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THE CONCEPTUAL REFERENCES OF THE RESEARCH

Relevance and importance of discussed topic. Assuming its status as a member of the Council of Europe from July 13, 1995, and, since September 12, 1997, as member state of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) [13], Republic of Moldova has expressed, along with other European states, its attachment to human rights enshrined within the respective treaty, which in time has proved to be one of the most effective human rights instruments in the world. Moreover, from the guarantees enshrined in article 4 of the Constitution of the Republic of Moldova [12] it follows that the ECHR constitutes an integral part of its internal legal system, and it is to be applied directly as any other law of the Republic of Moldova, with the distinction that the ECHR has priority over of the rest of the domestic laws that contravene them.

As a result of the implementation of the provisions of the European Convention and, especially, taking into account the jurisprudence of the Strasbourg Court, in the practical activity of the courts of the Republic of Moldova, there has been an increasing application of the norms regarding the right to a fair trial, as enshrined by art.6 of the ECHR [13]. In this way, in the last years, the provisions of art.6 of the European Convention are frequently applied to motivate court decisions. In the same order of ideas, there are numerous references to the jurisprudence of the European Court in the decisions of the Constitutional Court of the Republic of Moldova.

Under these conditions, by complying with the European norms in this field and by actually ensuring the protection of human rights, we can notice a major impact on the need to guarantee the conduct of judicial proceedings in equitable conditions, norms which have become a mandatory reference in recent years, within the framework of any modern discourse.

It is undeniable that the effectiveness of the Fundamental Law is conditioned by the existence of a concordance between its provisions and the objective laws for developing the relationships it regulates. As pointed out in French doctrine, [42, p.103-104] the Constitution is "the law adopted by the people with the purpose of determining the conditions under which power is to be transmitted and realized, as well as the relations between the governors and the governed", however, the State Supreme Act does not always ensure the unity of the interests and objectives of all participants in the constitutional process, and some constitutional values remain inaccessible to a large part of the population.

In conclusion, the realities currently experienced by the Moldovan society raise fundamental problems in front of the domestic legal science, which must contribute, in order to identify those solutions that would

increase the efficiency of the constitutional guarantees meant to ensure the realization of fundamental human rights and freedoms in general, as well as particularly the right to a fair trial.

Situation description in the field of research and identification of research problems. The issue of constitutional guarantees of the right to a fair trial is approached quite superficially in the literature of the Republic of Moldova, most authors focusing on researching certain elements of the fair process, such as independence of justice, free access to justice, reasonable deadline for examination, adversity of the causes, the contradictory nature of the debates, etc., ignoring the analysis of the mechanisms necessary for the realization of these rights, which have constitutional value and whose effective realization requires a thorough study of the whole instrumentality offered by the constituent, in order to identify ways to improve it. In Western doctrine the emphasis is placed on the study of the concept of fair trial and less on the constitutional guarantees that come to add value to this principle.

Among researchers in this field, some can be noted as follows:

a) in the national doctrine - Guceac I., Carnaț T., Zaporojan V., Poalelungi M., Osmochescu N., Gribincea V., Dolea I., Sedlețchi I., Turcan Ol., Marian Oc.,

b) in the Western doctrine - Favoreu L., Gaia P., Ghevontian R., Gomien D., Guillien R., Vincent J., Guinchard S., Renucci J.F., Sudre Fr., Velu J., Russen E., Wachmann P., etc.

The motivational choice of the subject

The motivation for choosing the research topic was based on the premise that, building and consolidating the rule of law strongly requires the creation of a complex mechanism meant to ensure respect towards fundamental human rights and freedoms, among which is the right to a fair trial. However, the realities faced by Moldovan society bring into attention serious deficiencies in terms of functionality of constitutional mechanisms meant to ensure the quality of the justice procedures, respectively the elements that form the concept of a fair trial are affected, that is the independence of judges, free access to justice, presumption of innocence, etc. This aspect requires sustained efforts to find the most appropriate solutions to overcome the crisis the justice system is going through.

The choice for this subject also derives from the need to support the litigant in the process of carrying out the relevant reforms, whether it is the elaboration and implementation of legislative changes, or the modernization of the activity of the judicial authority, in accordance with the best available European practices.

Research problem

The research problem encounters the following problems: to what extent the constitutional norms which guarantees a fair trial manage to ensure the fulfillment of the obligation of the state of Republic of Moldova, as part of the European Convention on Human Rights, in order to insure the protection of any persons involved in the act of justice against judicial arbitrage, and which is the impact of the legislative

reforms promoted in the recent years on the efficiency of the applicability of the requirements that make up the content of the fair trial concept, such as the independence of courts, the publicity of debates, the right to defense, the presumption of innocence, the other.

The purpose of the thesis is to examine and evaluate the way of regulation and implementation of guarantees for the right to fair trial, constitutionally enshrined, and the compatibility of these guarantees with the requirements imposed by the European Convention on Human Rights, respectively, the way in which state obligations are fulfilled in order to achieve a normative structure meant to ensure the protection of any person against judicial arbitrariness. As a result, it was necessary to elaborate some recommendations and proposals of *law ferendae*, which would contribute to the improvement of the constitutional normative framework in the field of guarantees of the right to a fair trial, which will have an impact to the improvement of the quality of the contribution of the state bodies that have competence in the matter of insurance, guarantee and promotion of rights and freedoms to citizens, respectively, the incensement of the satisfaction of the justice in relation to the quality of the justice act.

The research objectives

In order to achieve the proposed goal, the following research objectives were outlined:

- statement for a fair trial concept through approaches reflected in the national and international contemporary doctrines and constitutional provisions;

- system analysis of constitutional guarantees relevant to protection of human rights and fundamental freedoms, and highlighting particularities for these guarantees, indicating the regulatory framework, doctrinal and jurisprudential interpretations;

- highlighting the place and role of constitutional guarantees in respect of the right for fair trial, given that, being a fundamental and inalienable right it imposes by its very nature the necessity to establish an adequate implementation mechanism, embodied in instruments of a legal and institutional nature , which, customized in the context of a concrete legal process, both from the perspective of the framework in which they intervene and from the formation purpose are confined to the concept of constitutional guarantees;

- researching the system of regulating the procedural guarantees of the right to a fair trial, on the background of determining the component elements of the guarantees of the fair trial, that is the right to an independent and impartial tribunal, the publicity and the contradictory nature of the debates, free access to justice, right to judge the case in reasonable terms, equality of legal instruments;

- highlighting the major role of Constitutional Court practices in the process of ensuring an adequate application of guarantees for a fair trial in pronounced judgments, by monitoring and directing the ways in which transposition of regulations in this matter are fulfilled in the judicial procedure;

- highlighting some legal realities from the activity of state authorities, in whose competence is the application of legal instrumentation meant to guarantee the fair trial, which would justify the submission of certain legal proposals aimed at improving the functionality of these authorities;

- performing an analysis of the ECHR practice on different categories of guarantees of a fair trial, in order to determine activity gaps of judicial authorities and propose new mechanisms to ensure the right to a fair trial;

- identification of solutions with the title of *law ferendae*, regarding the modification and completion of norms regulated by the Constitution of Republic of Moldova, in order to eliminate some oversights admitted by legislator or to supplement some constitutional provisions, in order to correlate the fundamental Law with the provisions of the Convention for the defense of human rights and fundamental freedoms, in the matter of guaranteeing the right to a fair trial.

Research hypothesis

In this paper, the following hypotheses are exposed to evaluation:

- Fundamental rights and freedoms would become mere constitutional principles, declaratory in nature, if there was no system of procedural guarantees circumscribed to the right to a fair trial, which will be considered as a system of obligations imposed on the state as guarantor to insure and protect other fundamental rights and freedoms.

- If we assume that, the provisions provided by art.20 of the Constitution of Moldova and art. 6 of the European Convention on Human Rights, relating to the right to a fair trial, give expression to a general idea, according to which an effective protection of human rights cannot be achieved by the mere consecration of substantial rights, these rights should be accompanied by procedural fundamental guarantees, which will ensure the appropriate mechanisms of capitalization.

- It is well-known that the right to a fair trial represents a procedural right, which requires that defense of all personal and patrimonial rights of a subject of law in the internal procedures to be performed in a public process, by an independent and impartial court, instituted by law, as well as within a reasonable deadline, by ensuring the contradictory nature and the right to defense. In case this mechanism fails the implementation of these guarantees, the act of justice is compromised, and the paradigm of the rule of law remains without one of its fundamental structural elements.

- Free access to justice needs to be considered and viewed in the spirit of the European Convention, as a preliminary guarantee or a prerequisite for a fair trial; the limitations of rights to court procedures are implicitly allowed, because the right of access to justice requires, by its very nature, a regulation from the states, which can vary in time and space, depending on the needs and resources available to the community.

- It is indispensable to find a just balance between the need to hold more magistrates accountable through various legal instruments and the objective of maintaining their independence.

