

# General conditions for the trial of criminal cases ensuring the presence and exercise of the procedural rights of the parties in the proceedings

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## Abstract

The relevance of the topic lay in the need to ensure a fair trial in criminal cases, which is a fundamental guarantee of human rights and justice. The study focused on the general conditions governing criminal proceedings, which ensure the proper participation of the parties in the proceedings and the observance of the procedural rights. To achieve this aim, an analysis was conducted of legislative provisions, the case law of the European Court of Human Rights, and the judicial practice of the Republic of Moldova. The main conditions for ensuring the participation of the parties in the judicial process were examined, in particular the equality of the parties, the principle of adversarial proceedings, and the right to defence. It was found that failure to meet these conditions may lead to a breach of the principles of fair trial and affect the outcome of the proceedings. It was established that it was important to comply with the requirements regarding the proper summons of participants in the proceedings, ensuring equal opportunities to present evidence and participate in its examination. The role of the court in ensuring the fairness of the proceedings was also analysed, particularly in the context of maintaining a balance between the prosecution and the defence. It was found that the judge's active participation in maintaining adversarial proceedings and assisting the parties during the process is essential to ensuring that the rights of each party are upheld. Furthermore, it was established that failure to comply with procedural rules, such as the proper notification of parties to the proceedings, can have serious consequences for the fairness of the proceedings, including the annulment of court decisions. It was concluded that failure to comply with these conditions could result in serious violations of the rights of the parties to the proceedings, requiring the court's intervention to ensure a balance of the parties' rights and obligations. The practical value of the work lay in the fact that its findings could be used by judges, solicitors

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and legal practitioners to improve law enforcement practice and ensure appropriate conditions for criminal proceedings, in accordance with international human rights standards

### Keywords:

criminal cases; infringements of rights; court proceedings; parties to legal proceedings; presentation of evidence

### Introduction

Criminal justice, as an institutionalised form of resolving conflicts arising from the violation of criminal law, is inconceivable in the absence of a rigorous procedural framework composed of clear, precise, and mandatory rules intended to guide the conduct of all procedural participants. In Chapter II, Title II of the Special Part of the Criminal Procedure Code<sup>1</sup> (in particular Articles 315, 319, 320-324, 334), certain common rules are provided; general norms according to which any trial before a court of first instance is conducted, which must also be applied accordingly to each remedy, depending on the case. "An important condition that ensures the exercise by the court of this function and effectively contributes to the achievement of the purpose of criminal proceedings is the unconditional observance by all persons participating in the proceedings of all general rules established by law, in accordance with which any judicial procedure is conducted" (Sedlețchi & Milușev, 2018). Through these norms, the necessary framework is ensured for conducting the trial with due respect for the procedural rights of the parties, as well as for maintaining the balance between the interests of the prosecution and those of the defence.

The subject of criminal procedure and the safeguarding of the rights of parties to court proceedings is complex and multifaceted, as it encompasses a wide range of aspects covering both national legislation and international standards, in particular those arising from the case law of the European Court of Human Rights. Here is an overview of several important studies in this field, which highlight the key aspects of ensuring the fairness of judicial proceedings. T. Osoianu & O. Dinu (2023), examined an important aspect of the topic – the extraordinary review of criminal cases under the Criminal Procedure Code of the Republic of Moldova. The authors compared these procedures with international standards, in particular with the requirements of the European Convention on Human Rights. The authors concluded that the existing system of case review lacks transparency and proposed improvements to the procedures of national courts to ensure fairness and the protection of the rights of the accused. This study highlights the importance of integrating international standards into national legislation to ensure the effective participation of individuals in criminal proceedings.

In a subsequent study, T. Osoianu & O. Dinu (2025) again analyse extraordinary review procedures, but

with a focus on comparisons between different jurisdictions. The authors note that certain principles enshrined in the national legislation of the Republic of Moldova do not always meet the requirements of international standards, particularly in relation to human rights. The study concludes that Moldova must adapt its legislation to international norms in order to prevent violations of the rights of individuals affected by criminal proceedings, as well as to ensure greater transparency and access to justice. S. Leontieva (2024) focused on the impact of ECtHR rulings regarding the exclusion of illegally obtained evidence in criminal cases. The author noted that this issue is particularly important for upholding the rights of participants in criminal proceedings, as illegally obtained evidence can significantly affect the fairness of the trial. S. Leontieva concluded that although the ECHR has established clear standards regarding the exclusion of such evidence, these standards have not yet been properly implemented in Moldova, which may lead to violations of the rights of individuals in criminal cases. In the authors' joint paper, S. Leontieva (2026), the authors focused on the methodology for assessing inadmissible evidence obtained unlawfully. The researchers emphasised the importance of improving procedures to more clearly define the limits of admissibility of evidence, which directly affects the fairness of court proceedings. The authors concluded that it is necessary to develop a more detailed and consistent methodology that will prevent errors during the assessment of evidence and ensure respect for the right to a fair trial.

The European Commission's (2025) report, entitled "Moldova report 2025", highlights the importance of further reforms in the Republic of Moldova's criminal justice system. The report emphasises the need to integrate European standards into the country's criminal justice system to safeguard human rights in criminal cases. In particular, it mentions the need to improve judicial procedures to ensure the participation of all parties in proceedings, as well as the importance of an appropriate response to violations of the rights of those involved in the proceedings. The report concludes that Moldova has significant potential for reform but requires further efforts to integrate international standards into its legal system. Thus, the studies highlight important aspects of the criminal process in Moldova, particularly regarding the review of criminal cases,

<sup>1</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

the exclusion of inadmissible evidence and the incorporation of international human rights standards into national law. Each of these studies points to the need for further reforms to ensure greater transparency and fairness in criminal proceedings.

The study focused on the general conditions governing criminal proceedings, which ensure the proper participation of the parties in the proceedings and the observance of the procedural rights.

## Materials and Methods

The study was based on a conceptual and theoretical framework centred on the principles of a fair trial, in particular the adversarial principle, the equality of the parties, and the rights of the defence. The authors of the study focused on analysing criminal proceedings in the Republic of Moldova, as well as comparing national regulations with international human rights standards. Within this framework, both the theoretical foundations of criminal procedure and the practical aspects affecting the assurance of fairness in court proceedings were examined. The research methods employed in the study included comparative analysis, documentary analysis, and the interpretation of judicial practice. Comparative analysis enabled a comparison of the criminal procedure of the Republic of Moldova with procedures in other jurisdictions, particularly in the context of European standards. This method was chosen due to the need to identify the strengths and weaknesses of the Moldovan legal system in comparison with international requirements. Documentary analysis enabled a thorough review of legislative acts, court decisions, and international agreements relating to the right to a fair trial, which also contributed to a deeper understanding of the specifics of the Moldovan criminal procedure. In particular, documents such as the Criminal Procedure Code of the Republic of Moldova<sup>1</sup>, as well as ECHR judgments on cases concerning criminal procedure and the rights of defendants, were utilised. These sources helped to identify key shortcomings in

the Moldovan justice system that require reform to ensure fairness and respect for human rights.

