MOLDOVA STATE UNIVERSITY

With title of manuscript
UDC: 343.14.(043.2)

CEACHIR Anatolie

ADMISSIBILITY OF EVIDENCE PRESENTED BY DEFENCE COUNSEL IN CRIMINAL PROCEEDINGS

Specialty 554.03 – Criminal procedural law

Doctoral dissertation

Chisinau, 2023

The thesis was elaborated within the Department of Procedural Law of the Faculty of Law of Moldova State University

Scientific advisor:
VIZDOAGA Tatiana,
Doctor of Law, associate professor,
specialty 554.03 – Criminal procedural law

Official reviewers:

1. **SEDLETCHI Iurie**, Doctor of Law, university professor
2. **RUSU Vitalie**, Doctor of Law, associate professor

The composition of the Specialized Scientific Council:

1. **DOLEA Igor, president**, Doctor habil. of Law, university professor
2. **ESANU Adriana**, **scientific secretary**, Doctor of Law, associate professor
3. **CUSNIR Valeriu**, Doctor habil. of Law, university professor
4. **GOLUBENCO Gheorghe**, Doctor of Law, University Professor
5. **OSOIANU Tudor**, Doctor of Law, university professor
6. **AIRAPETEAN Artur**, Doctor of Law, associate professor

The defence will take place on "29" aprilie 2023, at 10^{00}, at the meeting of the **Specialized Scientific Council D 554.03-22-49 of Moldova State University** (MD 2009, Republic of Moldova, Chisinau mun., 67 M. Kogalniceanu str., block 2, auditorium 119).

The PhD thesis and the summary can be consulted at the Library of Moldova State University and on the NAQAER website.

The summary was sent on "27" martie 2023.

Scientific Secretary of Specialized Scientific Council, dr., assoc. prof. **ESANU Adriana**

Scientific advisor, dr., assoc. prof. **VIZDOAGA Tatiana**

Author: **CEACHIR Anatolie**

CONCEPTUAL LANDMARKS OF THE RESEARCH

The actuality and importance of the topic addressed. According to the Association Agreement of 27.06.2014 between the Republic of Moldova, on the one hand, and the European Union and the Member States, on the other hand, our country undertakes, according to art.1 para. (2) point (e), "... to support and intensify cooperation in the area of freedom, security and justice, with the aim of strengthening the rule of law and respect for human rights and fundamental freedoms, as well as in terms of mobility and people-to-people contacts", and through the provisions of Article 2 para. (1), it must "... ensure respect for the democratic principles, human rights and fundamental freedoms, as enshrined in the Universal Declaration on Human Rights and defined in the European Convention on the Protection of Human Rights and Fundamental Freedoms". At the same time, the text of article 12, according to para. 1 states: "In their cooperation in the area of freedom, security and justice, the Parties shall attach particular importance to the consolidation of the rule of law, including the independence of the judiciary, access to justice and the right to a fair trial." At the same time, para. (2) rules on the obligation to "... cooperate fully on the effective functioning of institutions in the areas of law enforcement and the administration of justice", and para. 3 establishes, by way of inalienable undertaking, that "... respect for human rights and fundamental freedoms shall guide all cooperation on freedom, security and justice."[1]

The National Action Plan in the area of human rights for the years 2018 - 2022, approved by the Parliament Decision, being the third public policy document aimed at achieving and promoting human rights in the Republic of Moldova in the area of intervention [2] *The National Justice System*, in order to achieve Objective 1: *Ensuring the protection of human rights through an accessible, independent, transparent and upright justice*, Strategic target B: *Facilitating access to state-guaranteed legal aid*, among the result indicators envisages "(...) reducing the exclusion of lawyers from the legal aid system guaranteed by the State as a result of non-compliance with quality standards". Thus, in order to ensure the quality in the legal assistance guaranteed by the State, it materializes on "(...) the need to develop methodological support for lawyers in the form of practical guides and minimum quality standards of lawyers' work".

---

[1] Association Agreement of 27.06.2014 between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and their Member States, on the other hand from 27.06.2014. In: *Official Gazette of the Republic of Moldova* no.185-199/442 of 18.07.2014.

[2]Decision of the Parliament of the Republic of Moldova on the approval of the National Action Plan in the field of human rights for 2018–2022 [online] [cited 15.02.2022]. Available: http://www.justice.gov.md/public/files/massmedia/PNADO_III.pdf

The Republic of Moldova proclaims itself, according to art.1 para. (3), "a democratic state governed by the rule of law, in which the dignity of man, their rights and freedoms, the free development of the human personality represent supreme values and are guaranteed." [3] The improvement of the criminal procedure legislation aims at ensuring real and effective guarantees of the fundamental rights and freedoms of all those who have found themselves in the orbit of criminal cases as a result of harmful acts. On this occasion, the lawyer, being a specialist in law, is asked to providethe respective assistance to the suspect, the accused, the defendant, and the function of the defence in the criminal proceedings remains in the view of the legislator and the doctrinaires. In recent decades, several measures have been taken to strengthen the status of the defender, broadening their rights, including in criminal evidence. In this regard, the additions made in *the Law on Lawyers*[4] of 22.04.2021, implemented on 14.06.2021, are significant. According to the text of the law, among the types of qualified legal assistance provided by lawyers to natural and legal persons, the legislator has established, at point g): "*carrying out the activity of independent investigation"*.

The possibility for the defence counsel to successfully perform their or her procedural function in the interests of the litigant is indissoluble dependence on the principle of adversariality and procedural equality of arms.

Adversariality is rightly recognized as the key to establishing the truth in a judicial process, being characteristic of the reasoned intellectual duel of the two belligerent forces – the prosecution and the defence – endowed with equal rights and possibilities in order to demonstrate the fairness of the position determined by the interest pursued in the criminal case. A trial based on adversariality asks thecourt for equidistance, objectivity and the obligation to settle the case only on the basis of the evidence presented by the parties, investigated at the hearing, with the participation of all those interested in the trial.

The procedural equality of the parties in the adversarial trial is transposed, in particular, in the criminal evidence, especially in the administration of evidence, or the subsequent actions – verification and assessment – will be made in relation to the evidence in the case file. Without the effective participation of the defence counsel in the probation, it will not be possible to ensure procedural equality and, without a doubt, a qualitative defence.

[3]Constitution of the Republic of Moldova of 29.07.1994. Flax: *Official Monitor of the Republic of Moldova*, no.1 of 12.08.1994; Republished: *Official Monitor of the Republic of Moldova* No. 78/140 of 29.03.2016.
[4]Law on lawyers no. 1260-XV. Flax: *Official Monitor of the Republic of Moldova*. 2002, no. 126-127/1001 [online] [quote 15.02.2022]. Available: https://www.legis.md/cautare/getResults?doc_id=129643&lang=ro #

The defence counsel must take their well-deserved place among the participants in the trial, the quality of both the judicial process and the solutions adopted largely depends on their performance. Certainly, an insistent, active defender and a good connoisseur of the defence techniques will effectively contribute to the achievement of the purposes of the criminal trial, provided for in Article 1 para. (2) Crim. Proc. Code, where both "(...) the protection of the person, society and the state from crimes", as well as "the protection of the person and society from the illegal acts of the persons with positions of responsibility in their activity, related to the investigation of the crimes alleged or committed, so that any person who has committed a crime is punished according to their guilt and no innocent person is held criminally liable and convicted".

At present, in the Republic of Moldova, measures are being taken to strengthen the adversarial process with active and equal parties in rights, which would present to the court well-thought-out and reasoned positions. Recognizing the adversariality as a cornerstone in the criminal trial of the Republic of Moldova, the legislator regulated it through art. 24 Crim. proc. Code, which divides the functions of the criminal process, establishes the neutrality of the court in relation to the parties to the trial, including on the scale of their possible and permissible equality.

Therefore, equality of the parties is a prerequisite for implementing the idea of adversariality of the parties in criminal proceedings, which would also ensure the admissibility of evidence presented bythe defence counsel in criminal proceedings.

For those reasons, the subject of the role of the defence counsel in the criminal evidence in general and the admissibility of the evidence adduced by the defence counsel when they participated in the proceedings, in particular, requests a detailed investigation. No less important is the analysis oflegal practice in this area.

The general conditions of the defence and of the evidence presented by the defender in the criminal proceedings were the object of the scientific investigations of the researchers: Dolea I.,Sedletchi Iu., Vizdoaga T., Osoianu T., Rusu V., Vesco I., Lichii B., Dongoroz V., Volonciu N., Theodoru Gr., Neagu I., Damaschin M., Doltu I., Lefterache L., Stoica C., Udroiu M., Jidovu N., Martincic E., Andrusco P., Botocova M., Davletov A., Zolotih V., Camisin V., Chipnis N., Cudreavtsev V., Cuznetov N., Larin A., Markina E., Melnicov Iu., Mikhailovsia I., Sibileva N.,Stroicova A., Urgalchin A., Garraud R., Levasseur G., Mueller C., Pelermam Ch., Pichard P., Pradel J. etc.

Although numerous, studies dedicated to the function of the defence and the defender as a subject of criminal proceedings have not exhausted all aspects of the issue concerned, on the contrary, have

highlighted its actuality and have incited polemics, especially when the value of the data that the defender accumulates for the purpose of providing qualified legal aid is called into question. The present study comes to complement the research carried out in the area by revealing the trends and newaspects with a multilateral investigation of the institution of admissibility of evidence and, in particular, of the admissibility of the evidence presented by the defender.

The aim of the thesis consists in carrying out a complex study of the activity of the defender in the criminal probation and, in connection with this, revealing the admissibility of the evidence presented by the defender through the prism of the institution of admissibility of evidence in the criminal trial and the optimization of the regulatory framework in this area.

