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Analysis of the national legal system in the Republic of Moldova concerning the recovery of costs in criminal cases

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I. Introduction

1. **Scope**. During the criminal process, the prosecution and the defence parties, other participants (interpreter, expert, etc.) of the process are subject to certain costs and expenses related to the execution of procedural actions in the criminal case. In this order, Article 227 of the Criminal Procedure Code (CPC) provides that "*Judicial expenses are the expenses incurred according to the law to ensure the proper conduct of the criminal process*." Other criminal procedure rules regulate the types of those costs called by the Code of criminal procedure "judicial expenses" and the persons who have the right to compensation for the costs and expenses. In this context, the chapter shall analyse the current legal framework and case-law in the Republic of Moldova concerning the recovery of costs in criminal cases.

2. Also, the aim of the chapter is to identify the eventual lacunae and shortcomings of the criminal justice policy, legal framework and case-law of the courts of the Republic of Moldova to provide an analysis of the situation "as is," to outline the findings and recommendations for actions to be taken to ensure a coherency of the criminal justice policy and legislation in this regard, as well as improvement of the court case-law, as necessary, vis-à-vis the compliance with Council of Europe (CoE) standards and best practices.

3. **Methodology.** The analysis in the present chapter is based on the findings emanating from desk research and focus group discussions with judges, prosecutors, lawyers and bailiffs. The desk research is based on a review of the legal framework (CPC, Law No. 1545/1998 regarding the way to repair the damage caused by the illegal actions of the criminal investigation bodies, the prosecutor's office and the courts), Supreme Court of Justice (SCJ) recommendations and General Prosecutor's Office reports, Moldovan courts case-law (1) concerning the recovery of costs in criminal cases, official data from other relevant institutions, policy documents and other reports. The desk research should provide for a sound understanding of the *status quo* regarding the recovery of costs in criminal cases in the Republic of Moldova, as the case may be, in light of the CoE standards, including the case law of the and European Court of Human Rights (ECtHR). The focus group discussions had the purpose of checking how the legal provisions under analysis are applied in practice, possible problems in the application of the legislation, and if there are aspects that would require a supplement or amendment of the law and other aspects. As to the criteria regarding the composition of the focus group, the discussions were held with first instance court judges, prosecutors from the territorial and specialized prosecutor's offices, practicing lawyers on criminal cases and bailiffs.

1 The decisions of the Supreme Court of Justice, but also of the lower courts (first instance courts, Courts of Appeal) will be analysed to the extent that they were upheld by the Supreme Court of Justice and if these decisions can be considered relevant and representative at the moment meaning that it would reflect current judicial practice.

II. Recovery of costs in criminal cases: analysis of the legal framework (Criminal Procedure Code, other regulations) in light of the national case law and CoE standards

4. The prosecution of offenders is a fundamental state function. Since the prosecutor and other participants of criminal proceedings have expended resources in discovering the crime and proving the breach of the law, it may be reasonable to recover some or all of those costs. Still, in any case, it is necessary to be in line with the human rights standards and to keep an appropriate balance between competing interests of the participants in the criminal proceedings when recovering costs in criminal cases.

Existing model of recovery of costs and expenses in criminal cases in the Republic of Moldova

5. The issue of judicial costs and expenses incurred during criminal proceedings is rather peripherally addressed in both specialized legal doctrine and the case law of national courts. The regulatory framework governing judicial costs in criminal cases has not undergone conceptual changes for at least the past 20 years and has not been adapted to reflect recent developments in ECtHR jurisprudence. This lack of alignment creates a risk of non-compliance with the right to a fair trial, particularly with the principle of the presumption of innocence and other human rights standards.

Unlike the laws of other states that refer to "court costs and expenses" incurred in criminal cases, the procedural legislation of the Republic of Moldova does not use the term "costs" but instead refers only to the recovery of "judicial expenses.”