The research process comprised several stages. The first stage involved a review of the theoretical foundations of criminal procedure and the principles underpinning a fair trial, as well as an examination of the legal framework of the Republic of Moldova. The next step was to compare Moldovan legal practice with international human rights standards. The final stage involved the study and analysis of ECHR judgments relating to criminal proceedings, with the aim of identifying gaps and proposing improvements to the administration of justice in Moldova.

## Results

**Equality of the parties before the court.** Two equal parties appear before the court – the prosecution and the defence – who must be ensured by the court equal opportunities to present and support the respective positions, that is, the principle of equality of arms must be guaranteed. From a formal perspective, “equality of the parties before the judge” offers the parties the opportunity to participate equally in the examination of evidence<sup>2</sup> and, at the same time, to have at the disposal the same means to present the arguments<sup>3,4</sup>.

In its extensive case-law concerning Article 6 of the Convention<sup>5</sup>, the European Court of Human Rights reiterates that one of the essential elements of a fair trial within the meaning of Article 6 § 1 of the Convention is the right to adversarial proceedings, whereby each party must, in principle, have the opportunity not only to adduce evidence necessary for the presentation of its defence and the success of its claims, but also to have knowledge of and to comment on all evidence and observations submitted with a view to influencing the court’s decision<sup>6,7,8,9,10</sup>.

The prosecutor, the injured party, the civil party, the defence counsel, the defendant, the civilly liable party, and the representatives enjoy equal rights before the court with regard to the taking of evidence,

<sup>1</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

<sup>2</sup> Judgment of the European Court of Human Rights in the Case Nos. 39647/98 & 40461/98 “Edwards and Lewis v. the United Kingdom”. (2004, October). Retrieved from <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-67226%22%5D%7D>.

<sup>3</sup> Judgment of the European Court of Human Rights in the Case No. 17358/90 “Bulut v. Austria”. (1996, February). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57971%22%5D%7D>.

<sup>4</sup> Judgment of the European Court of Human Rights in the Case No. 38460/97 “Platakou v. Greece”. (2001, January). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-59125%22%5D%7D>.

<sup>5</sup> European Convention on Human Rights. (1950, November). Retrieved from [https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG).

<sup>6</sup> Judgment of the European Court of Human Rights in the Case No. 15764/89 “Machado v. Portugal”. (1996, February). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57978%22%5D%7D>.

<sup>7</sup> Judgment of the European Court of Human Rights in the Case No. 19075/91 “Vermeulen v. Belgium”. (1996, February). Retrieved from <https://hudoc.echr.coe.int/rus#%7B%22itemid%22:%5B%22001-57985%22%5D%7D>.

<sup>8</sup> Judgment of the European Court of Human Rights in the Case No. 18990/91 “Nideröst-Huber v. Switzerland”. (1997, February). Retrieved from <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=002-9042&filename=002-9042.pdf&TID=ihgdqbxnfi>.

<sup>9</sup> Judgment of the European Court of Human Rights in the Case No. 21497/93 “Mantovanelli v. France”. (1997, March). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-58023%22%5D%7D>.

<sup>10</sup> Judgment of the European Court of Human Rights in the Case No. 48386/99 “Cottin v. Belgium”. (2005, June). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-69232%22%5D%7D>.

participation in the examination of evidence, and the submission of motions and requests. The court must ensure that the parties are granted equal rights concerning the taking of evidence. If a party encounters difficulties in producing evidence necessary to substantiate its position, upon request, the court shall provide assistance under the conditions of the Criminal Procedure Code<sup>1</sup> for the taking of the necessary evidence. The parties must be equally ensured the opportunity to participate in the examination of evidence during the court hearing. The court may base its judgment only on evidence whose examination was accessible to the parties on an equal footing. During the hearing, the parties independently determine the position, as well as the manner and means of supporting it. All motions and requests submitted by the parties are examined by the court with the opportunity afforded to the opposing party to express its views thereon, and in resolving those motions and requests, the court must address the position of each party to the proceedings.

“The requirement under Article 6 § 1 of the Convention that a case be examined fairly must be understood as ensuring respect for the fundamental principles of any proceedings, namely the principle of adversarial proceedings and the principle of the right to defence, both of which guarantee the full equality of the parties in the process”<sup>2</sup>. “The Court notes that the principle of adversarial proceedings, guaranteed by Article 24 of the Criminal Procedure Code, also implies the involvement of the court, paragraph (4) providing that: “The court shall grant assistance to any party, upon request, under the conditions of this Code, for the taking of the necessary evidence”<sup>3</sup>. The examination of a case may take place only if the parties have been lawfully summoned and the summoning procedure has been duly completed. A party present at a hearing shall no longer be summoned for subsequent hearings, even if this party fails to appear at any of those hearings. Although Article 319 CPC<sup>4</sup> is entitled “Summoning of the parties to trial”, the text of this article also refers to other participants in the proceedings who are not parties – the witness, the expert, the interpreter, and the translator.

Where the hearing is adjourned, the witnesses, experts, interpreters, and translators present shall be informed of the new hearing date. When the hearing continues, the parties and the other participants in the proceedings shall no longer be summoned. Military personnel shall be summoned for each hearing. In the case of summoning detained persons, the administration of the place of detention shall also be notified for each hearing. Persons appearing in response to a summons shall, upon request, be issued a certificate attesting the appearance before the court. Article 6 § 3 (d) of the Convention<sup>5</sup> grants the defendant the right “to examine or have examined witnesses against the defendant and to obtain the attendance and examination of witnesses on the defendant’s behalf under the same conditions as witnesses against the defendant. (...) It is primarily for the national courts to assess the evidence before the national courts and the relevance of the evidence which the accused seeks to adduce, particularly as regards the number of witnesses proposed by the accused” (§ 28)<sup>6</sup>.

Once the domestic courts have accepted, at least in principle, that the examination of a defence witness is relevant, such persons are under an obligation to take “effective” measures to secure the witness’s attendance at the hearing, at a minimum by issuing a summons<sup>7</sup> or by ordering the compulsory appearance of the witness before the court through police escort<sup>8</sup>. In cases involving the investigation and trial of citizens of other States, the criminal investigation body and the national courts sometimes hesitate to summon such persons in the State of origin (pursuant to Article 539(1) of the CPC<sup>9</sup>), where such persons may be lawfully present, since at the time of leaving the territory of the Republic of Moldova those citizens were not subject to any preventive measures restricting the freedom of movement. The prosecutor erroneously considered that summoning those citizens at the temporary residence in the Republic of Moldova was sufficient.