The objectives of the research are aimed at:

- investigating the institution of defence from the perspective of ensuring the right to a fair trial and demonstrating the role of the defence counsel in this respect;
- conceptual approach to the notion and criteria for the admissibility of evidence;
- analysis of the principle of free assessment of evidence;
- delimiting the assessment *of the admissibility of evidence* as a concept distinct from the concept of *free assessment of evidence*;
- identification of the admissibility of evidence in a broad and narrow sense;
- analysis of the doctrinal views on the assessment of the admissibility of the evidence presented by the defence counsel;
- revealing undisclosed data as evidence;
- assessment of the efficiency of the rights of the defender in criminal evidence, provided for in the current regulation of the Criminal Procedure Code;
- revealing the tactics of the defence for the efficient realization of the rights of the defender according to art. 100 para. (2) Crim. proc. Code;
- investigation of the institution of the lawyer's investigation in the criminal proceedings and of the conditions of admissibility of the acquired data;
- determining the conditions for the admissibility of objects, documents and information submitted by the defence counsel;
- description of the proposal and invocation of witness evidence by the defender in criminal proceedings;
- investigation of the legal provisions regarding the application of special knowledge by the defender, in order to achieve the defence;

- formulating the conclusions and recommendations for the improvement and efficiency of the mechanism of admissibility of the evidence presented by the defender in the criminal proceedings.

The important scientific problem solved in the area of research resides in the elaboration of the instruments for identifying the means of achieving the rights of the defender in the criminal evidence, *which led* to the clarification for theorists and practitioners in the area of criminal procedure of the conditions of admissibility of the evidence presented by the defender in the criminal trial, *in order to optimize the* procedural-criminal doctrine in this area by formulating and arguing proposals de *lege ferenda*.

Hypothesis research. The investigation starts from the hypothesis that the defender has the right to propose and invoke evidence in the criminal trial from the perspective of the adversarial principle and equality of arms. The procedural-criminal legislation does not expressly regulate the rules of admissibility of evidence, if it is discovered and proposed by the defence, and in the practical activity several approaches are encountered, which are interpreted differently by the courts. Such a situation creates the risk of affecting the principle of clarity and predictability of the law from the perspective of the rule of law.

Summary of the research methodology and justification of the chosen research methods. In order to establish the scientific-theoretical framework of the present study, in the research carried out I applied the general dialectic-scientific method, but also a series of particular scientific methods: historical, comparative-judicial, logical-legal and statistical. We have also resorted to some specific methods of scientific research, such as analysis, synthesis, induction, deduction, etc.

The general conclusions and recommendations formulated in the doctoral thesis reflect the results of the scientific research carried out and of the case studies.

The theoretical basis of the doctoral thesis is mainly provided by provisions in the area of constitutional law, criminal procedural law and law. In the content of the doctoral thesis, the international legal standards in the area of defence realization have found expression, regulated, in particular, by the CoEDO, the case-law of the ECHR, the norms of the Constitution, the judgments and decisions of the Constitutional Court, the laws of the Republic of Moldova, as well as by the Decisions of the Plenum of the Supreme Court of Justice of the Republic of Moldova.

In the process of elaboration of the doctoral thesis, an analysis of the norms of the criminal procedure law of Romania, Ukraine, Russian Federation, Slovenia, France, the Federal Republic of Germany, etc. was made. The application of the comparative method enabled the author to find that the

limits of the lawyer's activity for the purpose of taking evidence were regulated differently in the criminal procedure law of those countries.

The empirical basis of the doctoral thesis consists of the relevant case-law of the ECHR and national courts. The author studied 103 criminal cases, and in the process of elaborating the thesis of real use was also their personal experience, accumulated in their activity of over 27 years as a lawyer in criminal trials.

Data on the approval of the results. The scientific results and the basic conclusions of the doctoral thesis were discussed at the meetings of the Department of Criminal Procedural Law and Forensics, later of the Department of Procedural Law of Moldova State University. The conclusions reached during the research were reflected in the author's publications in specialized journals in the country and in summaries of communications presented at national and international scientific conferences. The results of the research were presented and discussed at various scientific and scientific practice events, were presented at the National Scientific Conference with internationalparticipation "Integration through Research and Innovation" (Moldova State University, Chisinau,November 10-11, 2020) and at the International Scientific Conference "Relevance and quality of university training: competences for the present and the future", Balti, 2020.

The main scientific results, obtained during the research, within the doctoral thesis, of the subject of admissibility of the evidence presented by the defender in the criminal trial, were reflectedin: the analysis of the role of the defender in the criminal evidence, the emphasis being placed on the right to gather evidence as one of the most important aspects of achieving the equality of the parties in the criminal proceedings; the justification of the fact that the inequality between the defence between the defence and indictment in criminal evidence infringes the adversarial principle and the purpose of the criminal proceedings in order to establish the truth; the parties should be on an equal footing, withinthe probationary framework, not only at the trial stage, but also until the case is sent to trial, where, for the most part, the evidentiary basis of the criminal case accumulates from the position corresponding tothe procedural interests of only one party – of the prosecution; arguing the thesis that the defence counsel, as a participant with equal rights in relation to the prosecution, cannot be deprived of the right and possibility to identify and gather evidence of disingenuousness; demonstrating that the lawyer's activity, related to the collection of evidence, falls within the qualified legal assistance granted to the suspect, the accused, the defendant; the justification that the right of the defence counsel to gather evidence may be strengthened by obliging the party against them to take certain procedural actions, with the participation of the defence counsel, in order to identify evidence in the defence, if the party to

the accused has previously rejected the request of the defence submitted in this regard; arguing the thesis that the evidence in the indictment, collected by error by the lawyer-defender and attached to the criminal case, is to be recognized as inadmissible, because it was administered by a participant in the trial, whose functions are incompatible with the function of the prosecution.

Publications on the topic of the thesis. On the topic of the doctoral thesis were published 7 scientific papers.

Volume and structure of the thesis: 197 pages of basic text that includes: Introduction, 4 chapters, general conclusions and recommendations; bibliography of 367 titles; statement on assuming responsibility; author's CV.

Keywords*:* defender, defence, evidence, rules of evidence, means of proof, administration, admissibility.

CONTENT OF THE THESIS

In **the Introduction,** the actuality and the importance of the approached problem are argued, the purpose and objectives of the thesis are formulated, the scientific novelty of the obtained results, the theoretical importance and the applicative value of the thesis, the approval of the results are formulated, the summary of the thesis compartments being pointed out.

Chapter I, entitled ***Analysis of the situation in the area of admissibility of evidence presented by the defence counsel in criminal proceedings***, reviews and analyses the scientific materials on the subject of admissibility of the evidence presented by the defender in the criminal proceedings. The examination of the discussions held on this subject is carried out systematically and in a chronological order, which allowed us to find that, in the doctrine of the criminal process and in the theory of evidence, the quality of the admissibility of evidence is recognized by most specialists as a key position, through the prism of which, as is known, the determination of the usefulness of their use within the evidentiary takes place. This idea is reflected in several scientific works, signed by authors from the Republic of Moldova and other states, such as: Dolea I., Sedletchi Iu., Vizdoaga T., Osoianu T., Rusu V., Vesco I., Lichii B., Dongoroz V., Volonciu N., Theodoru Gr., Neagu I., Damaschin M., Doltu I., Lefterache L., Stoica C., Udroiu M., Jidovu N., Martincic E., Andrusco P., Botocova M., Davletov A., Zolotih V., Camisin V., Chipnis N., Cudreavtsev V., Cuznetov N., Larin A., Marchina E., Melnicov Iu., Mikhailovka I., Sibileva N., Stroicova A., Urgalchin A., Garraud R., Levasseur G., Mueller C., Pelermam Ch., Pichard P., Pradel Jsupport, etc.

As a result, the degree of investigation of the topic and the scientific contribution of the studies in the area of admissibility of samples was established, the scientific problem to be solved was formulated and the directions for solving it were designed.

It has been found that the correct interpretation of the notion of "admissibility of evidence" has theoretical and practical importance, since it substantially influences the entire course of the evidence: the accumulation, verification and assessment of evidence in relation to which the mechanism of defending the rights of the accused persons can be addressed.

The vast majority of authors believe that evidence cannot be used if constitutional norms have been violated in the process of obtaining it.

It is absolutely certain that the evidence obtained in violation of the rights guaranteed by the Constitution: individual freedom and security of the person (art. 25); intimate, family and private life (Article 28); inviolability of the domicile (Art. 29); secrecy of correspondence (Article 30), etc., cannot be put at the basis of the accusation.

Several authors, including local ones, propose to delimit the substantial violations of the provisions of the law, which would neutralize the possibility of using evidence, from the non- substantial ones, which would not reflect on the admissibility of evidence. The latter are attributed to the violations of the provisions of the Code of Criminal Procedure which, by abridging or depriving of the rights guaranteed by law of the participants in the trial, prevented the court from examining the casecompletely and in all aspects or influenced the pronouncement of a legal and well-founded sentence.

Chapter II, entitled ***The co-report between the function of the defence and the institution of admissibility of evidence in criminal proceedings,*** in which context the ***general aspects regarding the defence and the role of the defender in the criminal evidence, the evidence and their admissibility criteria in the criminal trial*** were pointed out

It has been pointed out that “the right of defence being a complex one, includes several main aspects: the possibility of the parties to defend themselves in the criminal proceedings; the obligation of the judicial bodies to consider, the fine office, also the aspects favored to the parties; the possibility or, in the cases provided by law, the obligation to provide qualified legal assistance in the criminal proceedings”.[5]

[5]VOLONCIU, N. *Criminal Procedure Treaty. The general part*. Vol. I. Bucuresti: Paideia, 1988, p. 188; NA I. *Criminal Procedure Treaty.* Bucharest: Pro, 1997, p. 149.

The procedural activity of the defender represents a specific variety of the procedural-criminal activity. [6] In the specialized literature "*defence*" is researched:

a) in a narrow sense – as "a procedural-criminal function, which takes into account the procedural activity of the subjects of the party of defence (suspect, accused, defendant, defender, civilly responsible party, their representatives), oriented towards the total or partial overthrow of the accusation, revealing the favorable circumstances of the suspect, accused or defendant, as well as ensuring their legitimate rights and interests"[7];

b) in a broad sense – as a "constitutional legal category, understanding the activity carried out in order to protect the person from violations of their/her legitimate rights, freedoms and interests, as well as to compensate for the damages caused"[8];

Although the rights of the defence should not be limited solely to the assistance of the defence counsel, it is argued that "the activity of the latter, being one of the components of the rights of the defence, is carried out by giving advice and drawing up requests"[9].