6. The CPC of the Republic of Moldova is the primary legislative act regulating the types of judicial costs, the categories of individuals entitled to reimbursement, and those obliged to bear the costs, depending on the outcome of the criminal proceedings or their own actions that generate specific expenses. Another key law in this area is Law No. 1545 of February 25, 1998, of the Republic of Moldova (Law No.1545/1998), which governs the procedure for compensating damages caused by unlawful actions of criminal investigation bodies, the prosecution, and the judiciary. This law not only regulates the procedure for compensation but also comprehensively addresses the state's patrimonial liability for damages caused by unlawful acts committed by the judiciary, prosecutors, or criminal investigation bodies during criminal proceedings, particularly in cases where the defendant is acquitted. From this perspective, Law No. 1545/1998, encompasses the domain of compensating judicial costs at the state's expense in favour of the accused/defendant in cases of acquittal or other similar solutions / situations. In contrast, the CPC regulates other situations involving the reimbursement of judicial costs advanced by the state, particularly in cases resulting in the defendant's conviction or similar outcomes (e.g., termination of criminal proceedings on so-called "non-rehabilitative grounds," such as amnesty), as well as other circumstances (e.g., reconciliation between the accused and the victim) that do not culminate in the acquittal of the accused/defendant. Given that Law No. 1545/1998, has been deemed outdated and contains numerous ambiguous and confusing terms, the

Ministry of Justice of the Republic of Moldova is currently drafting a new law intended to replace Law No. 1545/1998. The proposed legislation aims to align with modern justice standards and uphold human rights.

7. Paragraph 1 of Article 227 of the CPC stipulates that *"Judicial expenses are those incurred in accordance with the law to ensure the proper conduct of criminal proceedings."* Thus, the concept of "judicial expenses" covers costs incurred both during the criminal investigation phase and during the judicial phase. However, the declared purpose of the law—*"to ensure the proper conduct of criminal proceedings"*—is somewhat ambiguous (2), as the prosecution and defense may have different, possibly even diametrically opposed, interpretations of what constitutes the "proper conduct of criminal proceedings." In any case, the procedural law, while not elaborating on the legal nature of judicial expenses, defines them broadly as costs incurred within the framework of a criminal process. Doctrine, however, narrows this definition, arguing that *"by their nature, expenses advanced by the state are those necessary for carrying out procedural or evidentiary acts ordered by the criminal investigation bodies to ensure the prompt handling of a criminal case and the gathering of evidence to support the charges brought against an individual."(*3*)* This interpretation somewhat limits the scope of the legal concept of "judicial expenses," as it considers expenses only those ordered by the criminal investigation bodies, without accounting for procedural acts ordered by courts or advanced by other procedural subjects (e.g., witnesses, victims). Despite such doctrinal opinions, Paragraph 2 of art.227 CPC and judicial practice qualifies as "judicial expenses" not only the sums advanced by the criminal investigation bodies in order to accumulate evidence and advance in the criminal proceedings, but also the sums incurred for these purposes by other participants in the criminal proceedings.

8. Paragraph 3 of Article 227 of the CPC clarifies that *"judicial expenses shall be paid from state-allocated funds unless the law provides otherwise."* This provision establishes that judicial expenses are primarily advanced by the state but may also be optionally advanced by other participants in the criminal proceedings (e.g., the accused, the defendant, witnesses, victims etc.). The state advances judicial expenses by allocating necessary funds to the budgets of criminal justice bodies (e.g., law enforcement agencies, the prosecution, courts), which cover costs related to procedural acts as needed (e.g., expert assessments, extradition of the accused, translation of foreign documents in the context of rogatory commissions etc.).

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2 For comparison, see the Law of 23.03.2019 on court expenses in criminal matters and assimilated expenses and the introduction of Article 648 into the Criminal Procedure Code of the Kingdom of Belgium, which stipulates in § 1 art.3: *"Judicial expenses in criminal matters are the costs, either paid or advanced for their recovery from one or more convicted parties, declared guilty or civilly liable, or civil parties who have failed, by the Federal Public Service of Justice,"* https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2019032318&table_name=loi#LNK0001.

3 Artur Airapetean, Marina Corgoja, *Compensation of judicial expenses incurred by the state for handling criminal cases – correlating procedural law norms and judicial practice*, *Law and Life*, September 2018, p.13.