“With reference to the above-mentioned legal provisions, the Extended Criminal Panel finds that both the criminal investigation body and the trial courts

<sup>1</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

<sup>2</sup> Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 68g/2018. (2018, June). Retrieved from [https://www.constcourt.md/public/ccdoc/decizii/d\\_55\\_2018\\_68g\\_2018\\_rus.pdf?utm\\_source](https://www.constcourt.md/public/ccdoc/decizii/d_55_2018_68g_2018_rus.pdf?utm_source).

<sup>3</sup> Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 68g/2016. (2016, June). Retrieved from <https://www.constcourt.md/ccdocview.php?tip=decizii&docid=210&l=ro>.

<sup>4</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

<sup>5</sup> European Convention on Human Rights. (1950, November). Retrieved from [https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG).

<sup>6</sup> Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 68g/2016. (2016, June). Retrieved from <https://www.constcourt.md/ccdocview.php?tip=decizii&docid=210&l=ro>.

<sup>7</sup> Judgment of the European Court of Human Rights in the Case No. 30997/02 “Polufakin and Chernyshev v. Russia”. (2009, January). Retrieved from <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-88482%22%5D%7D>.

<sup>8</sup> Judgment of the European Court of Human Rights in the Case No. 11423/03 “Pello v. Estonia”. (2007, December). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-80123%22%5D%7D>.

<sup>9</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

erroneously concluded that T.G., being a citizen of another State, had been lawfully summoned at the temporary address in xxxxx and that no other information regarding the defendant's whereabouts was known. However, a copy of the passport of T.G., a citizen of the Italian Republic, is attached to the case file, from which it results that the mentioned citizen was born in xxxxx and has residence in xxxxx"<sup>1</sup>.

The ECtHR "(...) specified that in the judgment in Ziliberberg it found a violation of the applicant's right to a fair trial because the summons had been sent too late. In the present case, the situation was more serious, as it had not been proven that the applicant had in fact been summoned. It is difficult to establish how the applicant could have exercised the applicant's rights without being present. In conclusion, the Court held that the applicant had not benefited from a fair trial in accordance with Article 6 § 1 of the Convention... Similar conclusions were also presented in the judgment in Guțu v. the Republic of Moldova, in which the applicant complained about the lack of summoning to the hearing at which the applicant's appeal was examined. The Court noted that the case file from the national courts, a copy of which was submitted by the Government, did not contain any summons for the hearing of 16 January 2002 before the Chișinău Tribunal" (Poalelungi *et al.*, 2017).

"In the case of Russu v. the Republic of Moldova<sup>2</sup>, in addition to what was stated in the cases of Ziliberberg<sup>3</sup> and Guțu<sup>4</sup>, the Court referred to the principle according to which the presence of the accused person at the examination of an appeal dealing solely with points of law is not crucial. However, in that case, the Court specified that since the applicant had not been informed of the hearing, the applicant had no opportunity to organise the applicant's defence and was not represented by a lawyer" (Poalelungi *et al.*, 2017). The parties who participated in the examination of the case before the court of first instance must be lawfully summoned before the appellate court<sup>5</sup>.

The European Court of Human Rights (ECtHR) has consistently emphasised the need for adversarial proceedings to ensure a fair trial, guaranteeing both parties equal opportunities to present evidence and make submissions. It also emphasises the court's duty to

assist the parties in obtaining the necessary evidence and to base its decision solely on evidence available to all. The document also examines the procedural rules for summoning the parties and other participants to court hearings, whilst emphasising the importance of proper notification to ensure the fairness of the trial.

**Participation of the prosecutor in the trial and the effects of the prosecutor's non-appearance.** Article 320(1) of the Criminal Procedure Code of the Republic of Moldova<sup>6</sup> contains several rules concerning the participation of the prosecutor in the trial before the court of first instance, in particular:

- the basic rule – the prosecutor who conducted the criminal investigation or, as the case may be, personally carried out the criminal investigation in the given case shall participate in the trial before the court of first instance;

- the exception to the basic rule – in the event of the prosecutor's inability to participate (that is, where the prerequisites for the application of the basic rule are lacking), the hierarchically superior prosecutor shall order the participation of another prosecutor in the hearing;

- complementary to the exception – where necessary, the hierarchically superior prosecutor may order the participation of a group of prosecutors also in the trial before the court of first instance.

In accordance with Article 320(4) CPC<sup>7</sup>, "If, during the examination of the case, it is established that the prosecutor is unable to continue participating in the hearing, the prosecutor may be replaced by another prosecutor". The court shall grant the prosecutor who has entered the proceedings sufficient time to become acquainted with the case materials, including those examined before the court, and to prepare for further participation in the proceedings; however, the replacement of the prosecutor does not require the recommencement of the trial from the beginning. The prosecutor is entitled to request the repetition of certain procedural actions already carried out at the hearing in the prosecutor's absence if there is a need to clarify additional issues. "In the event that several criminal case files, submitted by different prosecutors, are joined in court into a single set of proceedings, the prosecutor designated by order of the hierarchically superior

<sup>1</sup> Decision of the Extended Criminal Panel of the Supreme Court of Justice in Case No. 1ra-516/2018. (2018, May). Retrieved from [http://jurisprudenta.csj.md/search\\_col\\_penal.php?id=11215](http://jurisprudenta.csj.md/search_col_penal.php?id=11215).

<sup>2</sup> Judgment of the European Court of Human Rights in the Case No. 7413/05 "Russu v. Moldova". (2009, February). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-89579%22%5D%7D>.

<sup>3</sup> Judgment of the European Court of Human Rights in the Case No. 61821/00 "Ziliberberg v. Moldova". (2005, February). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-68119%22%5D%7D>.

<sup>4</sup> Judgment of the European Court of Human Rights in the Case No. 20289/02 "Guțu v. Moldova". (2007, June). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-80910%22%5D%7D>.

<sup>5</sup> Decision of the Extended Criminal Panel of the Supreme Court of Justice in Case No. 1ra-115/2007. (2007, February).

<sup>6</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

<sup>7</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

prosecutor shall participate in the examination of the case... “If several prosecutors participate in the court hearing, the absence of one prosecutor from the group at the examination of the case shall not entail the adjournment of the hearing. In such cases, the judicial hearing may continue in the presence of one prosecutor”<sup>1</sup>.