- The quintessence of problems related to the effectiveness of the constitutional guarantees of the right to a fair trial, remains the implementation of those norms that correspond to all democratic standards, which are ignored either by the judicial system or by the political factors that must ensure their implementation.

Synthesis of the research methodology, and justification of the chosen research methods

In the process of thesis elaboration, the most important scientific research methods applied to the theory of law were applied, such as: the logical method (in order to interpret the legal norms, to systematize them, to clarify the legal concepts etc.), the historical method (in order to track the evolution in time of the right to a fair trial and of the guarantees necessary for its realization), the comparative method (for comparing both the different views expressed by the researchers on the subject investigated, as well as some aspects of the applicability of some guarantees of the fair trial process in Constitutional Court of Republic of Moldova and in European Court of Human Rights), the prospective method (in order to identify the most efficient ways to optimize the legislation and improve the mechanism of its application), the systemic method (approaching the legislation as a system with the most important internal conditions and external relations with other normative systems).

These methods allowed obtaining reliable scientific information for the analysis of constitutional guarantees of the right to a fair trial in the Republic of Moldova and worldwide. In the subject disclosure special attention was paid to argumentations of scientific provisions and conclusions, to their critical evaluation.

Scientific novelty degree of the research

The scientific novelty of thesis consists in the fact that we proposed the application of new approaches on the mechanisms to increase the efficiency of constitutional guarantees of the right to a fair trial, highlighting the deficiencies in implementation and formulating solutions to remove depicted deficiencies.

The novelty elements this thesis introduces are summarized in the following principles:

- Investigation of constitutional norms in an unprecedented manner, by means of which the guarantees of a fair trial are ensured, and how these norms manage to ensure the fulfillment of obligations which belong to the State of Republic of Moldova, as part of European Convention on Human Rights, to realize the protection to any person involved in the act of justice against judicial arbitration.

- Applying a new approach to the concept of a fair trial, in the sense of arguing the necessity of its constitutional consecration, being a fundamental principle, of public order, meant to ensure the procedural balance of the parties and the legality of the procedure by observing guarantees that imply the free access to justice, the public character of the debates, carried out within the limits of the reasonable deadline, by an independent and impartial court established by law, with the assurance of the right to the defense and the delivery of a reasoned decision.

- Formulation of some proposals of *law ferendae* in order to ensure an effective character of the constitutional guarantees of the fair trial, having as reference the level of development of the general principles of the law, the degree of development of the democratic institutions, the realities of the political system, the quality and the effectiveness of the mechanisms for the realization of the legal norms, as well as the legal education of the population.

- Improvement of compliance process of the legislation of Republic of Moldova in accordance with the international norms that establish the right to a fair trial, prioritized by constitutional regulations. Presently, the existing guarantees do not always represent a solid barrier against abuses by the judicial system or other state bodies, which demonstrates the necessity of the legislator's intervention in order to improve the mechanisms of control and supervision over the activity of the judicial system.

The results of the thesis allow the establishment of both concepts of a fair trial and its component elements, as well as of new solutions designed to increase the effectiveness of the guarantees established at the constitutional level, in order to ensure that the principle of the fair trial is respected.

Summary of chapters of thesis

The structure of thesis is determined by the investigated scientific problem, also by the preordained research purpose and objectives. *The introduction* - presenting an argument for relevance and importance of this topic research, the purpose and objectives of thesis, as well as its degree of novelty; *three chapters* – related to the introduction with in-depth discussion of fundamental issues aimed at achieving the purpose and objectives; *General conclusions and recommendations* - express the fundamental arguments submitted as a result of elaborated research and formulated proposals to amend and supplement the legislation in force in order to strengthen the state mechanism to guarantee the right to a fair trial; *Bibliography* – consists of 270 titles that includes thesis normative and doctrinal support, the statement regarding the responsibility and the CV of the author.

Publications of the subject of thesis

The results of performed research have been reflected in 7 scientific works of the author published as articles in specialized magazines, and in the materials of international and national conferences and symposiums.

Keywords: fair trial, constitutional guarantees of fair trial, procedural guarantees of the right to a fair trial, specific guarantees of the fair trial in criminal matters, positive effects and deficiencies in the justice reform process, measures to improve the justice act.

THE CONTENT OF THE THESIS

The introduction includes the foundation and motivation of chosen subject, highlighting actuality and importance of revealed problem, analyzing subject's framing in doctrinal concerns, formulating thesis

purpose and objectives, research hypotheses, justifying chosen research methods, arguing novelty of obtained results.

In **Chapter 1**, entitled *Conceptual approaches referred to the right to a fair trial and guarantees of its implementation*, a thorough analysis of the national and foreign legal doctrine dealing with the concept of a fair trial and its requirements is performed.

Scientific investigations related to the complex issue of the right to a fair trial focus on the idea that the notion of a fair trial is quite difficult to define and, in this case, the concept is frequently used to define the array of rights offered to justice professionals by means of art.6 of the Convention, which represent a set of procedural guarantees that allow the exploitation of the fundamental rights and freedoms enshrined and protected by the Convention, as well as by national law. In this regard, the French author, Frederic Sudre, citing several judgments of the European Court, tries to define the essence of law enshrined in article 6 of the Convention as follows: "The right to a fair trial enshrines the fundamental principle of the pre-eminence of the right in a democratic society. Recognizing the right to a fair trial as an "eminent" place in a democratic society, the European judge consecrates it as one of the principles that constitute the basic structure of the European public order of human rights." [40, p.249]

One of the French researchers, however - J. L. Charrier [43, p. 84-137], prefers a distinct approach to the concept of a fair trial, resorting to analyzing its guarantees, namely, on the one hand, those included in art. 6 pph. 1 - as giving substance to general right to a fair trial in civil and criminal matters and, on the other hand, those registered in art. 6 pph. 2 and in art. 6 pph. 3 - as representing specific guarantees of the right to a fair trial in criminal matters.

However, in a large scientific work devoted to the right to a fair trial, *(Droit processuel. Droit commun et droit compare du process equitable)* elaborated by a group of authors, representatives of the European doctrine (S. Guinchard, C. Delicostopoulos, M. Douchy-Oudot, etc.) [44, p.27] a definition of the analyzed concept was formulated, which in our vision manages to reveal its quintessence, and namely: "The fair process is a balanced process between all parties, having an ideal equity judicial outcome, made possible to achieve by respecting some guarantees".

In Romanian specialized literature, many authors have exposed their opinion on fair trial subject, and guarantees of its accomplishment. Among them, we can name such notoriety as: I. Deleanu, R. Chirita, C. Birsan, T. Draganu, I. Muraru, E. S. Tanasescu, R. Miga-Besteliu, M. Damaschin and others. Particular attention should be paid to a complex work, with deep theoretical and practical approach elaborated by researcher Radu Chirita *The right to a fair trial*, [9] which treats the fair trial by analyzing general procedural guarantees, without their dissonance, considering the following important platforms: access to justice, court neutrality, speed of proceedings, publicity of the procedure, equality of instruments and guarantees in criminal matters. On the same issue, the constitutionalist I. Deleanu [14, p.210] perceives the right to a fair

trial as a concept, which concentrates all the procedural guarantees offered to justices by art.6 of the European Convention and, accordingly by national regulations, constitutional provisions being of paramount importance, and namely: free access to justice, performing justice acts in courts only, right to defense, publicity of debates.

The issue of the right to a fair trial and the guarantees that compose it was also discussed in the specialized literature in Republic of Moldova. Thus, Prof. Ion Guceac, a well-known personality in the field of constitutional law, in one of his scientific works dedicated to guaranteeing free access to justice *(Guaranteeing free access to justice through means of art.6 of the European Convention for defense of human rights and fundamental freedoms)* mentioned that: "The right to a fair trial implies the possibility of being addressed to the court that corresponds to certain standards in the field of human rights. At the same time, we must not forget that a judicial process can only be equitable if court judges are independent from judiciary authority" [24, p.97].

The issue of guarantees of right to a fair trial was also addressed by researchers M. Poalelungi, I. Dolea, T. Vizdoaga etc. in the written work *Judge's manual for criminal cases* [32], as well as by a number of young researchers, such as: E. Cataveica, D. Sarbu, C. Olteana, Ol. Turcan, I. Odinokaia, D. Corceac, D. Timciuc.

A considerable contribution to the study of guarantees for a fair trial was brought by the numerous reports elaborated by non-governmental organizations and experts in the field, which implement a thorough analysis of impediments to achieving access to justice and fair process. In this regard, we can note, the studies conducted by V. Gribincea, N. Hriptievschi, I. Guzun, Il. Chirtoaca etc.

Accomplishing a brief presentation of the specialized literature, devoted to the subject of fair trial, especially to the concept of a fair trial, to guarantees that give content and essence to the right of fair trial, as well as to aspects related to observance of this right in Republic of Moldova, I have revealed the constant concerns of this doctrine, but also of the civil society in general on this subject, are justified and based on a vast system of legal norms, which, interacting with each other, ensure the establishment of the fundamental requirements that represent the foundation of a fair trial, norms that have a great deal of constitutional value.