Justification for costs and expenses in criminal cases

9. The CPC, as previously mentioned, lacks explicit clarity in outlining the legal basis or rationale underlying the recovery of "judicial expenses" from one party in the criminal process to the benefit of another. The phrase in Paragraph 1 of Article 227 of the CPC, which states that *"Judicial expenses are those incurred … to ensure the proper conduct of criminal proceedings,"* addresses the question of *why* the State advances judicial expenses. However, it fails to sufficiently elucidate the legal foundation or justification for the recovery of such expenses from one procedural subject for the benefit of another within the criminal process.

10. According to Paragraph 4 of Article 229 of the CPC, *"In the event of the conviction of several individuals in the same case,* ***judicial expenses shall be apportioned based on the guilt, degree of responsibility****, and financial situation of each of them."*

11. Pursuant to Paragraph 5 of Article 229 of the CPC, "(5) *In the event of the termination of criminal* ***prosecution following the reconciliation of the injured party with the accused or defendant****, the court may allocate judicial expenses* ***<u>to the injured party,</u>*** *the accused, the defendant, or only to one of the parties."*

12. Thus, Paragraph 4 of Article 229 of the CPC outlines the legal basis of the criminal fault of the perpetrator (4), explained by the fact that the mere act of committing the offense triggers the State's criminal machinery and necessitates procedural actions, which inherently involve certain expenses. Conversely, Paragraph 5 of Article 229 of the CPC provides the legal basis for procedural fault of the procedural subject: the expenses are generated by the procedural actions undertaken by the responsible procedural subject, which have proven to be unjustified or have been dismissed by the prosecutor or the court.

13. Regarding the legal basis for judicial expenses, the SCJ stated the following:

> *"The incurrence of judicial expenses in a criminal case is caused by the commission of an offense that necessitates the conduct of investigation and trial in order to apply criminal law to the one who committed it. As a result, judicial expenses are attributable to the convicted defendant for committing the offense, with the legal basis being their criminal fault, as without the commission of the offense, the expenses would not have been incurred."*[5]

The cited SCJ case law confirms the opinion expressed above, the criminal fault of the perpetrator is the legal basis for imposing judicial expenses on the accused/convicted party in the case of their conviction.

14. The determination of the legal basis or justification for the recovery of judicial expenses is a matter of criminal policy that would simplify the task of the courts in deciding which procedural subject should bear these expenses. Conversely, it could clarify who among the participants would not be fairly charged with certain costs or expenses, depending on their procedural conduct (such as requesting a repeated expert examination or filing an appeal or cassation that is dismissed), financial situation, the outcome of the

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4 See Grigore Gr. Theodoru, Ioan-Paul Chiș, Treatise on Criminal Procedural Law, publisher Hamangiu, 4th edition, p. 597-598

5 Decision of the CSJ of May 18, 2022, Case no. 1ra-285/22.

case, the type of ruling (acquittal, conviction, or discontinuance of the criminal case), or other circumstances.

Types of costs and expenses in criminal cases

15. Not every expense advanced by the State or another subject within the criminal process has the legal nature of a "judicial expense" under the CPC. Paragraph 2 of Article 227 of the CPC provides a list in this regard, stipulating that *"Judicial expenses include the sums:*

1) *paid or to be paid to witnesses, the injured party, their representatives, experts, specialists, interpreters, translators, and procedural assistants;*
2) *incurred for the preservation, transportation, and examination of the objects of the offense;*
3) *to be paid for providing state-guaranteed legal assistance;*
4) *incurred for the restitution of the value of objects damaged or destroyed during the performance of judicial expertise or reenactment of the offense;*
5) *incurred in relation to performing procedural actions in the criminal case."*

16. Article 228 of the CPC, quoted below, although to some extent overlaps with certain provisions of Article 227 of the CPC, also provides further clarification regarding the types of expenses that are to be compensated following the criminal process. Thus, Article 228 of the CPC stipulates:

"Compensation of expenses incurred by persons participating in the criminal process. (1) In the manner provided by criminal procedural law, the following judicial expenses incurred by witnesses, the injured party, the civil party, procedural assistants, interpreters, translators, experts, specialists, and the legal representatives of the injured party and the civil party will be compensated from the sums allocated by the State:

1. expenses incurred in connection with appearing upon summons before the criminal investigation authority and the court;

2. accommodation expenses;

3. the average salary for the entire period of participation in the criminal process;

4. expenses for the repair or restoration of objects that were damaged as a result of their use in procedural actions at the request of the criminal investigation authority or the court.