In the case of *Karelin v. Russia*<sup>2</sup> (§§ 53-57), the ECtHR found that the absence of a prosecutor from the hearing may lead to a violation of the principle of a fair trial. In *Krivoshapkin v. Russia*<sup>3</sup> (§§ 44-45), the ECtHR held that the trial court failed to preserve the guarantees of the adversarial nature of criminal proceedings and confused the functions of prosecutor and judge: it assumed the role of the prosecution, examined the issues, established the applicant’s guilt, and imposed a sanction. Pursuant to Article 320(3) CPC<sup>4</sup>, “The non-appearance of the prosecutor at the court hearing shall result in the adjournment of the hearing, with the hierarchically superior prosecutor being informed thereof. For unjustified absence, the prosecutor shall be sanctioned with a judicial fine where such absence has led to additional judicial expenses”. By operating with the provisions of Article 124 of the Constitution of the Republic of Moldova<sup>5</sup> and Article 53 of the Criminal Procedure Code of the Republic of Moldova<sup>6</sup> (the powers of the prosecutor before the court), the prosecutor, in the examination of a criminal case before the court, performs the function of supporting the state prosecution, contributing to the administration of justice, as well as the function of protecting the rights of the individual, the State, and society.

In exercising the powers before the court, the prosecutor is independent and subject only to the law. The prosecutor is obliged to play an active role in the examination of the case and:

- presents at the court hearing the evidence of the prosecution and may also present new evidence in the case in which the prosecutor conducted or personally carried out the criminal investigation;

- participates in the examination of the evidence presented by the defence, presents new evidence

necessary to substantiate the accusation, submits motions and expresses opinion on issues arising before the court;

- requests the court to remit the criminal case in order to bring a more serious charge against the defendant and to take new evidence if, following the judicial examination, it is established that the defendant has committed other offences and the evidence is insufficient;

- modifies the legal classification of the offence committed by the defendant if the judicial examination confirms that the defendant committed that offence;

- expresses, during the pleadings, the prosecutor’s opinion regarding the application of criminal law and the imposition of punishment on the defendant for the offence committed”<sup>7</sup>.

“Appeal and cassation are independent stages of the judicial process; accordingly, the prosecutor’s powers at these stages are different” (Jitariuc & Calendari, 2025). Based on the principle of adversarial proceedings in criminal procedure, a unanimously recognised principle, and on the case-law of the ECtHR, the burden of proof at hearings before the court of first instance and before the appellate court rests with the public prosecutor by virtue of the public prosecutor’s procedural function (Articles 26(3), 51, 53, 320 CPC<sup>8</sup>).

In accordance with Article 9(4) and (5) of the Law on the Prosecutor’s Office<sup>9</sup>, prosecutors of the Anti-Corruption Prosecutor’s Office and of the Prosecutor’s Office for Combating Organised Crime and Special Cases represent the prosecution before the courts of first instance, appeal, and cassation in cases falling within the statutory jurisdiction. In other criminal cases, the state prosecution before the appellate and cassation courts is conducted by prosecutors of the Northern, Central, and Southern District Prosecutor’s Offices before the Northern, Central, and Southern Courts of Appeal, respectively, and by prosecutors of the Section for Representation of the Prosecution before the Supreme Court of Justice within the General Prosecutor’s Office<sup>10</sup>. However, in practice, in most

<sup>1</sup> Judgment of the Plenum of the Supreme Court of Justice of the Republic of Moldova in Case No. 12. (2012, December). Retrieved from [https://jurisprudenta.csj.md/search\\_hot\\_expl.php?id=43&utm](https://jurisprudenta.csj.md/search_hot_expl.php?id=43&utm).

<sup>2</sup> Judgment of the European Court of Human Rights in the Case No. 926/08 “Karelin v. Russia”. (2016, September). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-166737%22%5D%7D>.

<sup>3</sup> Judgment of the European Court of Human Rights in the Case No. 42224/02 “Krivoshapkin v. Russia”. (2011, January). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-103078%22%5D%7D>.

<sup>4</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

<sup>5</sup> Constitution of the Republic of Moldova. (1994, July). Retrieved from <https://surl.li/wzcvvz>.

<sup>6</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

<sup>7</sup> Judgment of the Plenum of the Supreme Court of Justice of the Republic of Moldova in Case No. 12. (2012, December). Retrieved from [https://jurisprudenta.csj.md/search\\_hot\\_expl.php?id=43&utm](https://jurisprudenta.csj.md/search_hot_expl.php?id=43&utm).

<sup>8</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

<sup>9</sup> Law of the Republic of Moldova No. 3/2016 “On the Prosecutor’s Office”. Retrieved from [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2019\)041-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2019)041-e).

<sup>10</sup> Decision of the Superior Council of Prosecutors of the Republic of Moldova in Case No. 1-391/2024. (2024, December). Retrieved from [https://csp.md/sites/default/files/2025-01/391\\_proiect\\_hot\\_modificarea\\_structurii\\_final\\_2025.pdf](https://csp.md/sites/default/files/2025-01/391_proiect_hot_modificarea_structurii_final_2025.pdf).

cases examined by the Courts of Appeal, particularly the Northern and Southern Courts of Appeal, groups of prosecutors acting as public prosecutors are formed, composed of prosecutors both from specialised prosecutor's offices and from the district prosecutor's offices at the level of the respective court of appeal, in order to ensure a more effective representation of the state prosecution (Calendari, 2024).

Consequently, if a prosecutor is unable to attend a court hearing, that prosecutor may be replaced by another prosecutor, who is given time to become familiarised with the case file. The document also outlines the prosecutor's duties, including the presentation of evidence, participation in its examination, and the submission of procedural motions. ECtHR has ruled in cases where the absence of a prosecutor led to a violation of the right to a fair trial, emphasising the important role of the prosecutor in ensuring the adversarial nature of the judicial process. Furthermore, the document outlines the organisational structure of the public prosecutor's office in Moldova and its powers at various stages of the judicial process.

**Participation of the defendant in the trial and the effects of the defendant's non-appearance.** The examination of the case before the court of first instance and before the appellate court shall take place with the participation of the defendant. "In its case-law, the European Court has held that, in order to ensure the fairness of criminal proceedings, it is important that the accused have the opportunity to be present in the courtroom – whether during the initial proceedings or in the context of retrial proceedings"<sup>1</sup>.