Estimating supreme law provisions regarding demands for a fair trial, we have found they are designed and structured separately, compared to provisions of the ECHR. They are included in different chapters of Constitution or formulate a part of organic laws (for example, the right to examine the case within a reasonable time is not reflected in Constitution, but in the procedural codes). The content of rights regulated by our legislator, in some respects, is slightly different from the provisions of Convention, hence some erroneous interpretations, such as situations where fair trial is equated with the principle of free access to justice, so such an equivalence is at least mistaken, since free access to justice can be considered in the spirit of the Convention, as a preliminary guarantee of a fair trial. In this context, I have argued that Article 20 of

the Constitution of the Republic, entitled *Free access to justice*, requires a reshuffle in terms of its content in order to ensure at the level of modern demands not only the right to a court, but also other guarantees provided by art. 6 of ECHR, which together make up the concept of a fair trial.

To support this perspective I came up with a relevant analysis of the most important legal instruments for guaranteeing human rights, in which there is also the right to a fair trial, accompanied by the guarantees of its implementation. Thus, the following concepts were investigated: *Universal Declaration of Human Rights* (art.10), [16] *International treaty on Civil and Political Rights* (art.14), [30] *European Convention for the Protection of Fundamental Rights and Freedoms* (art.6), [13] *Charter of Fundamental Rights and Freedom of European Union* [8], an act which reaffirms the rights derived in particular from the constitutional traditions and from the common international obligations of Member States [17, p. 92.], and which confirms the Union's desire to be endowed with a catalog of fundamental rights specific to communitarian order [22, p.116].

The analysis of the mentioned international documents allowed me to highlight the fact that the realization of the right to a fair trial involves the exercise of several guarantees approached as a complex of obligations imposed on the state, as guarantor of assuring and protecting other fundamental rights and freedoms. As a result, the right to a fair trial can be considered a fundamental human right to equality before the involvement of law and justice, a guarantee for finding the proper organization and functioning of justice in a rule of law, whose first and essential feature is elimination of arbitrariness and rule of law.

Concluding with those analyzed in Chapter 1, I pointed out that scientific investigations related to the complex issue of the right to a fair trial, focus on the idea that the notion of process equity is quite difficult to define and, in this case, the concept is frequently used to designate the sphere of rights offered to the justice seekers by article 6 of the Convention, which represents a set of procedural guarantees that allow the exploitation of the fundamental rights and freedoms enshrined and protected by the Convention, as well as by national law.

Also, evaluating opinions expressed in specialized literature, as well as legislative provisions, both on national and international level, we defined the right to a fair trial as a fundamental principle of public order, meant to ensure an equitable balance of parties and procedural legality by observing guarantees that imply free access to justice, public character of debates performed within the limits of the reasonable deadline, by an independent and impartial court, established by law, with the assurance of the right to defense and deliverance of a reasoned decision, the realization of which is guaranteed by the right to request forced execution. [7, p. 150].

In **Chapter 2** of the paper, named *System of constitutional guarantees of the right to a fair trial*, a scientific-practical analysis was performed, of the whole set of legal guarantees enshrined in the Constitution

of the Republic, which highlights the efforts of the Moldovan constituent to consecrate an important series of procedural mechanisms designed to ensure the right to a fair trial.

At first stage, it was pointed out that constitutional guarantees represent the conditions and circumstances provided in the Constitution of Republic of Moldova, regarding the realization of the fundamental human rights and freedoms provided by the state, as well as the mechanisms of legal nature that provide equal possibilities to people meant to achieve the values which define human existence. [45, p.218]

Among constitutional guarantees, also a special place is occupied by the absolute legal prohibition provided by art. 142 pph. 2 of the Constitution, regarding the revision of the supreme law that could have the effect of suppressing the fundamental rights and freedoms of man or their guarantees. The prohibition regulated in this constitutional text covers all legal subjects that could initiate the revision of the fundamental law. It has a definite and absolute purpose: their rights, fundamental freedoms and their guarantees. However, the doctrine does not mention [3, p.12] that current wording of article 142 paragraph 2 of the Constitution, is not quite successful, the following regulation being proposed instead: "No revision can be made if the outcome results in the suppression of fundamental rights and freedoms, the *attainment of their essential core* or the serious violation of their constitutional guarantees ". We also pressed for support in this formulation of the cause, arguing that current regulation prohibits the suppression of rights only, and not their evisceration by narrowing their essential core (it is up to the Constitutional Court to determine what this "essential core" represents).

Given the variety and complexity of contents referred to guarantees of human rights and fundamental freedoms, constitutionalist Ion Deleanu classifies them into two categories: substantive guarantees and procedural or jurisdictional guarantees [15, p.538]. Among procedural guarantees, which represent the quintessence of this paper analysis, I pointed out that Constitution of Republic of Moldova states the following: Chapter I *General provisions,* in which, art.16 al.2 is consecrated to equality of all people in front of law, art.20 regulates free access to justice, and art.21 - proclaims the presumption of innocense; Capitolul II *Fundamental rights and freedoms,* by means of art.25 it establishes the individual freedom and security, and art.26 establishes the right to defense; Chapter IX *The judicial authority*, by art.116 establishes that, "the court judges are independent, impartial and unchanging, according to law." Also, art.117 consecrates the public character of judicial debates, and art.118 determines the language of the procedure and the right to translation.

Summarizing the research of mentioned provisions, I have emphasized that procedural guarantees enshrined at constitutional level and with main concerns of constitutional legal guarantees, presuppose the observance of general and special cumulative and imperative conditions, edited in order to protect the fundamental human rights and freedoms, including the right to fair trial.

In the second section of chapter, I continued with the analysis of general procedural guarantees of the right to a fair trial, one of the first investigation subjects being the principle of free access to justice. Approaching this topic I focused on the doctrinal disputes regarding the absolute or non-absolute character of the right of free access to justice, justified by the constitutional norms. Thus, the tendency to absoluteize the right of free access to justice can be identified in the provisions of art. 20 paragraph 2 of the Constitution of Republic of Moldova, according to which it is forbidden that this right is somehow restricted by provisions of organic or ordinary laws. The cases presented by the ECHR and Constitutional Court jurisprudence have shown us a completely different situation, namely that the right of access to justice cannot, in any case, be an absolute right, thus the existence of limitations of access to justice are implicit in the normal exercise of this legal procedings. Correlating the findings learned from the doctrinal analysis, as well as that of jurisprudence with its constitutional norms, I found that legislator deviated not only from the line of thought, which is the basis of the existing international regulations regarding free access to justice, but also from the current practice of the European Court of Human Rights, which emphasized in its decisions that free access to courts is not an absolute right, [35, p.93], once competent courts have settled disputes to which they have been referring with different admissibility conditions. As a result, I proposed the completion of Article 20, paragraph 2 of the Constitution of Republic of Moldova, by adding the following sentence: "By way of exception legal enclosure is allowed, without prejudice to the substance of free access to justice, by establishing conditions of exercising court actions in justice". In the same way, we propose to amend art.54 al.3 of the Constitution of Republic of Moldova, by removing art.20 from the content of this paragraph. Respectively, art.54 paragraph 3 of the Constitution of Republic of Moldova, is to be formulated as follows: "The provisions of paragraph 2 do not allow the restriction of rights stipulates in articles 21-24".

Within the framework of the same section, I have emphasized that although art.20 of the Constitution of Republic of Moldova establishes free access to justice, this right in the current constitutional contex, as a guarantee of a fair trial, is lacking purposefulness, namely the possibility of benefiting from a equitable process. Respectively, with the title of *law ferendae* I proposed the completion of art.20 of the Constitution of the Republic, with the name *Free access to justice* in terms of its content, in order to ensure at the level of modern demands not only the right to a court, but also other guarantees provided by art.6 of ECHR, that together form an integral concept of fair trial, by introducing paragraph 3 with the following content: 3),,The parties have the right to fair trial and settlement of cases within a reasonable deadline".

Another procedural guarantee enshrined at the constitutional level, which targets the right to fair trial and has been subject to analysis within this chapter, is the right to an independent and impartial court, established by law.

In relation to both requirements of the fair trial, the Moldovan judicial system lists serious deficiencies. In this regard, I pointed out that independence of judge is affected by the manner of appointment and mandate

duration, currently enshrined in the legislation of Republic of Moldova, as well as by the inefficiency of guarantees against external pressures that impacts the relations between some magistrates, also impartiality is altered through reduced functionality of system incompatibilities and interdictions to which magistrates are subjected, a fact that we have demonstrated by referring to the ECHR jurisprudence (Tocono case and Prometheus Professors against Moldova) [25].