(2) Public authorities, enterprises, institutions, and organisations are required to maintain the average salary for the entire period during which the injured party, their legal representative, procedural assistant, interpreter, translator, specialist, expert, or witness

participated in the criminal process at the summons of the criminal investigation authority or the court.

(3) The expert and specialist are also entitled to reimbursement for the cost of materials that belong to them and were used in performing their task.

(4) The expert, specialist, interpreter, and translator are entitled to a reward for fulfilling their obligations, except in cases where they performed the task as part of their job duties.

(5) The expenses incurred by the persons mentioned in paragraph (1) will be recovered at their request based on a decision of the criminal investigation authority or the court, in the amount established by the applicable legislation."

17. Thus, the judicial expenses enumerated in Articles 227-228 of the CPC are sums allocated or incurred in connection with the execution of criminal procedural acts, the administration of evidence, or the preservation of material evidence, as well as the remuneration of subjects/participants in the criminal process (specialists, lawyers, experts, witnesses).

18. It should be noted that point 5 of paragraph 2, Article 227 of the CPC qualifies as judicial expenses, in addition to those listed in Paragraph 2 of Article of the 227 CPC, other sums *"incurred in connection with the performance of procedural actions in the criminal case."* This creates, at first glance, the impression that the list of sums indicated in Paragraph 2, Article 227 of the CPC is not exhaustive. However, the scope of point 5, Paragraph 2, Article 227 of the CPC is significantly limited when examined in conjunction with Article 228 of the CPC, which specifies the exact types of expenses that may be compensated.

19. The national courts have confirmed the restrictive interpretation of these norms, i.e., the sums that can be recovered as judicial costs in a criminal case. Through Recommendation No. 39 regarding the procedure for recovering judicial costs in the resolution of civil actions in criminal proceedings, (6) the SCJ of the Republic of Moldova addressed the issue of whether or not the civil action in a criminal case is subject to the court fee, i.e., whether the court fee can be collected as judicial costs within a criminal case. The SCJ explained:

"Judicial costs are regulated by the provisions of Articles 227-229 of the Criminal Procedure Code. Given the complex nature of the obligation to bear judicial costs in criminal proceedings, it is necessary to address the legal grounds on which these costs arise.

According to the legal text (Article 227, Paragraph (2) of the CPC), judicial costs include: sums paid or to be paid to witnesses, victims, their representatives, experts, specialists, interpreters, translators, and procedural assistants; sums spent for the preservation, transportation, and examination of evidence; sums to be paid for the provision of state-guaranteed legal assistance; expenses for the restitution of the value of objects damaged or destroyed during the execution of an expert examination or the reconstruction

6 Recommendation No. 39 of the SCJ regarding the procedure for collecting judicial costs in the settlement of civil actions in criminal proceedings

of the offence; sums spent in relation to the performance of procedural actions in the criminal case.

Therefore, the court resolving the civil action within the criminal case, whether partially or fully admitting the action, is not authorized to collect the court fee from the defendant's account, as it does not fall under the judicial costs regulated by Article 227, paragraph (2) of the Criminal Procedure Code, unlike the provisions of Article 82 of the Civil Procedure Code, which stipulate that judicial costs in civil proceedings also include the court fee."

20. Unfortunately, the Supreme Court of Justice, in Recommendation No. 39, overlooked the opportunity to clarify how the ”court fee” relates to point 5, Paragraph 2 of Article 227 of the CPC, which provides for the recovering of other sums ”*spent in connection with carrying out procedural actions in a criminal case*.” In practice, an example of sums ”*spent in connection with carrying out procedural actions in a criminal case*” includes expenses related to the exhumation of a corpse—an action not expressly mentioned in paragraph 2 of Article 227 of the CPC, but in certain criminal cases, such judicial expenses are unavoidable. However, in a tacit yet contradictory manner, we conclude that the Supreme Court of Justice implied that a sum, to be collected as ”judicial costs” in a criminal case, must be expressly provided for in Paragraph 2 of Article 227 of the of the CPC.