The examination of the case in the absence of the defendant may take place in the following situations:

1) where the defendant absconds from appearing before the court. "The Court observed that the applicant had left the address the applicant had notified to the judicial authorities without informing the judicial authorities in advance of the applicant's change of residence. The judicial authorities made all reasonable efforts to secure the applicant's presence before the court: the judicial authorities summoned the applicant at the known address, attempted to summon the applicant at other known addresses, sought to locate the applicant within penitentiary institutions, and

verified whether the applicant had left the territory of the country. In the circumstances of the case, the Court considered that the applicant had knowingly and validly waived, in an implicit manner, the applicant's right to appear in person before the courts and therefore there had been no violation of Article 6 § 1 of the Convention"<sup>2</sup>;

2) where the defendant, being in detention, refuses to be brought before the court for the examination of the case, and such refusal is confirmed either by the defendant's defence counsel or by the administration of the place of detention. "As regards the alleged parallel regulation of the defendant's refusal, the Court notes that the provisions of Article 321(2<sup>1</sup>) CPC, introduced by Law No. 179 of 26 July 2018, concern the situation in which, following the defendant's refusal to appear at the court hearing, such refusal being established by the penitentiary institution and brought to the attention of the court, the latter orders the compulsory bringing of the defendant in order to confirm the defendant's refusal to participate in the examination of the criminal case"<sup>3</sup>;

3) where the defendant requests that the case be examined in the defendant's absence, provided that the court establishes the existence of exceptional circumstances and objective reasons justifying the defendant's absence from the hearing; in this regard, the defendant having made a solemn declaration at a previous hearing or submitted a written statement countersigned by the defendant's defence counsel expressing a wish, based on an informed choice, to expressly waive the exercise of the defendant's right to appear before the court, and such waiver does not run counter to a more important public interest;

"The European Court has established that an accused cannot be considered to have waived, through an accused's conduct, the guarantees provided by Article 6 of the Convention unless it has been demonstrated that an accused could reasonably have foreseen the consequences of such conduct"<sup>4</sup> (see, in this respect, *Sejdovic v. Italy*<sup>5</sup>, § 87; *Haralampiev v. Bulgaria*<sup>6</sup>, § 33; and *Idalov v. Russia*<sup>7</sup>, § 173). "In particular, there is no violation of the right to a fair trial where the accused person was informed of the date and place of the proceedings or where the accused person was represented by a

<sup>1</sup> Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 86/2018. (2018, July). Retrieved from <https://www.constcourt.md/ccdocview.php?tip=decizii&docid=500&l=ro>.

<sup>2</sup> Judgment of the European Court of Human Rights in Case No. 52009/07 "Lena Atanasova v. Bulgaria". (2017, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-170842>.

<sup>3</sup> Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 124/2018. (2018, October). Retrieved from <https://www.constcourt.md/ccdocview.php?docid=545&l=ro&tip=decizii>.

<sup>4</sup> *Ibidem*, 2018.

<sup>5</sup> Judgment of the European Court of Human Rights in the Case No. 56581/00 "Sejdovic v. Italy". (2006, March). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-72629%22%5D%7D>.

<sup>6</sup> Judgment of the European Court of Human Rights in the Case No. 29648/03 "Haralampiev v. Bulgaria". (2012, April). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-110694%22%5D%7D>.

<sup>7</sup> Judgment of the European Court of Human Rights in the Case No. 5826/03 "Idalov v. Russia". (2012, May). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-110986%22%5D%7D>.

lawyer mandated for that purpose. These considerations formed the basis of the European Court's conclusion that there had been no violation of Article 6 of the Convention in *Medenica v. Switzerland*, 14 June 2001, §§ 56-59<sup>1</sup>;

4) upon the completion of the criminal investigation in the absence of the accused under the conditions of Article 291(1) CPC<sup>2</sup>.

Where the case is examined in the absence of the defendant, the participation of defence counsel and, where appropriate, of the defendant's legal representative is mandatory. In the event of the unjustified non-appearance of the defendant at the hearing, the court is entitled to order the compulsory bringing of the defendant, including the issuance of a border alert, and to impose a preventive measure or replace it with another measure that will ensure the defendant's appearance before the court, and, upon the prosecutor's request, to order that the defendant be declared wanted. The ruling declaring the defendant wanted shall be executed by the internal affairs bodies. The Constitutional Court clarifies that an appeal in cassation against a ruling ordering compulsory bringing does not fall within the scope of the right to a double degree of jurisdiction in criminal matters, guaranteed by Article 2 § 1 of Protocol No. 7 to the European Convention<sup>3</sup>. "The task of the court deciding on the compulsory bringing of the defendant is not to determine the 'criminal charge', but to ensure the defendant's presence at the court hearing"<sup>4</sup>.

The court decides to examine the case in the absence of the defendant on the grounds provided for in Article 321(2)(1) CPC<sup>5</sup> only where the prosecutor has presented credible evidence that the person charged and sent for trial is absconding from justice and that, following search measures, it has been impossible to obtain the defendant's expression of will to appear before the court. "From the case materials it is established that, during the examination of the case before the court of first instance, the defendant D.S. did not appear; however, the defendant's lawyer C.O., on 07.09.2020, submitted a request pursuant to Article 321(3) CPC, written and signed by the defendant and the lawyer, seeking the examination of the case

in the defendant's absence, stating that the defendant fully admitted guilt in committing the offence imputed under Article 264<sup>1</sup>(1) of the Criminal Code, with the participation of defence counsel on the defendant's behalf. Moreover, the appeal in cassation against the judgment was lodged by the defendant D.S., which indicates that the defendant was aware of the examination of the case in cassation proceedings. Therefore, the Criminal Panel notes that the appellant's arguments that the defendant had not been lawfully summoned cannot be upheld, since the case materials show that the appellate court undertook all actions provided by law in order to notify the defendant of the date and time of the hearings. Thus, on 27.05.2021 and 23.06.2021, summonses were sent to the residential address indicated in the case file, namely 'mun. Chişinău, com. XXXXX, str. XXXXX'; it is established that the summonses were not received by the defendant and were returned to the appellate court marked "unclaimed", and according to the extract from the search system, it is established that the defendant left the territory of the Republic of Moldova on 04.04.2021"<sup>6</sup>.

It outlines several scenarios in which the defendant may be absent: if the defendant absconds, refuses to appear from detention, or voluntarily waive the right to be present, provided certain conditions are met. ECtHR has ruled that an accused cannot waive the accused person's right to appear unless the accused was fully informed of the consequences. Additionally, the court has the authority to order the defendant's compulsory attendance, including issuing a border alert or declaring the defendant wanted if necessary. Defence counsel's presence is mandatory in such cases to protect the defendant's rights.

#### **Participation of defence counsel in the trial and the effects of defence counsel's non-appearance.**

Defence counsel participates in the examination of the case and exercises defence counsel's rights and obligations in accordance with Articles 67-69 of the Criminal Procedure Code<sup>7</sup>, which apply accordingly. The Constitutional Court notes that "the European Court of Human Rights has recognised the requirement of the intervention of a lawyer at certain procedural stages as an appropriate and proportionate means available to

<sup>1</sup> Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 124/2018. (2018, October). Retrieved from <https://www.constcourt.md/ccdocview.php?docid=545&l=ro&tip=decizii>.