In the field of analyzing the general procedural guarantees of the right to a fair trial, we also investigated publicity demands and contradictory nature of legal process. Referring to public character of the judgments, I mentioned that media space of the Republic of Moldova, were some disagreements regarding whether or not the publication of parties names in judgments, is compromised by violations of legislation regarding the protection of personal data. Ultimately, however, the Superior Council of Magistracy (SCM) adopted "Regulation on the way of publishing judicial decisions on the national portal of judicial courts", [36] which stipulates by art.13 that responsible authority will ensure, "permanently, the possibility of seeking judicial decisions according to parties names ", and art. 20 states that "in court decisions published on the national portal of the courts or on the web page of the Supreme Court of Justice, the names of the parties to the trial will not be anonymous in any case", with some exceptions. In this context, it is directly up to the courts to take all those measures that may ultimately facilitate the public's safe access to court decisions, including those regarding standardization and publication of judgments and the use of personal data within them. [29].

On same platform as the guarantees of the right to a fair trial is included the right to be tried within a reasonable deadline. Analyzing this concept I insisted on the necessity to broaden constitutional and institutional guarantees of fundamental rights and freedoms in general, as well as on the guarantees of the fair trial in particular, an objective determined by the evolution of constitutional democracy, the need to correlate the provisions of the Supreme Law regarding fundamental rights and freedoms with the provisions Convention for the Protection of Human Rights and, in particular, with the jurisprudence of the European Court of Human Rights, in this area. However, having these benchmarks in view, the consecration of the right to a fair trial and the settlement of cases within a reasonable deadline would represent an explicit use of Article 6 of the Convention.

However, I highlighted in the same context that judges are bound to find the balance between the need for a fast judgment and the need for a fair and complete judgment deduced from the judgment, and legislator must be more reserved in the tendency to speed up the proceedings on account of quality and efficiency of the act of justice. Such transformations, for example, the exclusion of the compulsory motivation of the judicial decisions on civil cases, except for the situations regulated by art.236 CPC, rather represent a violation of fair trial exigency than a condition of speeding the legal procedure.

Continuing with the analysis of the general procedural guarantees of the fair trial, we have approached the principle of equality of legal instruments - one of broader elements of the concept of a fair trial - which provides that each party has reasonable possibility to present its case under conditions that the case will not be exposed in disadvantageous situation to his opponent, matters stipulated in art.16 al.2 of the Constitution of Republic of Moldova.

The principle of equality of legal instruments applies, both in civil and criminal matters, within the framework of Article 6 of the European Convention [37, p.482]. In fact, all legal procedures are concerned. In other words, the domain of application is broader, which is legitimate, taking into account the interests in question.

As emphasized in the literature, the compliance to the equality of legal instruments in the criminal process is guaranteed by the obligation of the court, by offering each party the opportunity to present their case on equal terms. [38, p.42]. Thus, in the opinion of the former judge of the Constitutional Court of Republic of Moldova, Ig. Dolea, in case the probationer is governed by the principle of formality, the obedience by the principle of equality of legal instrument can be questioned. When legal parties propose certain data as evidence and the prosecution body determines their relevance, conclusion and usefulness, that is to say, they know their informational value - this principle is violated [21, pp. 185-187].

Through an interpretation that takes into account the object and purpose of art. 6, the European Court extended the scope of the special guarantees of a fair trial, to the previous phase of the trial itself, admitting that these guarantees also apply to the criminal prosecution phase [23, p.82]. In this regard, it can be observed that the European Court, besides the right of the accused to keep silent, to be informed about the accusations and the right to legal assistance enshrined in the national law and the national jurisprudence, has also enshrined the obligation of communication between the parties of all the evidence of the file, which are crucial for the establishment of guilt and providing necessary facilities to discuss these evidence in order to combat them [41, p. 239].

Taking into account these findings I stated that equality of legal instruments has applicability also at the stage of criminal prosecution, the accused not having access to all information regarding the case, a broader view on the case being held by those who compete or can compete in the preparation of the defense [23, p.84].

In the third section of chapter 2 we focused on the analysis of the specific guarantees of the fair trial in criminal matters, one of the first topics of discussion being the presumption of innocence, a fundamental guarantee provided by art.21 of the Constitution of Republic of Moldova.

Analyzing this institution, I found that the constitutional regulation of the presumption of innocence detains an appreciable but not sufficient character, a fact we have demonstrated through the situations in which mass-media is used as a means, by any of parties with opposite positions in a criminal trial, to

influence the public opinion and to put pressure on the judge, facts leading to disruption of the litigation. Misinformation can be caused by the court itself which carry out communications regarding ongoing cases, as well as the case where mass-media, without involving the participants in the trial misinterprets information to carry out real processes parallel to the judicial one *(trial by mass-media).* Nevertheless, criminal processes reflected by media can severely affect its fairness, when it influences the public opinion and implicitly the jurors called to decide on the guilt of the defendant.

The controversial issue of the relationship between the right to a fair trial and the freedom of expression of the media, investigated through reference to both domestic law and ECHR's practice, has led us to conclude that, the establishment of clear limits within which freedom can find its expression in the field of action related to judicial activity in criminal cases is an immediate imperative, also social misconduct of criminal prosecution bodies when assigning their role as judges by suggesting the suspected person's guilt during press conferences or interviews with mass-media representatives requires the intervention of the legislator. In this regard, according to Directive (EU) 2016/343 [59] of the European Parliament and of the Council from March 9, 2016, we proposed to amend Article 8 of the CPP of Republic of Moldova [10], by adding two new paragraphs with the following content:

"(4) It is prohibited during criminal prosecution - public communications, public statements and issue of any information, directly or indirectly, from public authorities or any other physical or legal persons regarding the facts and persons subject to these procedures. Violation of this obligation is a crime and is punished, according to criminal law.

(5) It is prohibited during the criminal trial - public presentation of persons suspected of committing offenses wearing handcuffs or other means of immobilization, or in any case affected by other means which might induce public perception into suspicion that they would be guilty of committing an offense".

Another specific guarantee for a fair trial in criminal matters that has been subjected to analysis is the right to keep silent and the privilege against its own incrimination, which is found in Article 21 of the CPP of Republic of Moldova [10]. At international level, the right to remain silent is enshrined in article 14, paragraph 3, letter g) of the International Pact on Civil and Political Rights [30] and in Directive 2012/2013 EU, the European Parliament and the Council of European Union [19]. With regard to the provisions of European Convention, [13], it is noted that the right to keep silence is not expressly regulated, but the ECHR has consistently stated that “the right not to make statements and the right not to incriminate oneself are standards generally recognized on international level, and ones that stay at the foundation of the concept of fair trial [46, p.15].

Evaluating various doctrinal positions that have been exposed on the right to non-self-incrimination and the right to silence, we succumb to opinion that the first one is of a generic category, and the right to silence derives from it [34, p. 134]. It is true that the relationship between the two notions is more difficult to

circumscribe, not only for the reasons already shown, but also because there has been a very important transformation of the right to non-self-incrimination; thus, it was initially recognized, historically, as a protection against the obligation to take an oath, in its own judgment, which did not equate nor offer the protection of a right to keep completely silent.

Against these arguments, I have defined the right to silence as representing the prerogative for the suspect or the accused to keep silent, not to make statements during the entire course of criminal proceedings or only at certain times, not to answer any of the questions that are addressed to them or only to a part of them, at their free choice, without being subjected to constraints or oppression or unfair investigation procedures [5, p.33].

Continuing with the analysis of this guarantee, evaluating it in the light of opinions expressed in the legal doctrine, but also according to ECHR judgments, which constantly emphasized the central role of the right to silence and non-discrimination in Article 6 and the right to a fair trial [34, p.138], we would like to emphasize that national regulations regarding the right to silence and non-incrimination of the suspect and the defendant are quite different, included in totally different institutions of the Criminal Procedure Code (probation procedures, coercive measures, rights of suspected, rights of defendant). For these reasons, we have concluded that, representing a component of the right to a fair trial and a consequence of the presumption of innocence, the right not to incriminate oneself and the right to silence requires a consecration at the constitutional level, namely in Article 21 of the Constitution RM, which establishes the presumption of innocence, by inserting paragraph (2) with the following content: "The person who has plausible reasons to be suspected that he/she has committed or tried to commit an offense, can be freely interrogated regarding these facts, only after having been informed about: a) the right to make statements, to answer questions or to keep silent; b) the right not to make any self-incriminating statement and not to confess his/her guilt".

In **Chapter 3**, entitled *The right to a fair trial in the case of Republic of Moldova*, the applicability of the principle of the right to a fair trial in the law system of Republic of Moldova was highlighted, by analyzing the deficiencies found in the legal regulations regarding the institutional and procedural guarantees that make up the content of the fair trial, legislative measures taken in order to improve the legal-procedural framework for dispute resolution, as well as by submitting a series of proposals meant to streamline the act of justice, finally ensuring a fair trial for the justice seeker.