21. In the case law of national courts, a distinction has been made between judicial costs and **costs related to the administration of justice.** The latter includes sums allocated for compensating the work of criminal investigation officers, prosecutors, judges, auxiliary staff, maintaining the premises where these bodies operate, the places of detention and upkeep of suspects, accused persons, and defendants held in preventive detention, as well as expenses for consumable materials. Currently, these costs of "administration of justice" are ultimately borne by the state, although, author`s view, some of them could fairly be borne by the defendant or other party in the criminal case that is responsible for causing them. The solutions in other jurisdictions support the idea that the public service of justice is not a free one, (7), which would mean that far fewer expenses in the category of "administration of justice" should be left to be borne by the State providing this public service of justice. At the same time, as can be seen from the case law cited below, this subject is of interest to the criminal justice bodies of the Republic of Moldova and would require further consideration in terms of a possible amendment of the costs legal framework in criminal cases.

22. By the conviction judgement of July 26, 2018, the Balti Court, Central Office (8), rejected the state prosecutor's request for the recovering of judicial costs, which included the salary of the criminal investigation officer for 25 hours of work. In another conviction judgement of June 6, 2019, the Balti Court, Central Office, rejected the prosecutor's request to recover judicial costs from the convicted person for the benefit of the state, which were incurred during the criminal process, arguing: "*The court notes that the legal provision does not*

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7 In its case law, the Constitutional Court of Romania has ruled that "*no constitutional provision requires that the administration of justice be free of charge. Therefore, the costs incurred by a party who is at fault in the proceedings shall be borne by that party*." (Decision no.254 from 23 of April 2019).

8 Sentence by Bălți Court, Central Headquarter, of 26 July, file 1-386/2018.

include the prosecutor's salary, the criminal investigation officer's salary, travel expenses, or office supplies such as paper, printer, etc., as judicial costs. Moreover, according to the provisions of the Law on the Prosecutor's Office no. 3 of February 25, 2016, and the Law on the Salaries of Judges and Prosecutors no. 328 of December 23, 2013, prosecutors are paid from the state budget. Therefore, criminal procedural law does not provide for compensation of the prosecutor's salary from the convicted person's account. Regarding the recovering of judicial costs from the defendant Ț.L. for consumables (paper, printer), the court considers this request unfounded, as the criminal procedural norms do not expressly provide for the payment from the convicted person's account of judicial costs for paper, printer, travel expenses, etc. Under such circumstances, the court finds it appropriate to reject the state prosecutor's request to recover judicial costs from the convicted person's account for the benefit of the state, as listed in the annex to the criminal case, namely: the prosecutor's salary, the criminal investigation officer's salary, office supplies, and travel expenses totaling 2,146.52 lei, as all these judicial costs are covered by the state and paid from the state budget" (9). This line of case law, confirmed by the higher courts, put an end to the prosecutors' attempts to recover from the convicted defendant's account judicial costs categorised as "administration of justice," as also discussed with the prosecutors and judges interviewed.

23. The view of Moldovan courts regarding the rejection of the recovering of expenses related to office supplies, paper, copiers, etc., as "judicial expenses" in criminal cases differs from the situation in other countries, such as Romania, where, when determining judicial expenses, the costs incurred by the criminal investigation bodies and other agencies are considered, including for the production of judicial photographs and audio-video recordings, paper, prints, and other materials that constitute criminal case files, and other tasks performed during the criminal investigation that required payments from public funds (10).

24. In another context, the criminal procedural legislation regarding judicial expenses contains other inconsistencies and contradictions. Paragraph 3, Article 227 of the CPC, assigns to judicial expenses only the amounts to be paid for the provision of state-guaranteed legal assistance (legal aid), excluding those paid for the services of a lawyer of one's own choosing.