I have found that the "*defence*" is used uniformly in the procedural-criminal law, when regulating the competences and duties of the prosecutor, the criminal investigation officer and the court in order to impose the constitutional obligation to ensure the rights and freedoms of the person, in particular, regarding the accusation and unfounded conviction, but also any illegal limitation of inviolability.

The actions of the defender of the suspect, the accused, the defendant in the rules of evidence in criminal cases are determined by the necessity of discovering the circumstances, in the power to acquit them or to diminish their degree of liability. For this, the defender has the means and modalities provided by the law, being understood the forms of activity of the lawyer, i.e., their procedural rights. The methods of defence, in turn, include "a system of rules and procedures, used by the defender and their client, through which the means of defence, guaranteed by the law, are implemented".[10]

The defence must be complete and effective, manifested throughout the criminal proceedings.

By performing the function of the defence, the lawyer will use all the means and methods not prohibited by the law. In this respect, it is important to specify the phrase *legitimate interest of the*

[6]MELNIKOV, V. Yu. Participation of the defense counsel in the course of pre-trial proceedings. In*: Eurasian Bar Association*, No2, 2013, P. 35.
[7]MARTYNCHIK, E.G. Development of criminal procedure legislation. Chisinau, 1977, p. 10; Stetsovskii, Yu. I. Criminal procedural activity of the defender. Moscow, 1980, p.3..
[8]LARIN, A. M. Protection of human rights in criminal proceedings. B: General theory of law. / Rev. ed. E. A. Lukashova. Moscow, 1996, p.169.
[9]DONGOROZ, V., KAHANE, S., ANTONY, G. et al. *Theoretical explanations of the Romanian Code of Criminal Procedure. The general part*. Vol. V. Bucharest: Ed. Academiei Romane; ALL BECK, 2003., c. 173.
[10]FOMENKO, I.V., PALIEVA, O.N . Legal means of activity of the defender in proving in criminal cases. In: *Theory and practice of social development,* No8, 2015, c.91.

accused, but also to point out the obligations to use the means and methods not prohibited by the law and not to apply them for the defence of an illegitimate interest. To begin with, when it comes to a legitimate interest, an interest provided for by law is envisaged. Thus, the protection of a legitimate interest arises from the general principle of respect for human rights, freedom and dignity, provided for in Art. 10 Crim. proc. Code, the person being guaranteed the inadmissibility of the conviction for an offence they did not commit, but also of an excessive conviction, imposing a fair punishment, which, inthe future, will facilitate the process of re-education and resocialization of the person. So, in both cases we are faced with a legitimate interest of the person, and it is the defender who, by various means, will prevent their violation. In a broad sense, we could consider that the protection of the legitimate interest of the defended person is also the guarantee of a fair trial, or fair trial can only be a trial, throughout which the rights of the person and their dignity are respected.

For the performance of their office, the defender is entitled to use all means and ways of defence, which are not prohibited by law. From the text of the provisions of art. 68, 100 and 315 Crim. proc. Code, we deduce:

1) the right to gather and present evidence necessary for the granting of legal aid. The ways by which the defence counsel may take evidence are governed by Art. 100 para. (2) Crim. proc. Code:

- request and present objects, documents and information;

- to hold conversations with individuals, if they agree to be heard in the manner established by law;

- to request certificates, characteristics and other documents from various competent bodies and institutions, in the established manner;

2) the right to request the opinion of the specialist for explaining the issues that require special knowledge;

3) the right to participate in the hearing of the suspect, the accused, as well as in other criminal prosecution actions, carried out with the participation of the suspect, the accused, either at their request or at the request of the defender;

4) the right to address questions to the interviewed persons, with the consent of the representative of the criminal investigation body, in the process of participation in the criminal investigation actions;

5) the right to submit applications and to make objections. The former are aimed at establishing the circumstances of the case by carrying out criminal prosecution actions, and the latter ensure the objectivity and impartiality of the person conducting the prosecution, which in turn has a positive impact on the evidence;

6) the right to lodge complaints against the actions (inactions) and decisions of the prosecutor, the criminal investigation body and the body that carries out special investigative activity.

In the procedural-criminal doctrine, the issue of the participation of the defender in the probation is controversial, dominating two points of view:

1) the defender is entitled to collect evidence independently;

2) the defence counsel collects only certain information, which will subsequently be the basis for the formation of the evidence.

According to a detailed study, it is concluded that "the defender does not have an important element, due to which their actions do not fall within the activity of collecting evidence, namely the conversion, transformation of the information obtained and the provision of a form corresponding to it, that is, it is about the lack of possibility of evidence formation".[11]

Determining the powers of the defence counsel for the purpose of presenting evidence, the legislator does not specify which participant they is going to make them available– to the party to the prosecution or to the court of law. At the same time, in order to resolve this issue, most authors argue the desirability and necessity of presenting the evidence gathered by the defence counsel, first of all, to the party to the accused. This position is determined by the fact that "upon the presentation by the defence counsel of the evidence directly in the court of law, certain difficulties may arise, generated by the impossibility of verifying at the hearing their authenticity".[12]

Others consider that "the presentation of evidence by the counsel directly to the court creates the risk of violating the right of the accused to defend from possible abuses at the criminal investigation stage". They compared the evidence gathered by the lawyer with the results of the special investigative activity, which, until 2012, were obtained outside the procedural actions and, as a result, were not considered by themselves evidence, and in order to transform them into evidence, in the legal sense, it was necessary to use the evidentiary verification procedures, charged to the criminal investigation body and the prosecutor.[13]

Following the logic of the legal norm, it must be concluded that the volume, sequence, and stages at which the defender will present their evidence will be determined based on the position of the defence in question and, necessarily, coordinated with their client. Finally, the defence counsel is not

[11]TARASOV, I.S. Lawyer as a participant in the process of proof in criminal proceedings. B: Bulletin of the Nizhny Novgorod University. N.I. Lobachevsky No3, 2014, c. 230.

[12]MASLOV, I. Адвокатское расследование. B: З*аконност*ь, 2004, No10, c. 37.

[13]STROYKOVA, A.S. Collection of evidence by the defender as a means of ensuring the rights of the accused. *In: Legal practice.* 2004, No. 3, c. 16.

obliged to disclose all their strengths until the hearing, reserving the right not to present them during and at the end of the criminal investigation.

It is argued that from the totality of the rights of the defence counsel, one can distinguish, in particular, the prerogative to gather evidence – an opportunity inherent in the adversarial criminal proceedings. [14] According to V. Popov, "the participation of the defender in the probation is the use by them of a cumulation of rules and procedures, applied in order to effectively influence, with the help of the information gathered, on the decisions taken by the criminal investigation bodies and the court".[15]

By giving the defence counsel the right to gather evidence, the legislature, on the one hand, did not detail their procedural order of administration and, on the other, did not provide guarantees as to the realisation of that right. Consequently, the gathering of evidence by the defence counsel takes place under the conditions of endowing the parties to the defence and accusing them with different powers and possibilities, the balance tilting in favor of the agents of the State.

During the course of the trial, by carrying out the evidentiary procedures, the criminal investigation officer and the prosecutor are entitled to give binding indications to the participants in the trial, to order on the procedural measures of coercion regarding the rights and freedoms of the person. The defence counsel, however, on the contrary, when carrying out their right to gather evidence, cannotin any event implement any state authoritarian power. Citizens are not obliged, but only have the right to provide information to the defender, if they see fit and agree. To the same extent, the defender does not have the right to take or request certain objects and documents from the persons who own them, as the criminal investigation officer or the prosecutor may do in the process of carrying out the criminal investigation actions. Thus, the right of the defence counsel to take evidence does not give rise to the obligation of natural and legal persons to make available to them the information requested, which, if necessary, could be recognised as evidence in the defence.

On the other hand, the legislature also does not give the defence counsel the right to give the information gathered a certain procedural form, therefore, they must, for the purpose of its use in the case, request its administration by the prosecuting body or the prosecutor, draw up minutes and orders in order to attach the materials to the criminal case. Each time, the satisfaction of the lawyer's requests

[14]KUDRYAVTSEV, V.L. The right of a defense lawyer to collect evidence in accordance with applicable law. *In: Problems of Russian legislation*, 2012, No2, c. 170-173; KUDRYAVTSEV, V.L Procedural problems of proof in a defense lawyer in criminal proceedings. *In: Journal of Russian Law*, 2005, No6, c. 44-50; RAGULIN A.V. Problematic issues of the implementation by a defense lawyer of the right to collect evidence. *In: Topical issues of forensic support of criminal proceedings* / Proceedings of the All-Russian Scientific and Practical Conference,24 November, 2009, Irkutsk: БГУЭП, 20,10, c. 152-162.

[15]POPOV, V.S. *Participation of a defense lawyer in the process of proving at the stage of preliminary investigation and in the court of first instance.* Abstract Doctor of Law thesis Chelyabinsk*,* 2005, c. 12.

will depend on the will of the official subject, subject to the right to challenge the refusal to the prosecutor, to the hierarchically superior prosecutor or to the investigating judge, pursuant to art. 299, 299[1], 313 Crim. proc. Code. The defender acquires wider possibilities at the trial stage, where the principle of adversariality and equality of arms persists in full magnitude.

By the Law no.67 of 22.04.2021[16] was completed art. 8 para. (1) of the Law *on Lawyers* with point g) which reads as follows: "(g) carries out activities of independent investigation".