The first section of this chapter is devoted to the internal mechanism of guaranteeing and realizing the fundamental human rights and freedoms, but in our opinion it is not possible to identify solutions that would ensure the increased functionality of the constitutional guarantees that accompany the realization of the right to a fair trial, without analyzing those instruments and institutions that the state has established as mechanisms for the practical realization of human rights and fundamental freedoms, thus implicitly and of the right to a fair trial. Respectively, I appreciated that it was rational and appropriate to treat the quintessence

of the concept of guaranteeing human rights and freedoms as a necessary objective in the direction of the activity of the state, which reflects its social destination and the legislative support it benefits from. As a result, ensuring the rights and freedoms of people, including the right to a fair trial, is a function of the state, and the fundamental purpose of a modern state in respect to the analyzed institution is none other than to achieve an effective, authentic implementation of these rights and freedoms.

Continuing to develop this topic, we mentioned that the state mechanism for the protection of human rights involves the contribution of the famous trinomial: legislative, executive and judicial powers, highlighting in detail the role of Parliament, Government, and President of Republic of Moldova in achieving the mechanism of protection of fundamental rights and freedoms, implicitly of the right to a fair trial, following an analysis of the competences of the most important institutions of the state, whose activity is focused on ensuring respect for human rights, and namely: People's Advocate, Prosecutor Department of Republic of Moldova, Juridical Courts, finalizing with the analysis of the Constitutional Court's activity, which through the potential creator of its jurisprudence, determined by the institution excepted of unconstitutionality, effectively contributes to the exploitation of constitutional rights.

In the second section of chapter 3, I highlighted the problems and circumspections regarding the institutional and procedural guarantees, which, although having constitutional protection, nevertheless, register serious deficiencies in terms of their functionality. These deficiencies are not new, they have been attested over many years, but more decisive attempts to remove the reported deviations have been registered with the adoption of the Justice Department Reform Strategy in the years 2011-2016 [39]. This Strategy, adopted in November 2011, represented the main comprehensive document regarding the reform of justice, with the main objective of strengthening the independence, accountability, impartiality, efficiency and transparency of the justice system. This strategic document was accompanied by an Action Plan (adopted in February 2012) [31], which outlined strategic directions, actions to be taken and preliminary implementation costs.

Analyzing the six pillars on which this Strategy was built and which included the objectives to be achieved following the implementation of the reform, I found that many of the key goals were unrealized, including:

- ensuring the independence of judiciary system, which is also affected by such aspects as: the composition and the procedure for appointing the members of the SCM, intensely discussed in recent years, but with questionable effects, because the number increment of SCM members does not solve the problem of integrity and their independence in relation to the state authorities, the emphasis being placed on the diversification of the spheres from which these members are selected, or the selection of just judges and law professors does not ensure a wide representation and credibility, as the activity of the SCM displayed since its establishment;

- ensuring a true reform of the prosecutor's department, until now in the perception of the society this department remains an institution subject to political influences. If the position of Prosecutor General is the subject of political negotiations between the ruling parties, we can only see the promotion of a failure reform;

- strengthening the institutional capacities and professional development of representatives of professions related to justice system (lawyer, notary, mediator, judicial executor, judicial expert, administrator of the insolvency procedure, translator / interpreter). Under the aspect of the profound change of the legal framework regarding the regulation of the activity of the liberal professions of lawyer, notary, judicial expert, mediator, judicial executor, insolvency administrator, I have pointed out that, although a series of normative acts were adopted that brought undeniable improvements in the notaries field; in the activity of judicial experts, judicial executors or insolvency administrators, however, some deficiencies or non-functionalities persist, such as: limitation of notaries number based on quantitative criteria has the consequence of price growth and notary services quality diminishment; the precarious nature of the legal assistance guaranteed by the state that is provided by the office lawyers, risking the efficacy of the mediation institution through the introduction of the mandatory judicial mediation, etc .;

- combating corruption in the justice department - in this segment, in most international studies and reports, Republic of Moldova is listed among countries with highest level of corruption in all state institutions, including in the field of justice. For these reasons, I appreciated that problems of Republic of Moldova in the fight against corruption do not necessarily represent the product of inadequate legislation, but arise mainly from a culture that accepts and tolerates corruption, as well as from the unwillingness of authorities to eradicate corruption at higher levels; and in the field of justice, corruption is also caused by the deficiencies in the way judges are promoted and selected, which is a non-transparent and defective procedure, the fault being attributed this time to the Superior Council of Magistracy;

- respect for human rights in the justice department - this chapter has also multiple deficiencies, most serious being registered in the penitentiary system, which is characterized by inhuman conditions of maintenance in penitentiaries, torture and beatings applied to prisoners, limiting the immediate access of lawyers to their legal customers.

All these drawbacks have determined the government to continue the process of reforms in the justice system, new strategies and projects being formulated in order to modify the Constitution, which, as mentioned above, need to be focused on the implementation of the legislative framework, and ensure the conditions for court representatives to carry out their activity independently; because the adoption of another imposing number of legislative acts, without changing the government policies will confuse and discredit this area even more.

In the third section dedicated to legislative measures taken in order to improve the legal-procedural framework for litigation resolution, we have highlighted the progress regarding the procedural guarantees

established by the legislator in recent years, in the civil and criminal procedural spheres. Thus, lately, in the matter of civil procedure, the normative framework has undergone extensive changes, meant to reduce the duration of court proceedings, including procedures simplification in case of certain types of civil actions (ex. reducing the number of steps taken to challenge court decisions), to strengthen the possibility of having free access to justice, to make the appeal system more efficient, to improve certain procedural mechanisms such as the administration of evidence, or the communication of procedural documents, to ensure the right of defense of for court participants (by widening the range of categories of representatives, as well as other rights that form the corollary of a fair trial).

An outstanding contribution to broaden the scope of procedural guarantees was made by the Constitutional Court of Republic of Moldova, which by its decisions has made significant progress, which resulted in legislative changes, in such areas as, the person's legal capacity, the application of arresting preventive measures (by restricting the possibility of applying this measure if the accused or the defendant does not acknowledge his guilt), ensuring equality of legal instrument in criminal process (completion Article 364^1 of the Code of Criminal Procedure, which states that, paragraph 5 is finally supplemented by the text: "If the injured party, the civil party and the civilly responsible party participate at the process, a word of debate is offered to them also" [10]), ensuring an effective right to defense in the criminal proceedings (recognizing the right of the legal person to designate the representative in the process).

In the fourth section of chapter 3 we focused on identifying solutions aimed to eradicate multiple negative phenomena, which are highlighted by the thesis as deeply affecting the field of justice, substantially jeopardizing the right to a fair trial.

In this regard, the proposals were oriented on several fundamental segments, such as:

- ensuring the independence of judges and their submission to law only, by expressly stipulating within the art.116 of the Constitution some guarantees that, although they are found in different normative acts, need constitutional validity to increase their effectiveness. Also, in order to avoid the possible pressures exerted on judges, by the threat with criminal case incrimination, we proposed to exclude the criminal component enshrined in art.307 CP, in order to remove any suspicions of constraint exerted on the magistrates;

- modification of the composition of the members of the SCM, which although has undergone recent changes, nevertheless, does not inspire sufficient confidence. In this respect, we have emphasized that, in our view, the membership of this body should only be held by: 1) representatives of the judiciary, elected in such a way as to represent proportionally the judges acting in all categories of courts; 2) representatives of civil society, both from the academic environment, as well as from NGOs with activity oriented to the justice sector, such as the Center for Legal Resources or the Center for Analysis and Prevention of Corruption; 3) a representative from the Lawyers Union. The current situation, when the only participants are civil law professors from the civil society, does not ensure a credible and effective representation;

- change the procedure for appointing judges at the Supreme Court of Justice, because the current system of appointment through Parliament is quite vulnerable, because some judges who have come to work in the supreme court have aroused much controversy and criticism from the civil society in terms of integrity, professionalism and obedience to government. For these reasons, we adhere to the proposal by which it was supported (Draft Law no. 10 of 18.01.2018) [33] the need to appoint a judge to the SCJ after the same procedure that is applicable to appointed judges at the court of appeal, that is by the decree of the President of the country, on the proposal of the SCM;

- modification of the procedure of periodic evaluation of the judges in order to remove the pressures related to possible dismissal from the position. Thus, I proposed that the emphasis be placed on the continuous training of judges, and not on the control carried out by their periodic certification. The periodic evaluation process should not lead to the dismissal of a judge before being offered an adequate opportunity to correct any drawbacks. In such situations, measures are needed to remove gaps found in professional training of magistrates, such as its obligation to participate in training courses organized by the NIJ, followed by a repeated evaluation and in no case dismissal, or as the Advisory Council of European Judges points out, [1] this should only happen in case of serious violations of disciplinary rules or of criminal provisions stipulated by law, or when evaluation process leads to inevitable conclusion that a judge refuses to fulfill duties at a minimum acceptable level, objectively evaluated;

- providing effective legal assistance. Non-qualitative services of lawyers who provide state guaranteed legal assistance are caused by the fact that their basic activity focuses on provision of paid services, and it is known that the provision of legal assistance guaranteed by the state is paid at a rather low level and late payments. As a result most lawyers are not motivated to carry out such activity and, some of them, having a low legal culture, transform the procedural activity into a mimic of actions without following a real benefit for the person representing them. For these reasons, I have proposed the establishment of obligations to provide legal assistance services guaranteed by the state only by public lawyers and para-lawyers, and lawyers from the private sphere should not be admitted in this area. It is necessary to increase the number of public lawyers, increase their remuneration value and strengthen the mechanism for monitoring their activity, both on the part of the CNAJGS and the judicial authority, which, if it finds an inappropriate attitude on the part of the public lawyer, will inform the CNAJGS. Also, the efficiency of the right to defense also depends on the services of interpreters and translators, due to lack of delays in court proceedings. To change the situation, we appreciated that it was necessary not only to increase their remuneration value, but also to implement changes in education department, by opening a new specialty within the Centers of Excellence that would prepare future clerks and interpreters for the authorities in the field of justice;

- ensuring compliance with the reasonable deadline for civil cases examination. Given the fact that the moment of communication of the decision by the court of appeal is difficult to determine, fact which affects

the process of submitting the appeal application, we proposed to change the rules for calculating the term of appeal, applying the provisions of the appeal, that is to say the deadline for contesting the decision or decision enters in effect not from the moment of its communication, but from the moment of the communication of targeted disposition by the court of appeal. Also, in order to avoid the infringement of the rights of persons who were not present at the court decision for justified reasons, we considered that it was necessary to exclude the provision from the CPC which catalogs the term of appeal as a waiver, in order to offer the possibility to Supreme Court of Justice, in justified situations to restore the legal action in court.

Finalizing the study on those phenomena and legislative deficiencies that affect the realization of constitutional guarantees of the right to a fair trial and of the necessary solutions and implementations to combat them, we also emphasized a persisting problem that endangers not only the fairness of the process, but also other fundamental values of law, and namely *legislative instability*, which has adverse effects not only on justice, but also affects economic, social and institutional development. Legislative frenzy has a destructive effect on the judicial system.

In this context, the legislator has to focus on the policy of simplifying the norms and increasing the quality of regulations, or the accessibility and predictability of the legal norms has been enshrined in this principle by the ECHR jurisprudence [2, p.276]. The solutions in these circumstances are limited to two possibilities: codification and interpretation of normative acts. Codification can be achieved by adopting a Judicial Code that would bring together a multitude of existing normative acts in the field of organization and functionality of the courts, as for interpretation, its necessity results not only from the imperfections of law, but also from their intrinsic nature, from the generality of contained norms, and more recently from their technicality, excess of used terminology and neologisms. Exactly for these reasons, some normative acts currently adopted require interpretation in order to ensure the quality of the judicial act, also for the accessibility of simple people to the paradigms of justice. However, the interpretation activity that is entrusted to the magistrates is often impossible to achieve, due to the ambiguous, uncertain and technical nature of the newly adopted legal norms.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Following the analysis and generalization of the subject exposed in the thesis, also in order to achieve the objectives of the present research, by approaching a wide spectrum of topics, the following conclusions were formulated:

1. The desire to create a democratic society, governed by the rule of law principle can be achieved not only by preventing the violation of human rights and by ensuring sanctions for these violations, but also by creating a complex of guarantees and instruments to ensure that reparative and sanctioning functions of

justice are exercised within a framework of legality and operability, thus eliminating the possibility of new injuries occurring in the very act of justice application.

2. Appraising the legal aims constitutional guarantees for human rights we conclude, according to their legal value, they represent an integrated set of economic, social, political and ideological conditions, enshrined in the Fundamental Law of the country that predetermines the real possibility of execution and the mechanisms of ensuring compliance to all fundamental rights and freedoms, constituting the final and decisive purpose for realization for any motivated person [45, p.218].

3. Analyzing different definitions for the concept of fair trial formulated by the legal doctrine, we have found that they do not fully reflect the essence of this institution, or the right to a fair trial represents almost the multitude of procedural guarantees designed to protect fundamental rights. From this perspective the right to a fair trial is the means by which other fundamental rights are given judicial protection. The aforementioned determined us to develop a definition for this concept [7, p. 150].

4. The right of access to a court is an aspect of the right to a fair trial, and is not equivalent to the latter; respectively we cannot put the sign of equality between the principle of free access to justice enshrined in Article 20 of the Constitution and the right to an equitable trial, a fact that determined us to propose the completion of this constitutional norm [4, p.30-31].

5. Assigning an absolute character to the right of free access to justice, the national legislator has admitted the introduction into the Constitution of an amendment, which contains a rule which cannot be respected from the start, because the existence of limitations in the exercise of the legal action is determined by the fact that lack of such restrictions would seriously affect the judicial system, transforming its activity into a chaos - if justice seekers with right for judicial defense were given the right to individually establish court location and legal proceedings schedule, nominal composition of the trial court and amount of court fee, setting deadline for case examination, as well as right to decide on other issues of procedural nature. In order to remove these inconsistencies, we have proposed the completion of art.20, pph.2 of the Constitution of Republic of Moldova.

6. Analyzing general guarantees of a fair trial I concluded that, one of its pillars is the independence of the judiciary, which depends on the fulfillment of three conditions: a) Safety of position: thus, the mandate of the judge, whether he is without deadline period or until age retirement, or for a fixed term, must be protected against arbitrary or discretionary interference of the executive, legislative or other competent authority in the appointment procedure. b) Financial security: an aspect that implies that salary and pension are established by law and cannot be subject to arbitrary interventions by the executive in a way that could affect the independence of the justice. c) Institutional independence: that is, independence in terms of administrative matters directly related to the exercise of the judicial function. [6, p.23]. Taking into account non-functionality and inefficiency of certain conditions, which create serious slippages in the judicial practice, we

submitted a draft law in which we recommend to complete art.116 of the Constitution of the Republic, respectively the introduction of constitutional guarantees aiming to exclude any pressure on the magistrates.

7. Major problems that affect the achievement of constitutional guarantees for a fair trial are due to lack of genuine reforms at the Supreme Court of Justice and at the Superior Council of Magistracy, as well as the lack of 5-year initial term for judge appointment, a fact which determined us to propose a modification in art.116 of paragraphs (2) and (4), as well as of art.122 of the Constitution of Republic of Moldova.

8. There are several reasons that explain the functional precariousness of demands of a fair justice, some of them being determined by normative defects, which make it difficult for the independent activity of the judges due to danger of initiating criminal case against them or a risk of disciplinary sanctions. These circumstances determined us to propose the exclusion of criminal components from Criminal Code in order to remove dangerous means of influence on magistrates, as well as to amend the Law references on selection, performance evaluation and career of judges, on the segment of reducing the drastic character of disciplinary sanction for the judge for eventual deficiencies in their activity.

9. While working on the thesis, identifying the guarantees of the fair trial and the right to silence and non-incrimination, I found that national regulations in field are quite different, being included in fundamentally different institutions of the Criminal Procedure Code (probation procedures, coercion measures , rights of suspect or rights of defendant). Respectively, I came up with the proposal that through the Fundamental Law, a unitary regulation should be assigned to this procedural guarantee, an aspect that would strengthen its legal force. [5, p.35]

10. Among the internal extrajudicial mechanisms meant to ensuring respect for human rights, including right to a fair trial, stands the institution of People's Advocate, regarding which we have found it has low efficiency and is subject to political influences, due to parliamentary appointment procedure. In order to increase this institution’s role in its activity to ensure respect of right to a fair trial, we recommend the modification of the appointment and dismissal procedures.

11. Noting a favorable impact that mechanism of raising the exception of unconstitutionality has on the realization of right to a fair trial, as well as the increasing role of arbitration, as an alternative way of resolving disputes, we highlight the need to make legislative changes in the legislation regarding arbitration, so that the exception of unconstitutionality can be invoked not only in front of courts of common law, but also in front of courts for commercial arbitration.

12. The controversial issue of the relationship between the right to a fair trial and the freedom of expression of the mass-media, investigated through reference to both domestic law and the ECHR's practice, has led us to conclude that, a clear limitation within the freedom of expression the field of action related to judicial activity in criminal cases is an immediate imperative, preventing criminal investigation bodies from

assigning their role as judges by suggesting the suspected person's guilt at press conferences or interviews for the media representatives. In this regard, we proposed to amend article 8 of the CPP of Republic of Moldova.

13. The effective character of free access to justice can be ensured by granting reasonable facilities to court access, namely exemption from state tax payment. However, at present, these facilities cannot be used by a large part of the population, which have incomes well below the established average of national economy level. In this context, we recommend broadening the spectrum of exemptions for state tax payment.

14. The provision of effective legal assistance is a basic element of access to justice and the state has the obligation to guarantee legal assistance to people who are financially vulnerable. From the analysis carried out, however, we found some dissatisfaction of the litigants in relation to the quality of services provided by office lawyers, which led us to propose some modifications in terms of mechanisms of granting the legal assistance guaranteed by state.

15. The quality of the act of justice, including the observance of the right to a fair trial, is strictly dependent on the number of personnel serving the justice sector. At present, there is an acute shortage of clerks, judicial assistants or court interpreters. These findings have encouraged us to recommend the co-operation of educational institutions in the process of filling vacant positions from judicial system.

Following the findings made in the context of investigations and arguments of the thesis, the following proposals were submitted:

1. Because the doctrinal definitions do not include all the defining elements of the right to a fair trial, I proposed the following definition of this institution: *The right to a fair trial is a fundamental principle, of public order, meant to ensure the procedural balance of the parties and the legality of the legal procedure. by observing guarantees that imply the free access to justice, the public character of the debates, carried out within the limits of the reasonable term, by an independent and impartial court, established by law, with assurance of the right to defense and delivery of a reasoned decision, the achievement of which is guaranteed by the right to demand a legal enforcement.*

2. The evolution of constitutional democracy in Republic of Moldova, as well as the need to correlate the provisions of the Fundamental Law regarding fundamental rights and freedoms with the provisions of the Convention for defense of human rights and fundamental freedoms, has determined us to propose the completion of Article 20 of the Constitution of the Republic, with the name *Free access to justice* in terms of its content, in order to ensure at the level of modern demands not only the right to a court, but also other guarantees provided by Article 6 of ECHR, that together form the concept of a fair trial. In this regard, we recommended the introduction of paragraph 3 with the following content: "3) Parties have the right to a fair trial and to resolution of cases within a reasonable deadline".

3. In order to remove the inconsistencies found regarding the absolute or non-absolute character of the right of free access to justice, we have proposed the completion of article 20 paragraph 2 of the Constitution

of Republic of Moldova, by adding the following sentence: “As an exception, it is admitted legal restraint, without prejudice to the substance of free access to justice, by establishing conditions for exercising the legal action". On the same line of thought, I suggested the modification of art.54 pph.3 of the Constitution of Republic of Moldova, by removing the art.20 from the content of this paragraph. Respectively, art.54 paragraph 3 of the Constitution of Republic of Moldova, is to be formulated as follows: "The provisions of paragraph 2 do not allow the restriction of the rights proclaimed in articles 21-24".

4. Since the current wording of Article 142 pph.2 of the Constitution of Republic of Moldova prohibits the suppression of rights only, and not their evisceration by restricting their essential nucleus, we have proposed the reformulation of this constitutional provision which will have the following content: "No revision can be made if it results in the suppression of fundamental rights and freedoms, *the attainment of their essential core* or the serious breach of their constitutional guarantees ”.

5. Consolidation of independence in institutions of justice department, so they are not subjected to political or other pressure from government, parliament, hierarchically superior courts, by adopting the following measures:

- the completion of art.116 of the Constitution of the Republic of Moldova by adding paragraph 1^1 with the following content: "The independence of the judge is ensured by keeping the following guarantees: a) the prohibition of any interference in the activity of the judge performing the justice by bringing to criminal liability offenders who have committed crimes; b) the organization of the courts, their competence and court procedure is determined by organic law; c) no limitation of time for the appointed office judge; d) the legal regulation of the procedure of appointment, suspension and dismissal of the judge; e) selecting and promoting judges according to criteria of professionalism, integrity and meritocracy; f) ensuring respect for the secret of deliberation; g) the inviolability of the judge; h) the allocation of sufficient resources for the functioning of judicial system; i) material and social insurance of the judge;

- modification of art.116 al.4 of the Constitution of Republic of Moldova, with the following content: "President, vice-presidents and judges of Supreme Court of Justice are appointed by President of Republic of Moldova at the proposal of Superior Council of Magistracy, the condition being seniority of work as a judge is at least 10 years”;

- modification of art. 122 of Constitution, which will have the following content: "The Superior Council of Magistracy is composed of: a) 7 representatives of the judiciary, in proportional number to all categories of courts; b) 4 representatives of civil society and academic department; 3) a representative from Lawyers’ Union". As a result, the SCJ would have the following composition: four judges delegated from the courts, two judges delegated by the courts of appeal and one judge from the SCJ. Also selection through contest will take place, two representatives from NGOs active in the field of justice and two entitled

professors from law faculties. The Lawyers' Union will delegate its elected representative to the General Assembly of Lawyers' Union. Also, paragraph 2 of Article 122 of the Constitution shall be excluded;

- exclusion of the criminal component enshrined in art.307 CP, with a view to remove any suspicions of constraint exercised on magistrates.

6. Completion of art.21 of Constitution of Republic of Moldova, which establishes the presumption of innocence, by introducing paragraph 2 with the following content: "Person who for plausible reasons is suspected to have committed or tried to commit an offense, cannot to be freely investigated without being informed about: a) the right to make statements, answer questions or keep silence; b) the right not to make any self-incriminating statements and not to confess his guilt".

7. The election of People's Advocate directly by citizens is a beneficial fact, who under certain conditions clearly stipulated in People's Advocate Law, should also have the possibility to revoke him. This would be a way to guard People's Advocate from the "dependence" on political majority and stimulate his decisive acts of major importance, regarding defense of rights and freedoms of citizens.

8. For the invocation of the exception of unconstitutionality both in the courts of common law, as well as in the courts of commercial arbitration, which also carries out a judicial activity under the arbitration agreement of parties on decisions which upon pronouncing are liable to forced execution, we have proposed the completion of article 27 of the Law on arbitration (no. 23 of 22.02.2008) [26] with paragraph 2^1, which will have the following content: " In case of uncertainty regarding the constitutionality of normative acts of Republic of Moldova, which will be applied to resolution of a case, the Constitutional Court will notify from the office or at the request of trial participants ".

9. Selfsame the Directive (EU) 2016/343 of European Parliament and of Council of March 9, 2016, we proposed to amend article 8 of CPP of Republic of Moldova by adding two new paragraphs aligned with following content: "(4) During criminal prosecution public communications and statements are prohibited, as well as publication of other information, directly or indirectly, coming from public authorities or from any other natural or legal persons, regarding facts and persons subject to these procedures. Violation of this obligation is a crime and is punished, according to criminal law. (5) It is prohibited during criminal trials, the public presentation of persons suspected of committing offenses wearing handcuffs or other means of immobilization, or affected by other ways thus inducing the perception they could be guilty of committing an offense".

10. In order to effectively ensure free access to justice I considered necessary to remove the payment of state tax for categories of persons who have low income. In this regard, we proposed the completion of Article 85 paragraph 1 of Code of Civil Procedure of Republic of Moldova [11] with letter a^1) with the following content: "applicants whose income do not exceed the average salary on national economy".

11. Given the fact that legal assistance services guaranteed by the state are often of low quality, we have proposed to amend article 29 pph 1 of the Law on legal assistance guaranteed by the state, [28] with the following content: "Qualified legal aid is provided by public lawyers". These changes are necessary to avoid possible future convictions to ECHR, which has repeatedly sanctioned states that did not effectively provide legal assistance, especially when the lawyer was appointed state office.

12. In order to supply the deficit of clerks and interpreters in courts, fact which affects proceedings velocity and procedural language principle, we considered as appropriate to open a new specialty within the Center of Excellence that would train auxiliary staff for the department of justice.

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ANNOTATION
BACU IGOR

"Constitutional guarantees of the right to a fair trial". Thesis of Doctor of Law, Chisinau, 2019

The thesis includes: An introduction, four chapters, conclusions and recommendations, bibliography including 280 titles, 161 text pages. The results gained have been published in 8 scientific works, the total volume of publications on the thesis topic is of about **3.37 c.a.**

Key words: constitutional guarantees, fair trial, mechanisms for ensuring the observance of the fundamental rights, judicial independence, trial publicity and its contradictory nature, proceedings celerity, presumption of innocence.

Thesis's goal. The work's goal is to approach how the guarantees to a fair trial are regulated and implemented at constitutional level and how compatible they are with requirements set out in the European Convention on Human Rights, and how states fulfill the responsibility to implement a normative framework designed to protect any person against the judicial arbitrary.

Thesis's objectives. To reach this goal the following objectives should be achieved: to define the concept of fair trial from the viewpoint of approaches mirrored in the modern doctrine and constitutional provisions; to identify international instruments dedicated to the right to a fair trial; to analyze the system of constitutional guarantees relevant for the protection of human rights and freedoms; to study the system regulating the guarantees to a fair trial by determining their basic elements; to highlight the basic role of the practice of the Constitutional Court to ensure the appropriate implementation of guarantees to a fair trial.

Scientific novelty and authenticity are determined by the goal and objectives derived from how the issue has been approached, from the nature of research subject matter. Therefore, the scientific novelty is provided by the analysis of steps the constitutional guarantees of the right to a fair trial are applied by the local judiciary system, by emphasizing the drawbacks in implementing and providing solutions to remove the drawbacks found.

The results obtained that contributes to solution of an important scientific problem lies in identifying solutions designed to optimize the mechanism of ensuring the observance of the right to a fair trial by establishing the right to a fair trial at constitutional level and by filling up or enlarging the area of guarantees set out at constitutional level.