25. Paragraph 1 Article 228 of the CPC considers as judicial expenses those incurred in relation to appearing before the criminal investigation body or in court. On the other hand, points e) and g) of Article 7 of Law No. 1545/1998, which regulates the compensation for damages in cases of acquittal of the defendant or in other situations where the prosecution fails to prove the defendant's guilt, assign the sums paid for legal assistance and the expenses incurred in connection with summonses to the criminal investigation body, the prosecutor's office, or the court as material damage resulting from the unlawful actions of state authorities that must be compensated by the state. Thus, Law No. 1545/1998 does not make a distinction between judicial expenses and material damages caused by the unlawful actions of state authorities, which are to be collected. This situation reflects a lack of conceptual consistency, and the legislator should unify the approach: should the amounts

9 Sentence of the Bălți Court, Central Headquarter, of 6th of June 2019, nr. 1-855/2017

10 Course notes, Criminal investigation, National School of Clerks from Romania.

paid to lawyers of one’s own choosing and for summonses to appear before the prosecutor or court be attributed to judicial expenses or material damages? Resolving these inconsistencies would contribute to a greater clarity in the area of judicial expenses. Adding a definition to the Criminal Procedure Code that clarifies the legal nature of judicial expenses—being financial obligations, categorized payments related to the activities of criminal investigation bodies or courts—would help address the identified issue and prevent their classification as material damages.

26. Thus, it is evident that, in practice, as mentioned by participants in the focus group discussions, law enforcement agencies incur certain types of expenses that are not classified as judicial expenses under Articles 227-228 of the CPC, or the courts, due to a restrictive interpretation, are reluctant to recognize certain categories of amounts as recoverable judicial expenses, for example: expenses for managing seized assets in a criminal case (a legislative draft is currently being developed in this regard); expenses for escorting the defendant to a court hearing when it is postponed due to the absence of a co-defendant who is at large; expenses for forced bring-backs (to the prosecutor or court); expenses for the destruction of special equipment (by the person to whom special investigation measures are applied without official notification); expenses related to the destruction of electronic bracelets applied to individuals under house arrest or in other cases; the cost of USB sticks/hard drives on which the electronic case file is recorded (which typically contains multiple volumes) to be transmitted to the defendant's lawyer for review and to avoid delays.

27. In addition to the issue of "which sums borne by participants of criminal proceedings could be classified as judicial expenses?", the quantification of judicial expenses for the purpose of recovering them is another highly relevant topic in current practice.

28. Within the focus group, participants expressed the opinion that, in practice, there are no issues regarding the quantification of certain judicial expenses, and therefore, they do not present practical problems for recovering if requested by the interested party. These expenses include: judicial expertise, specialist services or document translation services (the cost is confirmed by the payment document for the expertise services in the expert institution's or translation service's account), lawyer fees (the paid amount is confirmed by the payment order for legal services and there are Recommendations from the Bar Association regarding recommendable lawyer fees) and expenses related to the extradition of the defendant (the financial documents confirming the amounts spent are presented by the penitentiary authority escorting the extradited person from abroad).

29. At the same time, in practice, there are almost no cases of compensating judicial expenses incurred by witnesses and other individuals—participants in the criminal process—particularly concerning their salary/income for the time spent at the disposal of the prosecutor or judge (participation in hearings, court sessions, or other procedural acts), or for their travel/presentation to the criminal investigation body or court. This is apparently due to the absence of supporting payment documents, which creates difficulties in quantifying these expenses. Opinions have been expressed that it would be necessary to adopt a regulatory framework that establishes minimum amounts for certain types of expenses in the absence of supporting documents for expenses incurred by witnesses or other participants.

Persons entitled to recovery of costs and expenses in criminal cases

30. Paragraph 1 of Article 228 of the CPC establishes the circle of persons—participants/procedural subjects—who have the right to compensation for judicial expenses from the funds allocated by the state, namely: witnesses, the injured party, the civil party, procedural assistants, interpreters, translators, experts, specialists, and legal representatives of the injured party and the civil party.