<sup>2</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

<sup>3</sup> European Convention on Human Rights. (1950, November). Retrieved from [https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG).

<sup>4</sup> Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 77/2021. (2021, June). Retrieved from [https://old.gov.md/sites/default/files/document/attachments/subiect-15\\_-\\_nu\\_210\\_ms\\_2021\\_1.pdf](https://old.gov.md/sites/default/files/document/attachments/subiect-15_-_nu_210_ms_2021_1.pdf).

<sup>5</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

<sup>6</sup> Decision of the Criminal Panel of the Supreme Court of Justice of the Republic of Moldova in Case No. re-16/22. (2022, May). Retrieved from [https://jurisprudenta.csj.md/search\\_col\\_penal.php?id=21245](https://jurisprudenta.csj.md/search_col_penal.php?id=21245).

<sup>7</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

States to ensure enhanced guarantees and greater rigour in the defence of the accused"<sup>1</sup>.

During the trial, defence counsel enjoys equal rights with the prosecutor. In the event of the non-appearance of defence counsel at the hearing and the impossibility of replacing defence counsel at that hearing, the hearing shall be adjourned. For unjustified absence, defence counsel shall be sanctioned with a judicial fine. Where the defendant has several defence counsel, the adjournment of the hearing may not be ordered if at least one of the defence counsel is present at the examination of the case. The replacement of defence counsel who failed to appear at the hearing is permitted only with the consent of the defendant.

If the participation of the defence counsel chosen by the defendant is impossible for a period exceeding three days, the court shall adjourn the hearing and propose that the defendant choose another defence counsel; in the event of the defendant's refusal to choose another counsel, the court shall request the coordinator of the territorial office of the National Council for State Guaranteed Legal Aid to appoint a lawyer providing state-guaranteed legal assistance. For the replacement of defence counsel under this paragraph, the court shall grant the defendant a time limit of five days.

The ECtHR "specifies that the appointment of counsel ex officio does not in itself satisfy the requirements of the Convention, which guarantees effective legal assistance. However, this is not ensured by the mere designation of counsel, since, as indicated above, appointed counsel may die, fall seriously ill, etc. In the present case, the accused did not benefit from effective assistance before the Court of Cassation. The Court concluded, unanimously, that Article 6 § 3 (c) of the Convention had been violated (...)" (Berger, 2001). The State's obligation to provide state-guaranteed legal assistance is not fulfilled by the mere appointment of a lawyer. Additional measures must be taken to ensure that this right is practical and effective. If a particular lawyer is ineffective, the State is obliged to provide the suspect with another lawyer<sup>2</sup>.

The ECtHR has been reluctant to hold States responsible for the shortcomings of lawyers who, as members of independent and liberal professions, are expected to organise the professional activities. The ECtHR has frequently held that a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for the purpose of providing legal assis-

tance. States are required to intervene only when the failure of the defence to provide effective assistance is manifest or has been sufficiently brought to the attention<sup>3</sup>. An important issue concerns the effectiveness of the defence of a defendant absent from trial. Thus, in the criminal proceedings against Sannino before an Italian court, defence counsel declared withdrawal from participation in the proceedings; subsequently, Sannino's defence was carried out by various court-appointed lawyers who, during the trial in absentia, never requested the adjournment of the proceedings in order to become familiarised with the case materials and did not attempt to establish contact with the defendant. As a result, witnesses whose examination had previously been requested by the defendant were not heard. The European Court, while acknowledging that the State cannot be held responsible for unqualified legal assistance, nevertheless concluded that, where the omissions of the defence are manifest, the court must take appropriate measures<sup>4</sup>.

With regard to inadequate legal assistance and the failure of the court to intervene to put an end to such conduct, reference may be made to the ECtHR judgment in *Ananiev v. Russia*, according to which a person accused of an offence does not forfeit the benefits of the right to defence merely because of the person's absence from the hearing. The Court reiterated that during the proceedings the applicant had been removed from the courtroom due to the applicant's conduct and was brought back to be given the last word, but evidence had been examined in the applicant's absence and in the absence of the applicant's lawyer, since the applicant had refused that lawyer's services on the ground that the manner of defence did not coincide with the applicant's views; however, the court was required to explain to the applicant the consequences of such conduct and of waiving defence counsel<sup>5</sup>.

When deciding on the adjournment of the hearing in connection with the replacement of defence counsel, the court shall take into account the appropriateness of such a decision, having regard to the time already spent on the examination of the case, the complexity of the case, the time necessary for the newly appointed defence counsel to study the case materials, as well as other circumstances relevant to the preparation of the defence. The court shall grant the defence counsel who has entered the proceedings sufficient time and ensure appropriate facilities to familiarise defence counsel

<sup>1</sup> Judgment of the Constitutional Court of the Constitutional Court of Moldova in Case No. 16/2005. (2005, July). Retrieved from [https://www.constcourt.md/public/files/file/Actele%20Curtii/acte\\_2005/h\\_16.pdf](https://www.constcourt.md/public/files/file/Actele%20Curtii/acte_2005/h_16.pdf).

<sup>2</sup> Judgment of the European Court of Human Rights in the Case "Artico v. Italy". (1980, May). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-57424>.

<sup>3</sup> Judgment of the European Court of Human Rights in the Case "Orlov v. Russia". (2011, June). Retrieved from <http://hudoc.echr.coe.int/eng?i=001-105273>.

<sup>4</sup> Judgment of the European Court of Human Rights in the Case "Sannino v. Italy". (2006, April). Retrieved from <http://hudoc.echr.coe.int/eng?i=001-75213>.

<sup>5</sup> Judgment of the European Court of Human Rights in the Case "Ananyev v. Russia". (2009, July). Retrieved from <http://hudoc.echr.coe.int/eng?i=001-150432>.

with the case materials, including those examined before the court, and to prepare for further participation in the proceedings; however, the replacement of defence counsel does not require the recommencement of the trial from the beginning. Defence counsel is entitled to request the repetition of certain procedural actions already carried out at the hearing in the defence counsel's absence if there is a need to clarify additional issues.

**Participation of the injured party in the trial and the effects of the injured party's non-appearance.** The injured party, by participating in the examination of the case, enjoys the rights and is subject to the obligations provided for in Article 60 of the Criminal Procedure Code<sup>1</sup>. The examination of the case before the court of first instance and before the appellate court shall take place with the participation of the injured party or the injured party's representative. In the event of the justified non-appearance of the injured party, the court, after consulting the opinions of the parties, shall decide whether to proceed with the examination of the case or to adjourn it, depending on whether the case can be examined in the absence of the injured party without infringing the injured party's rights and interests. Upon a well-founded request by the injured party, the court may exempt the injured party from appearing at the hearing, obliging the injured party to appear at a specific hearing scheduled for the injured party's examination. In the event of unjustified failure to appear before the court for examination, the injured party may be brought compulsorily and may be subject to a judicial fine.