Work's theoretical significance. Theoretical conclusions set out in the paper shall contribute to develop the Constitutional Law, especially to study the mechanism to ensure the observance of human rights, especially of the right to a fair trial. The research's results shall serve as basis for developing some synthetic works and not only for the constitutional law, but also for the criminal or civil proceedings as it provides for fundamental rules to carry out a trial in close interaction with mechanisms set at constitutional level meant to ensure the observance of those rules.

Practical value of thesis. Analyses, conclusions and recommendations herein referring to optimization of applicability of the constitutional guarantees of the right to a fair trial shall set up a theoretical and practical background that could contribute to strengthen the rule of law state in the Republic of Moldova.

Implementation of results obtained: from theoretical and scientific viewpoint it has been shaped and analyzed the content of the constitutional and international guarantees applicable to the Moldovan legal system related to achieving the right to a fair trial. From the legislative and normative viewpoints, it has been analyzed the legal framework in the field of guarantees securing the observance of the right to a fair trial. From the practical and jurisprudence viewpoint, it has been studied a variety of casuistic works based both on ECHR's decisions and the Moldovan Constitutional Court's decisions.

ADNOTARE

Bâcu Igor ”Garanțiile constituționale ale dreptului la un proces echitabil”. Teză de doctor în drept, Chișinău, 2020

Structura tezei este următoarea: Introducere, patru capitole, concluzii generale şi recomandări, bibliografie din 280 titluri, 161 pagini text de bază. Rezultatele obţinute au fost publicate în 8 lucrări ştiinţifice, volumul total al publicaţiilor la teza este circa **3,37 c.a.**

Cuvinte cheie: garanții constituționale, proces echitabil, mecanisme de asigurare a respectării drepturilor fundamentale, independența judecătorului, publicitatea și contradictorialitatea procesului, celeritatea procedurilor, prezumția nevinovăției.

Scopul lucrării. Lucrarea presupune ca scop abordarea modului de reglementare şi implementare a garanţiile dreptului la un proces echitabil, consacrate la nivel constituțional şi compatibilitatea acestor garanţii cu exigenţele impuse de Convenţia Europeană a Drepturilor Omului, respectiv modalitatea în care este îndeplinită obligaţia statelor de a realiza o construcţie normativă menită să asigure protecţia oricărei persoane împotriva arbitrariului judecătoresc.

Obiectivele lucrării. Atingerea scopului propus presupune realizarea următoarelor obiective: definirea conceptului de proces echitabil prin prisma abordărilor reflectate în doctrina contemporană și a dispozițiilor constituționale; identificarea instrumentelor internaționale care consacră dreptul la un proces echitabil; analiza sistemului garanțiilor constituționale relevante în materia protecției drepturilor și libertăților fundamentale ale omului; cercetarea sistemului de reglementare a garanţiilor dreptului la un proces echitabil, pe fundalul determinării elementelor componente ale acestora; evidenţierea rolului major al practicii Curții Constituționale în procesul de asigurare a unei aplicări adecvate a garanţiilor procesului echitabil.

Noutatea și originalitatea ştiinţifică este determinată de scopul şi obiectivele, derivate din modalitatea de abordare a problemei, din însuşi natura obiectului de cercetare. Astfel, noutatea ştiinţifică este reprezentată de analiza modului de aplicare în ordinea juridică internă a garanțiilor constituționale ale dreptului la un proces echitabil, evidențiind carențele în implementare și formulând soluții pentru înlăturarea deficienţilor constatate.

Rezultatele obținute care contribuie la soluționarea unei probleme științifice importante constau în identificarea soluțiilor menite să eficientizeze mecanismul de asigurare a respectării dreptului la un proces echitabil, prin consacrarea constituțională a dreptului la un proces echitabil, precum și prin completarea sau lărgirea sferei garanțiilor instituite la nivel constituțional, în vederea asigurării realizării drepturilor și libertăților fundamentale ale omului.

Semnificația teoretică a lucrării. Deducţiile teoretice formulate în lucrare vor contribui la dezvoltarea Dreptului constituțional, în special studiul privind mecanismul de asigurare a respectării drepturilor omului, cu predilecție pentru dreptul la un proces echitabil. Rezultatele cercetării pot servi la elaborarea unor lucrări de sinteză, nu numai pentru dreptul constituțional, dar şi pentru procedura penală sau civilă, fiindcă prezintă reguli fundamentale ale desfășurării procesului de judecată în strânsă conexiune cu mecanismele instituite la nivel constituțional în vederea asigurării respectării acestor reguli.

Valoarea aplicativă a prezentei teze. Analizele, concluziile şi recomandările cuprinse în conţinutul tezei ce ţin de eficientizarea aplicabilității garanțiilor constituționale ale dreptului la un proces echitabil, creează o anumită bază teoretică și practică ce poate contribui la consolidarea statului de drept în RM.

Implementarea rezultatelor obţinute în plan teoretico-științific, se conturează și se analizează conținutul garanțiilor constituționale și internaționale, aplicabile în sistemul de drept al Republicii Moldova, privitoare la realizarea dreptului la un proces echitabil. În plan normativ-legislativ se analizează cadrul juridic în sfera reglementării garanțiilor ce asigură respectarea dreptului la un proces echitabil. În plan practico-jurisprudențial, se cercetează un vast material cazuistic bazat atât pe hotărârile CtEDO, cât și pe hotărârile Curții Constituționale a RM.

АННОТАЦИЯ

Быку Игорь "Конституционные гарантии права на справедливое судебное разбирательство". Доктор в области права, Кишинев, 2019 г.

Структура диссертации следующая: Введение, четыре главы, общие выводы и рекомендации, библиография из 280 наименований, 161 страниц текста. Полученные результаты опубликованы в 8 научных работах, общий объем публикаций в диссертации составляет около 3,37 с. а.

Ключевые слова: конституционные гарантии, справедливое судебное разбирательство, механизмы обеспечения соблюдения основных прав, независимость судьи, публичность и противоречивость процесса, быстрота процедур, презумпция невиновности.

Цель исследования. Работа предполагает как цель подход к способу регулирования и применения гарантий права на справедливое судебное разбирательство, установленных на конституционном уровне, и совместимость этих гарантий с требованиями, налагаемыми ЕКПЧ, а именно то, каким образом выполняется обязательство государств выполнять нормативную конструкцию, призванную обеспечить защиту любого лица от судебного произвола.

Задачи исследования. Достижение предложенной цели предполагает достижение следующих целей: определение концепции справедливого процесса с помощью подходов, отраженных в современной доктрине и конституционных положениях; анализ системы конституционных гарантий, касающихся защиты прав человека и основных свобод; исследование системы регулирования гарантий права на справедливое судебное разбирательство на фоне определения их составных элементов; подчеркивая важную роль практики Конституционного Суда в обеспечении надлежащего соблюдения гарантий справедливого судебного разбирательства.

Научная новизна и оригинальность исследования полученных результатов определяются целью и задачами, вытекающими из способа решения проблемы, из самой природы объекта исследования. Таким образом, научная новизна представлена анализом применения во внутреннем правовом порядке конституционных гарантий права на справедливое судебное разбирательство, подчеркивая недостатки в реализации и формулируя решения по устранению выявленных недостатков.

Результаты исследования, способствующие решению научной проблемы особой важности состоит в определении решений, призванных упростить механизм обеспечения соблюдения права на справедливое судебное разбирательство, путем конституционного установления права на справедливое судебное разбирательство и путем дополнения или расширения объема гарантий, установленных на конституционном уровне, с целью обеспечения и реализации прав и свобод личности.

Теоретическая значимость работы. Теоретические выводы, сформулированные в документе, будут способствовать развитию конституционного права, особенно исследования механизма обеспечения соблюдения прав человека, особенно права на справедливое судебное разбирательство. Результаты исследования могут послужить для разработки обобщающих работ не только для конституционного права, но и для уголовного или гражданского судопроизводства, поскольку в нем представлены основные правила проведения судебного разбирательства в тесной связи с механизмами, созданными на конституционном уровне для обеспечения соблюдения этих правил.

Прикладная ценность данной работы. Анализ, выводы и рекомендации, включенные в тезис относительно эффективности применения конституционных гарантий права на справедливое судебное разбирательство, создают определенную теоретическую и практическую основу, которая может способствовать укреплению правопорядка в Республике Молдова.

Внедрение полученных результатов: в теоретическом и научном плане изложены и проанализированы содержание конституционных и международных гарантий, применимых в правовой системе Республики Молдова, в отношении реализации права на справедливое судебное разбирательство. В нормативно-законодательном плане анализируется правовая база в сфере регулирования гарантий, обеспечивающих соблюдение права на справедливое судебное разбирательство. В плане судебной практике исследуется обширный казуистический материал, основанный на решениях ЕСПЧ, а также на решениях Конституционного Суда РМ.

BACU IGOR

THE CONSTITUTIONAL GUARANTEES FOR THE IMPROVEMENT OF THE RIGHT TO A FAIR PROCESS

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