31. According to paragraph (2) of Article 228 of the CPC*, "State bodies, enterprises, institutions, and organizations are required to maintain the average salary for the entire period during which the injured party, their legal representative, procedural assistant, interpreter, translator, specialist, expert, or witness participated in the criminal process at the summons of the criminal investigation body or the court."* We can observe that, according to this legal provision, only state enterprises and institutions, not private ones, are obligated to maintain the average salary for the entire period of participation of the individual in the criminal process. This provision treats employees in the private sector less favorably compared to those in the public sector, which could be problematic from the perspective of the principle of equality, guaranteed by Article 16 of the Constitution and Article 14 of the European Convention on Human Rights (ECHR). On the other hand, the maintenance of salary for the participant/procedural subject by the state institution during the criminal process may create obstacles in recovering judicial expenses from the convicted person's account, as in this case, the state institution, not the witness or the injured party, as established by Paragraph (1) of Article 228 of the CPC, would be entitled to request compensation for the amounts paid as salary to the participant/ procedural subject who was absent from work due to being summoned by the prosecutor or judge and whose salary was maintained.

32. According to paragraph (4) of Article 228 of the CPC, *"The expert, specialist, interpreter, and translator have the right to compensation for carrying out their duties, except in cases where they performed them as part of a service assignment."*

33. By Decision No. 270 of March 15, 2006 (11), which has not been amended since its adoption, the Government regulated the mechanism for compensating judicial expenses, approving the amounts of money to be paid to individuals who appeared in response to a summons from the court or criminal investigation bodies.

Thus, witnesses, the injured party, the civil party, procedural assistants, interpreters, translators, experts, specialists, and legal representatives of the civil party and the injured party are entitled to:

11 Government Decision No. 270 of March 15, 2006 regarding the approval of the amounts of money paid to individuals summoned by the judicial court, criminal investigation bodies, those examining administrative materials, and those executing enforcement documents.

1. A reward for time taken away from their primary occupation per hour, for all categories of individuals summoned, receiving 0.3 conventional units per hour, but no more than 1.8 conventional units per day;
2. Compensation for travel expenses, per diem, and accommodation. In the absence of travel tickets/documents, payment for transportation within the Republic of Moldova will be made according to the minimum tariff.
3. Hourly compensation for work performed: for interpreters from 0.3 to 0.4 (oral translation); for translators from 0.3 to 0.4 per 1000 printed characters; for experts, specialists, and educators (psychologists) from 0.3 to 0.5 conventional units. The amount of compensation for experts, specialists, educators (psychologists), and translators is determined considering their level of qualification and the complexity of the work performed.

34. According to Paragraph (5) of Article 228 of the CPC, expenses incurred by witnesses, the injured party, the civil party, procedural assistants, interpreters, translators, experts, specialists, and legal representatives of the injured party or civil party will be reimbursed upon their request based on an order of the criminal investigation body or a court ruling, in the amount established by law. From this, it emerges that judicial expenses in practice are advanced by the party interested in the presence of the summoned person, or they are initially borne by the witness, specialist, etc., and later reimbursed, upon request, through the prosecutor's order or the court's decision from the funds of the person against whom the court will rule.

35. In practice though, the Governments' Decision No. 270 of 15.03.2006, which was not once modified since its passing to adapt to the current requirements, is not made use of in courts or by the prosecutor to serve as a legal base for the compensation of the expenses incurred by participants during the criminal process.

Who pays the costs and expenses in criminal cases (the State, the defendant, or other participants to the proceedings)? Recovery of costs in criminal cases from the defendant / accused

36. Article 229 of the CPC answers the question regarding who and to what extent bears the expenses in a criminal case:

" (1) Judicial expenses shall be incurred by a convicted person or by the state.

(2) The court may oblige a convicted person to refund judicial expenses, except for the amounts paid to interpreters, translators and defence counsels if the defendant is granted an attorney providing the legal assistance guaranteed by the state when this is required in the interests of justice and the convicted person does not have the necessary financial means. Judicial expenses may also be paid by the convicted person exempted from punishment or applied a punishment, and by the person in whose regard the criminal investigation was discontinued on non-rehabilitation grounds.

(3) The court may exempt a convicted person or a person who must pay judicial expenses from paying such expenses in whole or in part if they are insolvent or if the payment of

judicial expenses would substantially influence the financial condition of persons supported by them.

(4) If several persons are convicted in the same case, the judicial expenses shall be divided depending on their guilt, degree of liability and the financial condition of each of them.