The civil party and the civilly liable party, or the representatives, participate in the examination of the case and enjoy the rights and are subject to the obligations provided for in Articles 62, 74, and 80 CPC<sup>2</sup>. In the event of the non-appearance before the court of the civil party or the civil party's representative, the court shall leave the civil action without examination; in such a case, the civil party retains the right to bring the action in accordance with civil procedure. Upon a well-founded request by the civil party or the civil party's representative, the court may decide to examine the civil action in the absence. The non-appearance of the civilly liable party or the civilly liable party's representative before the court does not prevent the adjudication of the civil action.

The injured party must participate in the case examination, and if the injured party is unable to attend, the court will decide whether to proceed or adjourn, considering the injured party's rights and interests. In cases of unjustified non-appearance, the injured party may be compelled to appear and face a judicial fine. Similarly, civil parties and the representatives must be present, but if absent, the civil action may be left

unexamined. However, the civil party retains the right to pursue the action through civil procedure. The court can decide to continue the civil case in the absence, and the non-appearance of the civilly liable party does not prevent the civil action from being adjudicated.

**Measures taken against persons who disturb the order of the court hearing.** The presiding judge shall ensure the maintenance of order and solemnity of the hearing and is entitled to take the necessary measures for this purpose. If the defendant disturbs the order of the hearing and fails to comply with the instructions of the presiding judge, the latter shall warn the defendant of the need to observe discipline; in the event of repeated disturbance or serious misconduct, the judge or, as the case may be, the judicial panel shall order the defendant's removal from the courtroom, continuing the proceedings in the defendant's absence. However, the judgment shall be delivered in the presence of the defendant or shall be communicated to the defendant immediately after delivery.

The removal of the applicant from the courtroom, in circumstances where the judge did not warn the applicant of the consequences of the applicant's conduct, and the taking of evidence in the applicant's absence, constitutes a violation of the right to a fair trial (ECtHR judgment in *Idalov v. Russia*<sup>3</sup> [GC], 22 May 2012, § 178). If the prosecutor or the lawyer disturbs the order of the court hearing and fails to comply with the instructions of the presiding judge, that person may be sanctioned with a judicial fine, and that person's conduct shall be reported to the Prosecutor General, and respectively to the Bar Association and the Minister of Justice.

If the injured party, the civilly liable party, or the representatives disturb the order of the hearing or fail to comply with the instructions of the presiding judge, the court may order, by ruling, the removal from the courtroom. Other persons present at the court hearing, for the same conduct, may be removed from the courtroom by order of the presiding judge. In cases of manifest disrespect towards the court by disturbing the order of the hearing, as well as by committing acts that demonstrate manifest contempt for the court, such persons may, by court ruling, be subject to a judicial fine.

The Constitutional Court "observes that the presiding judge, having the role of ensuring compliance with order during the court hearing [Article 317 CPC], is responsible for explaining ex lege to the defendant that, pursuant to Article 66(5)(6) CPC, the defendant is obliged to respect the order established during the hearing, as well as that, in the event of disregarding this imperative, the defendant may be removed from the courtroom, thereby assuming the legal consequences

<sup>1</sup> Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from [https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf).

<sup>2</sup> Ibidem, 2009.

<sup>3</sup> Judgment of the European Court of Human Rights in the Case No. 5826/03 "Idalov v. Russia". (2012, May). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-110986>.

concerning the right to participate in the trial"<sup>1</sup>. In this regard, the Supreme Court of Justice notes that "If the defendant appears at the hearing but displays unacceptable conduct, Article 334(2) CPC imposes on the judge the obligation to take measures to restore order during the hearing and allows, as an extreme measure, the removal of the defendant from the courtroom. However, in such a case, the proceedings continue in the absence of the defendant" (Ruling of the Supreme Court..., 2025).

Consequently, if the defendant disrupts order in the courtroom, the defendant will be given a warning; if the disruption continues, the defendant may be removed from the courtroom, in which case the hearing will continue in the defendant's absence. However, the court's decision will still be announced in the defendant's presence or brought to the defendant's attention at a later date. Disorderly conduct on the part of the prosecutor, a lawyer or other participants may result in sanctions, including court fines and notification of the relevant authorities. The court may also remove the injured party, the civil party or the injured party's or the civil party's representatives if the injured party, the civil party or those representatives disrupt the proceedings, and may impose fines for contempt of court. The Constitutional Court and the Supreme Court emphasise the judge's duty to explain to the defendant the consequences of such behaviour.

## Discussion

The findings of this study are consistent with the results of the seminal study by P. Mahoney (2006) on the right to a fair trial under Article 6 of the ECHR, yet the findings of the present study also reveal a number of significant differences in emphasis and interpretation. Both analyses emphasise the importance of ensuring fairness in criminal proceedings, in particular through the participation of all parties in the trial and the maintenance of a procedural balance between the prosecution and the defence. Both also emphasise the equality of the parties, which is critical to ensuring that the defendant is able to present the case on an equal footing with the prosecution. The idea that an ineffective defence or the improper summons of parties to court can undermine the fairness of the trial is common to both works.

However, P. Mahoney's (2006) work focuses more on the procedural principles established by ECtHR and highlights how these principles are applied within a broader legal context, discussing specific defence rights and case law relating to the fairness of judicial proceedings. P. Mahoney's (2006) analysis, whilst discussing fairness and equality of arms, does not highlight the actual gaps in judicial practice in the way the present study does. P. Mahoney (2006) touches upon

legal rights and judicial procedures, but does not delve as deeply into the court's procedural obligations to actively ensure that these rights are upheld throughout the proceedings.

C. DeFrancia's (2001) work is a fundamental legal analysis of the conceptual foundations of due process in an international context. Academic works from 2025-2026 predominantly assess individual aspects of criminal procedure from an empirical or comparative perspective, not always linking these aspects to fundamental theoretical issues of due process on a global scale. C. DeFrancia (2001) emphasises that, due to the hybrid nature of international criminal proceedings (some of the mechanisms having been borrowed from different legal cultures), the procedure cannot be reduced to a mere "technical form" – it shapes justice itself and confidence in judicial decisions. The articles published in 2025-2026 focus more on procedural irregularities, the effectiveness of application, and compliance with national or European law. This study, however, emphasises the importance of procedural fairness, particularly in the context of ensuring that the parties are properly notified, the right to participate in the proceedings, and the need for active judicial intervention to maintain a balance between the prosecution and the defence.