Thus, the legislature established the possibility for the lawyer to organize their own investigation into the interests of the client. At first glance, things are finally oriented in the direction favorable to the defence and the lawyer can make use of the evidentiary procedures, provided for in the procedural-criminal legislation, but the current regulatory framework of the criminal proceedings establishes that "the legal norms of a procedural nature from other national laws can be applied only on condition of their inclusion in the present Code" (art. 2 para.(4) Crim. proc. Code). Therefore, until the Code of Criminal Procedure is completed with provisions that will regulate the mechanism for the performance by the lawyer of independent investigations, the institution declared in the Law on Lawyers remains ineffective due to the impossibility of implementation.

Theoretically, empowering the defence with the right to carry out independent investigation activity, the legislator did not detail the procedural order of their administration and did not provide guarantees of the realization of this right, which determines the state when the defender cannot, to the full extent and without any impediment, carry out their powers in terms of gathering evidence.

Given the adversariality and equality of the parties, it is argued that[17] "the work of the defence counsel in the taking of evidence must possess the same legal character and content as the similar activity of the party against whom the accused is concerned. However, the legal conferral on the prosecution party of broader procedural possibilities in the interpretation of evidence, in relation to the procedures of evidence collection, which the defence side has, determines the inequality of their procedural status."

If during the trial phase the defence party uses rights equal to those of the prosecution, then in the criminal prosecution the volume of rights of the defender regarding the participation in the probation does not correspond, from a procedural point of view, to the volume of rights that the party of the

[16]Law no.67 of 22.04.2021 **for the modification of Law nr. 1260/2002 on lawyers.** In: *Official Gazette* No. 146 art. 172, 14.04.2021.
[17]BITOKOVA M. H. *The right to collect evidence by the defense counsel and its implementation in criminal proceedings:* Автореф. дисс..... канд. юрид. наук. Москва, 2008. 27 p.

accused has, empowered with powers of state authority and with the right to take decisions in order to perform the function they represents.

We share the view that the defender cannot complete their activity, at the criminal investigation stage, by drawing conclusions in defence only on the basis of the materials accumulated by the criminal investigation body. The informational-evidentiary basis and the procedure for drawing up these documents can be obtained and exposed only within the framework of an independent, self-wealthy investigation carried out by the lawyer.[18]

Thus, the logical continuity of the democratization of the criminal process is the extension of the right of the defence party to collect the evidence necessary to overturn the suspicion, as the case may be, of the accusation. Only in such an approach, gradually, will the status of the prosecution party be matched with that of the defence in the criminal evidence.

Given that the issue of the institution of the defence counsel's investigation is a recent one, its approach is also different. From the perspective of art.6 para. 3 point d) CoEDO, we see the consolidation of the institution of the lawyer's investigation in two aspects: the actual participation of the defender in the procedural actions carried out by the party of the accused, including in the hearingof witnesses; the independent performance of procedural actions by the defence side. Regardless of the way of manifestation of the lawyer's investigation procedure, the criminal procedural legislation of the Republic of Moldova in force has granted the lawyer, in support of the realization of the right to defence, the possibility to use *all means and methods not prohibited by law*. Although, interpretingonly these provisions, we can certainly conclude on some broad rights of the defender regarding the exercise of a complete defence at any stage of the criminal process, but analyzed on the whole with the other provisions of the Code of Criminal Procedure, the mentioned methods and means are verylimited, being in some places more formal.

We conclude on the importance of training the defender in the administration of evidence, which lies in:

a) ensuring the balance of justice – by its participation in perceiving the circumstances of the crime through the search for and accumulation of information, through the effective presence at the performance of procedural actions in the cases provided by law, either directly, personally, within the limits of the granted rights;

b) promoting the position of the defence – without proving the favorable circumstances of the accused by presenting and invoking evidence, the procedural interest cannot be achieved. By

[18]MARTINCHIK E.G. *Cited works.*, c. 60.

participating in a specific criminal case, the defence counsel assumes the legal obligation to prove the chosen position, justifying either the innocence of their client or a reduced guilt, if the accused pleads guilty;

c) the performance by the defence counsel of their/her rights in evidence contributes to the identification of the real, authentic circumstances of the case.

When the suspect, the accused or the accused proposes evidence in defence, as long as it may apparently lead to another conclusion, different from the version of the prosecution, provided that it is conclusive and useful, the prosecuting body is obliged to proceed to its administration.

With regard to the criteria for the admissibility of evidence in criminal proceedings, generalizing the analyzed opinions, we conclude that the factual data that:

a) are collected by an appropriate subject (criminal investigation officer, prosecutor, court of law). Therefore, the evidence will be admissible only if it is obtained by the subject competent togather evidence and if the actions carried out do not exceed the limits of the legal powers . The powers of a specific person to conduct criminal prosecution in the criminal case or a concrete criminalprosecution action is determined by: the capacity of criminal investigation officer or prosecutor; thefact of assuming the criminal prosecution or the execution of an indication of carrying out a concrete criminal prosecution action, or inclusion in the group of officers who are to carry out the criminal investigation; the absence of circumstances that exclude participation in the criminal proceedings; the temporal limits, within which the criminal investigation body is empowered to investigate the case;

- are presented in the form of objects or documents by the suspect, the accused, the injured party, the civil party, the civilly responsible party, their representatives and the defender, in order to be attached to the materials of the case;

- are requested by the criminal investigation officer, the prosecutor, and in some cases also by the defender. The trial court requests the evidence only at the request of the parties.

b) They are obtained from an appropriate source of information. In accordance with art. 93, para. 2) Crim. proc. Code, as evidence in the criminal proceedings, the factual elements established by the following means are admitted:

- statements of the suspect, the accused, the defendant, the injured party, the civil party, the civilly responsible party, the witness;

- the expert report,

- criminal bodies;

- the minutes on the actions of the prosecution and of the judicial investigation;

- documents, including official documents,

- audio or video recordings, photographs;

- technical, scientific and forensic findings;

- procedural acts recording the results of the special investigative measures and the annexes thereto, including verbatim reports, photographs, recordings and others;

- the minutes of recording the results of the parallel financial investigations and the minutes of recording the opinion of the state control body regarding the entrepreneurial activity, issued in accordance with the provisions of art. 276^1, if it has not been set out in a control report;

-the control report, drawn up within the state control over the entrepreneurial activity, another control/administrative act of decision-making nature, drawn up by a supervisory body, as a result of a control carried out according to the special legislation in force.

c) They are administered by the evidentiary processes, namely:

- criminal prosecution actions;

- provided by the procedural-criminal law;

- carried out in the course of criminal proceedings.

d) the corresponding way of carrying out the actions is regulated by Articles 102 to 164 of Crim. Proc. Code.

The exact observance of the legal provisions is the inalienable condition of ensuring the admissibility of the evidence obtained in a criminal trial.

Chapter III, entitled ***Admissibility of certain categories of evidence presented by the defence counsel*****,** contains a relevant characterization of the admissibility of the objects, documents and information presented by the defender, coming up with details of the proposal and invoking of the witness evidence, of the application of special knowledge by the defender in order to achieve the defence, of the data not admitted as evidence, etc. It begins from the provisions of art. 100, para. (2) Crim. proc. Code, being subjected to a detailed analysis the rights of the defender with whom the legislature has endowed them for the purpose of administering evidence.

It has been established that the defence counsel does not have the power to carry out criminal proceedings. Therefore, if necessary, the defender will be able to obtain the objects, documents and information necessary for the provision of legal assistance only as a result of voluntary transmission, based on the free consent of the holder. For this purpose, the defender must obtain a written statement from the owner or holder of the object, the content of which, in addition to the mandatory elements, is reflected: when and under what circumstances they became the holder of the object, document or other

information; their distinctive characteristics, in respect of which they agrees to transmit them to the defender and for what purposes; whether the handing over of the object, the document or other information was made voluntarily and no measures of influence or coercion were applied to it. If necessary, the signature of the owner or owner of the object, document or other information may be notarized.

If special knowledge is required to receive or examine the object, document or other information, the defender, with the consent of their client, may involve a specialist, with the help of whom traces, peculiarities and distinctive features will be revealed.

The course and result of the transmission of the object, document or other information may be further reflected by technical means of fixing photo-, audio- or video-.

The legislator provided as a procedural means of discovering information, which could later be used as evidence in the criminal case, communication with individuals. The defender may hold discussions with the eyewitness of the offence or with other persons who are aware of the circumstances of the case, this being possible only with the consent of the data subject. At the same time, the law does not provide for ways to ensure the authenticity of the information obtained by the defender. Although the procedural-criminal law recognizes their conversation with individuals, with their consent, as one of the ways of accumulating evidence by the defender, the result obtained by the defender (the information on the criminal act) does not automatically become evidence. Only on condition of a subsequent hearing of the persons concerned, carried out by the representative of the criminal investigation body or at the hearing, those declared by them shall acquire the legal regime of evidence within the meaning of Art. 93 Crim.proc.Code.

The analysis of the rules of criminal procedure allows us to find that they do not provide for the procedural order of carrying out actions for the purpose of gathering evidence by the defender,including through conversations with certain persons. The only observation we can make in this case is that in the text of the procedural-criminal law, only the possibility of the defender to hold conversationswith natural persons is prescribed, given that they express their consent in this regard, without specifying the preparation for such conversations, the rules for their performance or the rules for fixing the obtained results.

Another aspect no less important, in the context of art.100, para. (2) point 1) Crim. proc. Code, refers to information related to the granting of legal aid. Firstly, they represent the information on potential evidence, which emanates from potential witnesses, objects, documents, obtained by the defender from the litigant, their close persons, relatives, as well as from other persons. Secondly, the

information necessary for the criminal case can also be gathered directly by the defence counsel. In some categories of cases, in order to achieve an effective defence, it is advisable for the defender to go to the spot, to take cognizance of the particularities of the place where the crime was committed. We will remind that art. 53 para. (1) point g) of the Law *on Lawyers* establishes the right of the lawyer to investigate the territories, premises, assets, with the consent and participation of the owner or their representative. On this occasion, they are entitled, on their own or with the help of the specialist, to draw up plans, schemes, to carry out photography and video recording.

After analyzing 103 criminal cases, in which the defender made requests under art. 100 para. (2) point 1) Crim. proc. Code, regarding *the annexation of objects, documents and information*, weemphasize the importance and impact they will have on the position of the defence:

a) at the criminal investigation phase, the requests of the defence party were partially admitted, about 10% of the total submitted applications;

b) at the stage of judging the criminal case in the court of first instance, the claims of the party of the defence were admitted in a proportion of 70% of the number of applications made;

c) at the stage of judging the criminal case in the court of appeal, the claims of the defence party were admitted to the extent of 10% of the applications submitted.

These figures are a telling proof of the attitude of the bodies conducting the criminal proceedings towards the right of the defender to propose and invoke objects, documents or other information, which are important for establishing the real circumstances of the case. In most criminal cases, the criminal investigation officer and the prosecutor have a preconceived position, from the beginning accusatory, defying the principle of presumption of innocence and the obligation to investigate in all aspects, completely and objectively all the circumstances of the case.

The legislator in art.100 para. (2) p.1) Crim. Proc. Code., provided for the procedural method of discovering information, which, subsequently, could be used as evidence in the criminal case – conversations with individuals. The defence counsel may have conversations with the eyewitness of the offence or with other persons who have knowledge of the circumstances of the case. This is only possible with the consent of the data subject.[19]

At the same time, the procedural-criminal law does not provide for ways to ensure the authenticity of the information obtained by the defender. Although it acknowledges the conversation with individuals, with their consent, as one of the ways in which the defence counsel collects evidence,

[19]VIZDOAGA, T., **CEACHIR, A.** Problems and solutions in the realization of the right of the defender to administer the evidence with witnesses.In: *Journal of the National Institute of Justice*, no.3(50), 2019, p.10.

the result obtained by them (the information on the criminal act) does not automatically become evidence. Only in the event of a subsequent hearing by the representative of the criminal investigation body or at the hearing of the persons concerned, those declared by them shall acquire the legal status ofan evidence within the meaning of Art. 93 Crim. proc. Code

The criminal process, in general, and each action and evidentiary process, in particular, have an express regulation in the text of the procedural-criminal law. These include the rules of conducting the hearing and fixing the results, stipulated both in the common rules (such as those that establish the procedural status of certain participants in the trial, the general conditions of the criminal investigation and of the trial of the case), as well as in the special rules of art.104-112, 115, 367, 369, 370 Crim. proc. Code

From the analysis of the rules of criminal procedure, it was found that the procedural order of carrying out the actions for the collection of evidence by the defender, including through conversations with certain persons, is not provided. The only remark would be that, in the text of the law, the possibility of the defender to hold conversations with natural persons is prescribed, given that they express their consent to this, but neither the preparation for carrying out such conversations, nor the rules for carrying them out, nor the rules for fixing the results obtained are not reflected in the text of the procedural-criminal law.

In Chapter IV, entitled ***Assessment of the evidence presented by the defence counsel in the criminal proceedings,*** the institution of the assessment of the evidence in the criminal proceedings is analyzed, and the particularities of the assessment of the evidence presented by the defence counsel are also identified.

Starting from the fact that, when assessing the evidence as the final operation of the evidence, the prosecuting bodies and the court determine the extent to which the evidence creates their confidence that it is consistent with the truth, and the result of its assessment forms the conclusion of the criminal investigation body or of the court regarding the merits or unfoundedness of the accusation, the principles governing this process have been revealed. In the context of our study, the question of the analysis of the evidentiary basis of the defence side matters. Often such a quality of evidence as admissibility is subject to criticism. It has been shown that ignoring the importance of that quality, in particular from a practical point of view, has the effect of excluding part of the evidence and, consequently, the basis of the prosecution is undermined. In these circumstances, it should be notedthat the procedural-criminal law determines as inadmissible the evidence obtained in violation of the provisions of the rules of criminal procedure.

Most of the time, such discussions occur at the stage of examining criminal cases in court. At the stage of the criminal investigation, the assessment of the admissibility of the evidence is decided on the side of the prosecution, because it is its responsibility to collect and fix them. The prosecution party resolves the issues related to the subsequent targeting of the criminal hearing: either the suspension of the criminal investigation, the removal of the person from criminal prosecution, the termination of the criminal trial, or its transmission with an indictment to the court.

It is argued that the admissibility of the evidence is also assessed by the defence party, which is an expression of the defendant's right to defence. According to the general rule, the assessment of evidence from the point of view of its admissibility is carried out by the parties on the basis of their own conviction. At the same time, in the event of certain doubts as to the taking and fixing of the evidence, the defence party realises its right to submit requests for the exclusion of such evidence.

In relation to the evidence administered by the defence counsel, the procedural-criminal legislation does not impose established evidentiary procedures.

In criminal proceedings, evidence must be admissible, relevant, conclusive and useful. The lack of quality of the evidence clearly requires the conclusion that the data obtained do not constitute evidence and are to be recognised as inadmissible.

Apriori, the data administered in accordance with the provisions of the Code of Criminal Procedure correspond to the rigors of admissibility. The inadmissibility of the evidence must beproved. The positions in relation to the admissibility of the evidence administered by the defence counsel are analysed.

The issue of asymmetry of evidence was approached, against which only the evidence, obtained in violation of the provisions of the law, which can be put at the basis of the accusation, is recognized as inadmissible; the proof of guilt is charged to the prosecution. The defence is entitled both to prove the innocence of the accused and to question the evidence in the indictment; the accused is not responsible for the errors of the criminal investigation bodies or of the prosecutor, who destroyed, discredited the evidence in the indictment; in cases where the evidence (which is, by its content, one in the defence) was obtained in violation of the procedural rights of the accused, it may be recognised admissible at the request of the defence, because its factual circumstances only improve the situation ofthe accused.

General conclusions and recommendations.

As a result of the scientific approach carried out, the current scientific problem of major importance, which consists in the right of defence to propose and invoke evidence in the criminal trial from the perspective of the principle of equality of arms, was solved. Criminal procedural law does not expressly regulate the rules for the admissibility of evidence, if it is discovered and proposed by the defence, and in practical work several approaches are encountered, which are differently interpreted by the courts. Such a situation creates the risk of affecting the principle of clarity and predictability of the law from the perspective of the rule of law.

The performed study generated the solution of ***the important scientific problem in the area of research***, which includes the elaboration of the instruments for identifying the means of achieving the rights of the defender in the criminal evidence, *which led* to the clarification for theorists and practitioners in the area of criminal procedure of the conditions of admissibility of the evidencepresented by the defender in the criminal trial, *in order to optimize the* procedural-criminal doctrine in this area by formulating and arguing proposals de *lege ferenda*.

The important scientific problem treated in the thesis was revealed through **the conclusions** formulated on the basis of the research hypothesis, in particular:

1. The administering of evidence is the activity by which legal, relevant, conclusive and useful evidence is collected or brought before the prosecuting body and the trial court in order to establish the facts and circumstances the existence or non-existence of which must be established in order to find out the truth in question (See: Chapter 2, Subchapter 2.1.).
2. Admissibility, in narrow sense, presupposes the procedural quality of the evidence. In a broad sense, admissibility is a legal institution – a system of legal rules, which regulate the order of obtaining, the mechanism for verifying admissibility, the recognition of evidence asinadmissible and its exclusion from the evidentiary. For a piece of evidence to be admissible, it must be administered by the competent subject, by appropriate means, in accordance with due procedure, not obtained from other evidence, in breach of the procedure, contain data the authenticity of which can be verified (See: Chapter 2, Subchapter 2.2.).
3. Equality of the defence and prosecution parties in the rule of evidence – both during investigation and during the trial – is the mandatory element of the adversarial form of the criminal proceedings, which calls for a balance of the means by which the parties can achieve their purpose, a context in which none of them has exclusive rights to gather and present arguments in order to justify the procedural interest pursued (See: Chapter 2, Subchapter 2.1.

4. The defence counsel must use with diligence and with a well-defined purpose all their procedural rights, in order to discover the circumstances that remove or diminish the liability of the accused. It is not up to the defence counsel to establish the actual circumstances of the case, as they are entitled to select only that information which is necessary for them to support the position of the defence. The volume, sequence and stages of the presentation of the evidence collected by the defender are to be determined based on the tactics of the defence in question, mandatorily coordinated with the client. Finally, the defence counsel may not disclose the evidence they hold for the benefit of the accused until the hearing, reserving the right not to present it to the accused party (See: Chapter 2, Subchapter 2.1.).
5. The lawyer is a subject of the rule of evidence within the pre-trial phase of the criminal trial not only for the reason of participation in the accumulation and formation of evidence, but also by virtue of the fact that they have the right to verify and assess them, as a result the position of the defence being established, requests are made, complaints filed, etc. (See: Chapter 2, Subchapter 2.1.)
6. In the context of the amendments made in *the Law on Lawyers,* which established the lawyer's right to conduct an independent investigation, the participation of the defender in the collection of evidence at the criminal investigation stage requires a detailed regulation in the Code of Criminal Procedure, with the establishment of a system of guarantees, which would ensure the real and effective realization of this right. In the theoretical aspect, according to its character, object, tasks and goals, the investigation of the defender represents a variety of investigations within the criminal trial, which are carried out until the case is sent to trial, having a subsidiary and helpful character, in relation to the criminal prosecution. The independent investigation of the defender is beneficial to the criminal prosecution, in order to ensure their object and purpose, provided for in art. 252 Crim. proc. Code, in order to "collect the necessary evidence on the existence of the crime, to identify the perpetrator, to ascertain whether or not it is the case to transmit the criminal case to trial, under the law and to establish their liability". From the perspective of art.6 para. 3 point d) CoEDO, it is established the consolidation of the lawyer's investigation institution in two aspects: the actual participation of the defender in the procedural actions carried out by the accused party, including in the hearing of witnesses, and the independent performance of procedural actions by the defender.

   The basic form of completion of the investigation carried out by the lawyer may be an act, called *the conclusions of the defence* (See: Chapter 2, Subchapter 2.1.).

7. Regardless of the way of manifestation of the lawyer's investigation procedure, the criminal procedure legislation of the Republic of Moldova in force granted to the lawyer, in support of the realization of the right to defence, the possibility to use *all the means and methods not prohibited by law*. There are no remedies in criminal procedural legislation, which would be aimed at contributing to the effective assurance of equality of arms. Although art.100 para. (2) Crim. proc. Code provides for some duties of the defence in the criminal evidentiary, this norm remains to have a declarative nature, without certain procedural guarantees (See: Chapter 2, Subchapter 2.1.).
8. The completions made in Article 53 of *the Law on Lawyers* give the lawyer additional rights, in particular: to summon and hear persons; to order extrajudicial expertise as authorising officer; to investigate territories, premises, property, with the consent and participation of the owner or their representative; to carry out other procedural actions necessary to provide legal assistance. The factual data, obtained by the defender, under the conditions of art. 100 para. (2) The Crim. proc. Code, by the criminal investigation body and the prosecutor, shall be compulsorily attached to the case materials, if they meet the criterion of relevance. (See: Chapter 3, Subchapter 3.1.)
9. By empowering the defence counsel with the right to gather evidence, the legislature, on the one hand, did not detail the procedural order of collecting them and, on the other hand, did not provide guarantees as to the realisation of that right. Consequently, the taking of evidence by the defence counsel takes place under conditions of endowing the parties to the defence and the prosecution with different powers and possibilities. Citizens are not obliged, they only have the right to provide information to the defender, if they accept this. The right of the defence counsel to collect and produce objects and documents, which may be recognised as evidence or criminal bodies, does not correspond to the obligation of a particular person to make them available to them on the basis of their request (See: Chapter 3, Subchapter 3.1.).
10. In the course of criminal proceedings, the defence counsel may present objects, documents and other information. The information carriers, which are important for solving the criminal case, are administered through the process of seizing objects and documents. The defence counsel does not have such legal competence. Therefore, if necessary, the defender will be able toobtain them only as a result of the voluntary transmission, on the basis of the free consent of theholder. For this purpose, the defender may obtain a written statement from the owner or holder of the object, in which it is reflected, in addition to the mandatory elements, when and under

what circumstances they became the holder of the object, document or other information; their distinctive characteristics, in respect of which they wish to transmit it to the defender and for what purposes; if the handing over of the object, the document or other information was made voluntarily and no measures of influence or coercion were applied towards itself. If necessary, the signature of the owner or possessor of the object, document or other information may be notarized. The fact that the object, document or other information is transmitted by the owner or holder to the defender may take place in the presence of two persons, who, if necessary, by their signature, will confirm the voluntary nature of the action. If special knowledge is required to receive or examine the object, document or other information, the defender, with the consent of their client, may train a specialist, with the help of which traces, peculiarities and distinctive features will be revealed. The journey and result of the transmission of the object, document or other information may be further reflected by technical means of photo-, audio- or video-fixing (See: Chapter 3, Subchapter 3.1.).

11. In accordance with art. 100, para. 2, point 3) Crim. proc. Code, the lawyer admitted to the criminal proceedings is entitled, in the interest of legal assistance, to request, with the consentof the person they defends, the opinion of the specialist in order to explain the issues that require special knowledge. It is usually used when it is necessary to obtain the view of a competent person on the merits of the conclusions of the expert opinion carried out in question, which the defence considers to be doubtful or incomplete. As authorising officer, the defence counsel is entitled to order extrajudicial expertise (See: Chapter 3, Subchapter 3.3.).
12. The factual elements acquired by the defender have distinct admissibility requirements from the evidence of the accusation, if we approach them exclusively from the perspective of observing the form provided for in Article 100 para. (2) Crim. proc. Code and their procedural fixation, because the mechanism of obtaining and fixing by the defender of the information acquired is lacking, and the legal provisions regulating the evidence establish only that the defender is entitled to request and present objects, documents and information, necessary for the provision of legal assistance, including to hold conversations with natural persons, if they agree to be heard in the manner established by law, etc. Thus, if the procedure is not regulated, the defence counsel is entitled to make use of any means and, if there are no regulations on the administration mechanism – nor is it what it violates (See: Chapter 4, Subchapter 1.2.).

Description of personal contributions with emphasis on its theoretical significance and practical value. *The personal contributions* reside in the detailed and complex investigation of the

admissibility of the evidence presented by the defender in the criminal proceedings, approached in the general context of the criteria of admissibility of evidence, from the perspective of the right to a fair trial. A multiaspectual analysis is subject to the rights that the defence counsel has when participating in the criminal evidence and their specificity of realization at different stages of the trial, emphasizing that these prerogatives are guaranteed only at the trial stage. The conclusions reached by the author are based on doctrinal conceptions, judicial practice and the legal practice of providing qualified legal aid in criminal cases. The doctoral thesis contains proposals with an obvious scientific novelty and originality, in order to improve the procedural-criminal regulation framework, which ensures the value of the data and information acquired by the defender on the occasion of participation in the criminal evidence. The author substantiated the proposals de *lege ferenda*, formulated on the basis of his own researches and theoretical conclusions, as well as the proposals in order to improve the procedural-criminal activity. For the first time in the Republic of Moldova, the content and practice of applying the procedural-criminal legislation on the value ofthe evidence presented by the defender in the criminal trial were analyzed. In the doctoral thesis there are contained pertinent arguments in support of the opinions of the researchers in the area, others, on the contrary, were debated.

The scientific novelty and originality of the thesis also lies in the fact that the theoretical and scientific-practical aspects of the admissibility of the evidence presented by the defender in the criminal proceedings have been examined. The examination of the aspects of this subject, so far insufficiently studied, allowed the formulation of certain conclusions, which have, for the most part, a character of substantial novelty and originality and which are important both for the development of certain procedural-criminal institutions and for the improvement of the practical activity of the judicial bodies. In this way, the research undertaken corresponds to the criteria of scientific novelty and originality.

The legal and empirical basis of the study consists of: a) the norms provided for in art. 8, 17, 19, 24, 27, 68, 93-101, 115, 224 and others from Crim. proc. Code, RM; b) the relevant norms of the Law of the Republic of Moldova on lawyers; c) the practice of criminal and judicial prosecution in the matter of admissibility of evidence presented by the defence counsel; d) the criminal procedural regulations of the laws of foreign states in the area of adversariality and equality of arms, of the rights of the defender in the rule of evidence.

The scientific basis of the study consists of the works of the local authors, as well as those from other states. In the doctoral thesis were used empirical data from the practice of the Anticorruption

Prosecutor's Office, PCCOCS, Prosecutor's Office Chisinau mun., Law Court Chisinau mun., Chisinau Court of Appeal, Supreme Court of Justice.

The theoretical significance of the thesis consists in the fact that the results obtained are theoretically relevant in the sense of identifying the correlation between the function of the defence and the institution of admissibility of evidence in criminal proceedings; of the admissibility of certain categories of evidence presented by the defence counsel; the assessment of the evidence presented by the defence counsel in the criminal proceedings. The investigated subjects are exposedcomplexly, reflecting their content in the legal-organizational, theoretical and methodological aspect; the doctoral thesis broadens and amplifies the knowledge in the science of the criminal process with reference to the admissibility of the evidence presented by the defender, results that can be used in further research in the area.

The practical value of the thesis is determined by the fact that the results of the research are oriented towards the improvement of the legislation and the activity of the defender in criminal cases. They can be used in scientific research and in the didactic process. The applicative value of the study is also manifested by the fact that: 1) the author's proposals for the improvement of the Criminal Procedure Code can be implemented in the law-making process; 2) practicalrecommendations, substantiated in the work, may be useful to lawyers, judges, prosecutors and criminal investigation officers, in order to correctly apply and standardize the judicial practice; 3) the content of the doctoral thesis can be used by students and the teaching staff of educational institutions with a legal profile in the process of studying and teaching the corresponding topics at the courses Criminal Procedural Law, Defence in Criminal Cases, Law Firm, etc.

Data on the approval of the results. The scientific results and the basic conclusions of the present doctoral thesis were discussed at the meetings of the Department of Criminal Procedural Law and Forensics, later of the Department of Procedural Law of Moldova State University. The results of the scientific investigations were reflected in 7 (seven) publications of the author in specialized journals in the country and in summaries of communications presented at national and international scientific conferences. The results of the research were presented and discussed at various scientific and scientific- practical events, were presented at the National Scientific Conference with international participation "Integration through Research and Innovation" (Moldova State University, Chisinau, November 10-11, 2020) and at the International Scientific Conference "Relevance and quality of university training: competences for the present and future", Balti, 2020 .

Indicating the limits of the obtained results, establishing the problems that remain unresolved. The limits of the obtained results are about: the investigation of the subject of admissibility of the evidence presented by the defender in the comparative criminal procedural law;the analysis of the historical elongation of the establishment of the admissibility of the evidence presented by the defender in the criminal trial in the Romanian space; the in-depth analysis of the institution of the "independent investigation" carried out by the lawyer and of the perspectives of itsimplementation within the criminal trial in the Republic of Moldova.

Recommendations:

1. Completion of art. 68 para. (1) Crim. proc. Code with item 1^{1}) having the following text: *to carry out independent investigation activities.*
2. Completion of art. 93 Crim. proc. Code with a new para. (6): *Factual data, obtained by the defender, under the conditions of Article 100 para. (2) of this Code, are to be compulsorily attached to the case materials by the criminal investigation officer and the prosecutor, if they correspond to the criterion of relevance.*
3. Exposing art. 100 para. (2) Crim. proc. Code in the following wording: *For the purpose of evidence administration, the lawyer admitted to criminal proceedings, in the manner provided for by this Code, is entitled: 1) to request and present objects, documents and information necessary for the provision of legal assistance, to summon and hear persons; 2) to request certificates, characteristics and other documents from various competent bodies and institutions, in the prescribed manner; 3) in the interest of legal assistance, to request, with the consent of the person they are defending, the opinion of the specialist for explaining the issues requiring special knowledge, to order the extrajudicial expertise to be carried out as authorising officer; 4) to investigate the territories, premises, property, with the consent and participation of the owner or their representative, as well as to carry out other procedural actions necessary to provide assistance Legal.*
4. Completion of the provision of art.115 Crim. proc. Code with para. (6) in the following wording: *The suspect, the accused and/or their defence counsel, with own technical means, have the right to record the hearing process audio or video.*
5. Completion of art. 244 Crim. proc. Code with para. (1^{1}): *The refusal of the prosecutor to administer the evidence invoked by the defender shall be challenged before the investigating*

judge, who, in case of finding the merits of the complaint, will oblige them to carry out the requested procedural actions. The procedural actions will be carried out with the obligatory participation of the defender.

6. Completion of art. 260 Crim. proc. Code with para. (7). *If the prosecution has been carried out on the initiative of the defence counsel, they shall have the right to draw up a report in parallel. At the end of the criminal investigation, the report drawn up by the defence counsel must be countersigned by the person who carried out the criminal investigation, so that subsequently, during the examination of the case in court, the defence counsel can use it as evidence.*

7. Completion of the Criminal Procedure Code with art. $261^{1.}$ *The minutes on the taking of evidence by counsel,* having the following content:

(1) The minutes on the actions carried out under the conditions of Article 100 para. (2) of this Code shall be drawn up by the defender during the performance of the action or immediately after its completion.

2. The minutes shall include:

1) the place and date of the action;

2) by whom and on what grounds;

3) with whose participation the action took place;

4) who conducted the hearing, as the case may be, the examination;

5) a detailed description of the facts found, the results obtained;

6) mention of the performance, while carrying out the action, of the photographing, filming, audio recording, execution of casts and patterns of traces, of the technical means used to carry out the respective action, the conditions and the manner of their application, theobjects to which these means have been applied, the results obtained, as well as the mention that, before using the technical means, about this was communicated to the persons participating in the performance of the action;

7) what exactly was received, the mention of packaging and sealing.

(3) The minutes shall be read to all the persons who participated in the performance of the action, explaining at the same time that they have the right to object, and these shall be recorded in the minutes.

(4) Each page of the minutes shall be signed by the defence counsel as well as by the persons participating.

(5) The subject matter, document or other information shall be attached to the minutes ; photo-, audio- or video-material, which shall be recorded in the document drawn up.

(6) If necessary, the signature of the owner or holder of the object, document or other information may be notarized.

BIBLIOGRAPHY

1. Association Agreement of 27.06.2014 between the Republic of Moldova, of the one part, and the European Union and the European Atomic Energy Community and their Member States, of the other part from 27.06.2014. In: *Official Gazette of the Republic of Moldova* no.185-199/442 of 18.07.2014.
2. Constitution of the Republic of Moldova of 29.07.1994. In: *The Official Gazette of the Republic of Moldova*, no.1 of 12.08.1994; Republished: *The Official Gazette of the Republic of Moldova*, no. 78/140 of 29.03.2016.
3. DONGOROZ, V., KAHANE, S., ANTONIU, G. et al. *Theoretical explanations of the Romanian Criminal Procedure Code. The general part*. Vol. V. Bucharest: Ed. Academiei Romine; ALL BECK, 2003. 431 p.
4. Decision of the Parliament of the Republic of Moldova on the approval of the National Action Plan in the area of human rights for 2018–2022 [online] [cited 15.02.2022]. Available: http://www.justice.gov.md/public/files/massmedia/PNADO_III.pdf
5. Law on lawyers no. 1260-XV. In: *The Official Gazette of the Republic of Moldova*. 2002, no. 126-127/1001 [online] [cited 15.02.2022]. Available: https://www.legis.md/cautare/getResults?doc_id=129643&lang=ro#
6. Law no.67 of 22.04.2021 for the amendment of the Law no. 1260/2002 on lawyers. In: *Official Gazette* no. 146 art. 172, 14.04.2021.
7. NEAGU, I. *Criminal Procedure Treaty.* Bucharest: Pro, 1997. 734 p. ISBN 973-97447-9-6.
8. VIZDOAGA, T., **CEACHIR, A.** Problems and solutions in the realization of the right of the defender to administer the evidence with witnesses. In: *Journal of the National Institute of Justice*, no.3(50), 2019, p.10.
9. VOLONCIU, N. *Criminal Procedure Treaty. The general part*. Vol. I. Bucharest: Paideia, 1988, p. 188 ISBN973-9387-71-5.
10. Bitokova M. H. *The right to collect evidence by the defense counsel and its implementation in criminal proceedings:* thesis of Doctor of Law, Moscow, 2008. 27 p.
11. 11. KUDRYAVTSEV V.L. Procedural problems of proof in the activities of a defense counsel in criminal proceedings. In: *Journal of Russian Law*. 2005, no. 6, pp. 44-50. ISSN 1605-6590.
12. KUDRYAVTSEV V.L. The right of a defense lawyer to collect evidence on current legislation. In: *Gaps in Russian legislation*. 2012, no. 2, pp. 170-173. ISSN 2072-3164.
13. LARIN, A. M. Protection of human rights in criminal proceedings. In: *General theory of law*. / Rev. ed. E. A. Lukashova. Moscow, 1996, p.169.
14. MARTYNCHIK, E. G. Development of criminal procedure legislation. Chisinau, 1977, p.
15. MARTYNCHIK E.G. Lawyer's investigation in criminal proceedings. In: *Criminal Justice: Theory and Practice*. Ed. N. A. Kolokolova. Moscow: Youwrite, 2011, pp. 350-363. ISBN 978-5-9916-1207-4.
16. MASLOV, I. Lawyer's investigation. In: *Legitimacy*. 2004, no. 10, pp. 34-38. ISSN 0869-4486.
17. MELNIKOV V. Yu. Participation of the defense counsel in the course of pre-trial proceedings. In: *Eurasian Advocacy*. 2013, no. 2, pp. 35-41. ISSN 2304-9839.

18. POPOV V.S. *Participation of a defense lawyer in the process of proving at the stage of preliminary investigation and in the court of first instance*: Abstract of the Doctor of Law thesis. Chelyabinsk, 2005. 27 p.
19. RAGULIN A.V. Problematic issues of the implementation by a defense lawyer of the right to collect evidence. In: *Topical issues of forensic support of criminal proceedings*: Materials of the All-Russia. scientific-practical. Conf., November 24, 2009. Irkutsk: Ed. BSUEP, 2010, rr. 152-162. ISBN 978-5-7253-2196-8.
20. STROYKOVA A.S. Collection of evidence by the defender as a means of ensuring the rights of the accused. In: *Legal practice*. 2004, no. 3, pp. 16-19.
21. TARASOV, I.S. Lawyer as a participant in the process of proof in criminal proceedings. In: *Bulletin of the Nizhny Novgorod University.* N. I. Lobachevsky. 2014, no. 3, pp. 230-234.
22. FOMENKO, I.V., PALIEVA, O.N. Legal means of activity of the defender in proving in criminal cases. In: *Theory and practice of social development.* 2015, no. 8, pp. 91-93. ISSN 1815-4964.

THE LIST OF PUBLICATIONS ON THE TOPIC OF THE THESIS

1. T.VIZDOAGA, **A. CEACHIR** ***Problems and solutions in the realization of the right of the defender to administer the evidence with witnesses.*** In: Journal of the National Institute of Justice, NR. 3 (50), a.2019.ISSN 1857-2405. https://ibn.idsi.md/ro/vizualizare_articol/86187
2. **CEACHIR** ***Request by the defender of the opinion of the specialist to explain the issues that require special knowledge.*** In: Journal of the National Institute of Justice, NR. 1(52), a.2020. ISSN 1857-2405. https://ibn.idsi.md/ro/vizualizare_articol/102670
3. **CEACHIR** ***The deontological principles of the defence counsel's activity in criminal proceedings.*** In: National Law Journal, NR. 7-9(225-227) p.90. a.2019. ISSN 1811-0770. https://ibn.idsi.md/ro/vizualizare_articol/93158
4. **CEACHIR** ***Rights of the defender in criminal evidence.*** In: Studia Universitatis Moldaviae, Nr.3(133). a.2020. ISSN 1814-3199/ ISSN 2345-1017. https://ibn.idsi.md/ro/vizualizare_articol/105739
5. **CEACHIR** ***Conceptual approaches to the admissibility of evidence in criminal proceedings.*** In: Revista Nationala de Drept, NR.10-12(228-230) a.2019/ISSN 1811-0770. https://ibn.idsi.md/ro/vizualizare_articol/101657
6. **CEACHIR** ***The function of the defence in the criminal process - between regulations and reality.*** International Scientific Conference "Relevance and quality of university training: skills for the present and the future", a.2020, vol.II. Balti, ISBN 978-9975-50-256-6. https://ibn.idsi.md/ro/vizualizare_articol/120529
7. **A. CEACHIR** ***The limits of the participation of the defender in the criminal evidence.*** Integration through research and innovation. Legal sciences. Studia Universitatis Moldaviae, USM. a.2018. ISBN 978-9975-142-50-2. LDS: 343,131 Conference "Integration through Research and Innovation" Chisinau, Moldova, November 8-9, 2018. https://ibn.idsi.md/ro/vizualizare_articol/78874

ADNOTARE

CEACHIR Anatolie. „Admisibilitatea probelor prezentate de apărător în procesul penal”. Teză de doctor în drept la specialitatea științifică 554.03 - Drept procesual penal. Chișinău, 2023.

Structura tezei: Introducere, patru capitole, concluzii generale și recomandări, bibliografia din 367 titluri, 197 pagini de text de bază. La tema tezei au fost publicate 7 (șapte) lucrări științifice.

Cuvinte-cheie: apărător, apărare, probă, probatoriu, mijloc de probă, administrare, admisibilitate.