(5) Should a criminal investigation be discontinued as a result of a reconciliation of the injured party and the accused/defendant, the court may impose judicial expenses on the injured party on the accused/defendant or on one of the parties.

(6) Should the convicted person decease prior to the sentence enter into force, judicial expenses may not be imposed on his/her successors.

(7) If the convicted person is a juvenile, the parents or the tutors of the convicted juvenile may be obliged to pay judicial expenses provided serious drawbacks in performing their obligations to the juvenile are established."

37. According to Paragraph 1 of Article 229 of the CPC, as a primary measure, in cases where the criminal process ends with the conviction of the defendant, the State seeks to recover judicial expenses advanced by itself or by other procedural subjects listed in Paragraph 1 of Article 228 of the CPC, first and foremost from the convicted party's funds.

38. In its case law, the SCJ has argued the obligation of the convicted person to bear the judicial expenses in accordance with Article 229 of the CPC as follows:

"The obligation of the defendant to bear the judicial expenses is primary and integral, as the commission of a crime inevitably leads to the initiation of the criminal investigation and the trial of the case, in order for the punishment to be applied to the offender. The obligation to bear the judicial expenses primarily lies with the defendant, even if the injured party and the civil party have caused expenses through their requests. Moreover, the obligation to bear the judicial expenses is integral, covering all expenses necessary for the first-instance court to render a conviction." (Decision of the Criminal Panel of the SCJ of May 30, 2018, case no. 1ra-984/2018).

39. However, we must approach with caution the position of the SCJ regarding the statement that "the obligation to bear judicial expenses is integral, including all expenses necessary for the pronouncement of a conviction," as some expenses may prove not to have been strictly necessary, excluding the procedural fault of the convicted defendant, or the recovery of other expenses may not be equitable or in line with the fair trial guarantees. In such cases, these expenses should be borne by the State or another participant in the criminal process.

40. Paragraph 2 of Article 229 of the CPC expressly states that judicial expenses can be imposed for payment regardless of whether the convicted person has been sentenced to a criminal penalty or released from the penalty. This regulation appears to be equitable, as the (non)application of the sentence should not intersect with the issue of the costs in a criminal case, as the grounds for applying or exempting from the penalty are different from those for judicial expenses.

41. On the other hand, Paragraph 2 of Article 229 of the CPC expressly stipulates that *"The court may oblige the convicted person to recover judicial expenses, except for the amounts paid to interpreters, translators, and defenders in the case of providing the defendant with a lawyer who provides state-guaranteed legal assistance, when this is required by the interests of justice and the convicted person does not have the necessary means."* Therefore, the convicted person's obligation to bear judicial expenses is not, in fact, an integral one. Paragraph 2 of Article 229 of the CPC prohibits the recovery from the convicted person of sums paid to interpreters and translators, even if the convicted person has financial resources. The sums paid to the lawyer providing state-guaranteed legal assistance (legal aid) may only be recovered from the convicted person if they have sufficient means.

42. Article 6 § 3 (e) of the ECHR refers to the assistance of an interpreter, while Paragraph 2 of article 229 of the CPP refers to the assistance of the interpreter and translator, without having a clear understanding of the difference between the assistance of the interpreter and of the translator.

43. Article 6 § 3 (e) guarantees the right to the free assistance of an interpreter for translation or interpretation of all documents or statements in the proceedings which it is necessary for the accused to understand or to have rendered into the court's language in order to have the benefit of a fair trial (12).

44. However, it does not go so far as to require a written translation of all items of written evidence or official documents in the proceedings (13). For example, the absence of a written translation of a judgment does not in itself entail a violation of Article 6 § 3 (e) of the ECHR (14). The text of Article 6 § 3 (e) refers to an "interpreter", not a "translator". This suggests that oral linguistic assistance may satisfy the requirements of the ECHR (15).

45. In conclusion, the criminal procedure law of the Republic of Moldova guarantees the right to a free assistance of an interpreter at a somewhat higher level than that required by the ECHR.

46. Regarding the collection of expenses for the legal assistance guaranteed by the state under legal aid scheme from the convicted person's account, the author believes that Paragraph 2 of art. 229 of the CPC does not pose any problems from the ECHR perspective either. