблемы, вызванные правовым регулированием и практической реализацией института рассмотрение дела в отсутствие подсудимого.

Задачи работы: вопросы возникающие при принятии решения о рассмотрении дела в отсутствие подсудимого, проведении судебного разбирательство, а также способ обжалования решения принятого по делу.

Научная новизна и оригинальность: она исходит из факта, что это первая национальная работа, которая рассматривает вопрос рассмотрение дела в отсутствие подсудимого с всесторонним анализом правовых положений, внутренней практики и зарубежной. Важная научная проблема, решаемая в соответствующей области, состоит в научном обосновании того, как на практике применяются правовые нормы, касающиеся судебного разбирательства в отсутствие подсудимого, возможных юридических ошибок допущенных на практике в этом отношении, а также в анализе законодательства с внесением соответствующих предложений по их совершенствованию.

Результаты: исследования в первую очередь способствуют решению важной научной проблемы, которая заключается в выяснении допустимых случаев по разбирательстве дела в отсутствие подсудимого. Во-вторых, исследование будет способствовать разработке национальных нормативных стандартов в области обеспечения справедливости уголовного судопроизводства. Кроме того, исследование направлено на решение некоторых практических вопросов, касающихся единого применения стандартов разбирательства дела в отсутствие подсудимого, с учетом индивидуальных особенностей уголовного дела. Наконец, целью исследования является содействие улучшению учебного процесса в высших учебных заведениях в рамках уголовного процесса.

Теоретическая значимость: это анализ правовых положений, связанных с предъявлением обвинения, вызов подсудимого в суд и допустимые по закону случаи рассмотрение дела в отсутствие него, только после выполнения правовых условий.

Прикладная ценность работы: на основании результатов исследования выявлены упущения правовых норм, касающихся процедуры судебного разбирательства в отсутствие подсудимого, допущенные на практике судебные ошибки в этом отношении, разрабатывая предварительные версии для их разрешения. Работа основана на большом количестве научных работ, которые будут иметь теоретическую и практическую ценность.

Внедрение научных результатов: они 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 правоохранительными органами и судами.

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