The study by B. Cerekja & O. Mucollari (2024) highlights the importance of striking a balance between efficiency and fairness in judicial proceedings, noting that countries such as France and Poland often prioritise expedited case processing, which may infringe upon the rights of the accused. At the same time, Germany, Italy and Albania emphasise a thorough examination of cases, which guarantees fairness but prolongs the process. This is consistent with the analysis conducted, which also highlights the importance of judicial impartiality and equality of the parties, but this study focuses more on the need to respect the rights of the accused. This leads to an emphasis on the efficiency of judicial procedures in the context of the technological solutions proposed by B. Cerekja & O. Mucollari (2024) to expedite the process.

This study shares common themes with the work of I. Vakhlyis (2023) in that both emphasise the importance of a fair trial and access to justice in the context of criminal proceedings; however, the present study highlights the difference in the legal nature and inter-relationship. Vakhlyis notes that these rights must be distinguished due to the different legal nature, whilst the present research emphasises that these rights are integral components of the rule of law, and the application must be interlinked, particularly through the equality of the parties in the judicial process. Vakhlyis acknowledges that the right of access to justice is part

<sup>1</sup> Decision of the Constitutional Court of the Republic of Moldova in Case No. 11/2017. (2017, February). Retrieved from <https://www.constcourt.md/ccdocview.php?docid=308&l=ro&tip=decizii>.

of the right to a fair trial, which aligns with the position advanced in the present study, namely that the right to a fair trial includes guarantees of access to justice. However, this article devotes greater attention to the practical implementation of these rights, a point often overlooked in analysis. While I. Vakhlyis (2023) focuses more on the theoretical foundations and doctrinal distinctions between these rights, the present study stresses the practical aspects of ensuring these rights in criminal proceedings, particularly in ensuring effective defence, the availability of evidence, and the right to a timely and fair trial. Thus, this research offers a more comprehensive approach that incorporates both the legal theory and the real-world challenges in applying these principles, highlighting the importance of judicial reform and compliance with European human rights standards.

## Conclusions

The analysis of the general conditions governing the trial of criminal cases reveals that those conditions do not represent mere procedural rules, but fundamental guarantees for the realisation of a fair criminal process within the meaning of Article 6 of the European Convention on Human Rights. The provisions contained in the Special Part, Title II, Chapter I of the Criminal Procedure Code constitute the indispensable normative framework for ensuring the real and effective participation of the parties in the trial and for maintaining procedural balance between the prosecution and the defence.

Compliance with the general conditions of the trial constitutes a prerequisite for the validity of the judicial decision. Any irregularity concerning the summoning of the parties, the participation, or the taking of evidence has the potential to affect the fairness of the proceedings and to lead to the quashing of the judgment; therefore, the court is obliged to verify *ex officio* the observance throughout the trial. The principle of equality of arms imposes on the court a positive obligation to intervene. The judge cannot remain passive in situations where one of the parties is objectively unable to exercise the party's procedural rights; it is necessary to grant the procedural assistance provided by law in order to prevent procedural imbalance. The summoning of the parties must be assessed from the perspective of effectiveness and the actual nature of the notification, not through excessive formalism. The mere dispatch of a summons is not sufficient if it results that the person did not genuinely become aware of the proceedings,

especially in the case of foreign nationals, persons residing abroad, or persons in detention.

The participation of the prosecutor in the trial is indispensable for maintaining the adversarial character of criminal proceedings. The absence of the public prosecutor risks creating an inadmissible confusion between the functions of the court and those of the prosecution, affecting the objective impartiality of the judge and the procedural balance. The examination of the case in the absence of the defendant is of a strictly exceptional nature and must be subject to rigorous scrutiny. The court is obliged to verify whether the waiver of the right to be present was express, unequivocal, and made in full awareness of its consequences, or whether absconding from trial is established by credible evidence; any doubt must be interpreted in favour of the exercise of the right to defence. The right to defence entails the provision of effective and continuous legal assistance, not merely formal representation. The appointment of defence counsel does not release the court from the obligation to intervene where the defence is manifestly ineffective, passive, or lacking in substance; concrete measures are required to guarantee the effectiveness of this right.

Finally, the active role of the court in maintaining order and discipline during the hearing must be exercised with due respect for the right to defence. Measures such as the removal of the defendant or other participants must be applied as a last resort, only after prior warning and explanation of the legal consequences, so that the right to effective participation in the proceedings is not deprived of its substance.

Overall, the essential conclusion is that the cumulative and effective observance of the general conditions governing the trial of criminal cases constitutes the premise of a fair trial, and the rigorous application in judicial practice represents an indispensable instrument for preventing violations of fundamental rights and for strengthening confidence in the administration of justice.

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None.

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# Загальні умови розгляду кримінальних справ, що забезпечують належну участь сторін і дотримання їхніх процесуальних прав

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### Анотація

Актуальність теми полягала в необхідності забезпечення справедливого судового процесу в кримінальних справах, що є основною гарантією прав людини та правосуддя. Метою роботи було проаналізувати загальні умови проведення судових процесів у кримінальних справах, які забезпечують належну участь сторін у процесі і дотримання їхніх процесуальних прав. Для досягнення мети було здійснено аналіз законодавчих норм, практики Європейського суду з прав людини та судової практики Республіки Молдова. Досліджено основні умови для забезпечення участі сторін у судовому процесі, зокрема рівність сторін, забезпечення принципу змагальності та права на захист. Виявлено, що невиконання цих умов може призвести до порушення принципів справедливого судочинства та вплинути на результат судового процесу. Обґрунтовано значущість дотримання вимог щодо належного виклику учасників процесу, забезпечення рівних можливостей для подання доказів та участі в їх розгляді. Проаналізовано роль суду в забезпеченні справедливості процесу, зокрема в контексті підтримання рівноваги між обвинуваченням і захистом. З'ясовано, що активна участь судді в підтриманні змагальності та наданні допомоги сторонам у процесі є необхідною для забезпечення дотримання прав кожної сторони. Крім того, встановлено, що недотримання процедурних норм, таких як належне повідомлення учасників судового процесу, може спричинити серйозні наслідки для справедливості судочинства, зокрема призвести до скасування судових рішень. Сформульовано висновок, що недотримання цих умов може спричинити серйозні порушення прав учасників процесу, що вимагало втручання суду для забезпечення балансу прав й обов'язків сторін. Практична цінність роботи полягала в тому, що її результати можуть бути використані суддями, адвокатами та правниками для покращення правозастосовної практики та забезпечення належних умов для кримінальних процесів, відповідно до міжнародних стандартів прав людини

### Ключові слова:

кримінальні справи; порушення прав; судовий розгляд; сторони в судовому процесі; подання доказів