Scopul lucrării constă în realizarea unui studiu complex al activității apărătorului în probatoriul penal și, în legătură cu aceasta, relevarea admisibilității probelor prezentate de apărător prin prisma instituției admisibilității probelor în procesul penal și optimizarea cadrului de reglementare din acest domeniu.

Obiectivele studiului vizează: cercetarea instituției apărării din perspectiva asigurării dreptului la unproces echitabil și demonstrarea rolului apărătorului în acest sens; abordarea conceptuală a noțiunii și a criteriilorde admisibilitate a probelor; analiza principiului liberei aprecieri a probelor; delimitarea aprecierii *admisibilității probelor* ca noțiune distinctă de conceptul de *liberă apreciere a probelor*; identificarea admisibilității probelor în sens larg și în sens îngust; analiza viziunilor doctrinare asupra aprecierii admisibilității probelor prezentate de apărător; relevarea datelor neadmise ca probe; aprecierea eficienței drepturilor apărătorului în probatoriul penal, prevăzute în actuala reglementare a Cpp; relevarea tacticii apărării pentru realizarea eficientă a drepturilor apărătorului potrivt art. 100 alin.(2) Cpp; cercetarea instituției investigației avocatului și a condițiilor de admisibilitate a datelor obținute; determinarea condițiilor de admisibilitate a obiectelor, documentelor și a informațiilor prezentate de apărător; descrierea propunerii și invocării probei cu martori de către apărător; cercetarea prevederilor legale referitoare la aplicarea cunoștințelor speciale de către apărător în vederea realizării apărării; formularea concluziilor și a propunerilor *de lege ferenda*.

Noutatea și originalitatea științifică constă în faptul că au fost examinate aspectele teoretice și științifico-practice ale admisibilității probelor prezentate de apărător în procesul penal. Examinarea aspectelor acestui subiect, deocamdată insuficient studiate, au permis formularea unor concluzii care poartă, în mare parte, un caracter de noutate și originalitate substanțială și care sunt importante atât pentru dezvoltarea anumitor instituții de drept procesual penal, cât și pentru perfecționarea activității practice a organelor judiciare. În acest fel, cercetarea întreprinsă corespunde criteriilor de noutate și originalitate științifică.

Problema științifică importantă soluționată în domeniul de cercetare rezidă în elaborarea instrumentariului de identificare a mijloacelor de realizare a drepturilor apărătorului în probatoriul penal*, fapt care a condus* la clarificarea pentru teoreticienii și practicienii din domeniul procedurii penale a condițiilor de admisibilitate a probelor prezentate de apărător în procesul penal*, în vederea optimizării* doctrinei procesual-penale în acest domeniu prin formularea și argumentarea propunerilor de *lege ferenda*.

АННОТАЦИЯ

ЧАКИР Анатолий. «Допустимость доказательств, представленных защитником в уголовном процессе». Докторская диссертация по научной специальности: 554.03 - Уголовно-процессуальное право. Кишинэу, 2023 г.

Структура диссертации: введение, четыре главы, общие выводы и рекомендации, библиография из 367 наименований, 197 страниц основного текста. По теме диссертации опубликовано 7 (семь) научных работ.

Ключевые слова: защитник, защита, доказательства, доказывание, средства доказывания, собирание, допустимость.

Цель статьи: провести комплексное исследование деятельности защитника в области доказывания по уголовным делам и, в связи с этим, выявить допустимость доказательств, представленных защитой через призму института допустимости доказательств в уголовном процессе и оптимизировать нормативно-правовую базу в этой области.

Задачи исследования: исследование института защиты с точки зрения обеспечения права на справедливое судебное разбирательство и выявление роли защитника в этом отношении; концептуальный подход к определению понятия и критериев допустимости доказательств; анализ принципа свободной оценки доказательств; разграничение оценки допустимости доказательств как самостоятельного понятия от концепции свободной оценки доказательств; определение допустимости доказательств в широком и узком смысле; анализ доктринальных взглядов на оценку допустимости доказательств, представленных защитником; выявление недопустимых данных в качестве доказательств; оценка эффективности прав защитника в процессе доказывания, предусмотренных действующим УПК; выявление тактики защиты для эффективной реализации прав защитника предусмотренных в ст. 100 пункт (2) УПК ;исследование института адвокатского расследования и условий допустимости полученных данных; определение условий допустимости представленных защитником предметов, документов и сведений; описание процесса запроса и использования показаний свидетелей в качестве доказательств со стороны защиты; исследование правовых норм, касающихся применения защитником специальных знаний для осуществления защиты; формулирование выводов и предложений *de lege ferenda*.

Научная новизна и оригинальность состоит в том, что исследованы теоретические и научно-практические аспекты допустимости доказательств, представленных защитником в уголовном процессе. Изучение пока недостаточно исследованных аспектов этой темы позволило сформулировать определенные выводы, которые в большинстве своем носят новизну и существенную оригинальность, а также важны как для развития отдельных институтов уголовно-процессуального права, так и для улучшения практической деятельности судебных органов.

Полученные результаты, способствующие решению научной проблемы заключаются в разработке инструментария для выявления средств реализации прав защитника в области доказывания в уголовных делах, *что привело* к разъяснению для теоретиков и практиков условий допустимости доказательств, представленных защитником в уголовном процессе, *с целью оптимизации* уголовно-процессуальной доктрины в данной сфере путем формулирования и аргументирования предложений *de lege ferenda*.

Теоретическая значимость: Диссертация является одной из немногих работ, посвященных анализу правового содержания права защитника на сбор доказательств с позиции обоснования необходимости обеспечения равенства сторон защиты и обвинения в области доказывания и признания действий защитника по сбору доказательств, как уголовно-процессуальной деятельности.

Практическая значимость: Предложения автора будут полезны для усовершенствования Уголовно-процессуального кодекса; практические рекомендации, изложенные в работе, могут быть полезны адвокатам, судьям, прокурорам и офицерам по уголовному преследованию для правильного применения и придания единообразия судебной практике; содержание работы может быть использовано в учебном процессе, в начальной и непрерывной подготовке специалистов в данной области.

Внедрение научных результатов. Научные результаты докторской диссертации были внедрены в научно-дидактический процесс на юридическом факультете Государственного Ynиверситета Молдовы.

ANNOTATION

CHAKIR Anatoly – "Admissibility of evidence presented by defence counsel in criminal proceedings". Doctoral dissertation in scientific specialty: 554.03 - Criminal procedural law. Chisinau, 2023.

Structure of the thesis: introduction, four chapters, general conclusions and recommendations, bibliography of 367 titles, 197 pages of the main text 7 (seven) scientific papers have been published on the subject of the thesis.

Keywords: counsel, defence, evidence, proving, collection, admissibility.

Purpose of the article: to conduct a comprehensive study of the activities of the defence counsel in the area of criminal evidence and, in this connection, to determine the admissibility of evidence submitted by the defence, through the institution of the admissibility of evidence in criminal proceedings and the optimization of the legal framework in this area.

Objectives of the study: to study the institution of the defence from the perspective of the right to a fair trial and to identify the role of the defence in this regard; to take a conceptual approach to the definition of the concept and criteria for admissibility of evidence; analysis of the principle of free evaluation of evidence; separation of the assessment of admissibility of evidence as a separate concept from the concept of free evaluation of evidence; determination of the admissibility of evidence in a broad and narrow sense; analysis of doctrinal views on the assessment of the admissibility of evidence submitted by counsel; identification of inadmissible data as evidence; evaluation of the effectiveness of the rights of defence counsel in the evidentiary process under the current Code of Criminal Procedure; identification of defence tactics for the effective exercise of the rights of defence counsel as provided for in art. 100 par. (2) of the Code of Criminal Procedure; to study the institution of legal investigation and of the conditions for the admissibility of the data obtained; determination of the conditions for the admissibility of the objects, documents and information submitted by the defence counsel; a description of the process of requesting and using witness statements as evidence for the defence; to study the legal provisions relating to the use by the defence counsel of special knowledge for the defence; to formulate conclusions and proposals *de lege ferenda.*

Scientific novelty and originality: the theoretical and practical aspects of the admissibility of evidence presented by a defence counsel in criminal proceedings have been examined. The study of the insufficiently researched aspects of the topic has enabled the doctoral candidate to draw certain conclusions, which are mostly new and highly original, and are also important for the development of individual institutions of criminal procedure, and to improve judicial practices. Thus, the study meets the criteria of novelty and scientific originality.

The results obtained, which contribute to the solution of the scientific problem: consist in the development of a tool for the identification of means of exercising the rights of defence counsel in the area of evidence in criminal cases, which has led to the clarification for theorists and practitioners of the conditions for thebility admissi of evidence, submitted by the defence counsel in criminal proceedings and, in that connection, the optimization of the doctrine of criminal procedure in that area, which determined the formulation and reasoning of the proposals *de lege ferenda*.

Theoretical significance: the thesis is one of the few works examining the legal content of the right of defence counsel to collect evidence on the basis of the need to ensure equality between the defence and the prosecution in the evidence area and recognition of the defence counsel's evidence-gathering activities as criminal proceedings.

Practical significance: the author's proposals will be useful for the improvement of the Code of Criminal Procedure; the practical recommendations set out in the work may be useful to lawyers, judges, prosecutors and criminal investigation officers in order to ensure the correct application and uniformity of jurisprudence, the content of the doctoral thesis can be used in the teaching process, initial and continuing training of specialists in this area.

Implementation of scientific results. The scientific results of the doctoral dissertation were introduced into the scientific and didactic process at the Law Faculty of Moldova State University.

CEACHIR Anatolie

ADMISSIBILITY OF EVIDENCE PRESENTED BY DEFENCE COUNSEL IN CRIMINAL PROCEEDINGS

Specialty 554.03 – Criminal procedural law

Summary of the doctoral dissertation

Approved for printing: 22.03.2023
Paper offset. Offset pattern.
Sheets of print:2,2.

Format 60×84 1/16
Circulation 50 ex.
Order no. 45

The Editorial-Polygraphic Center of Moldova State University
60 A.Mateevici str., Chisinau, MD 2009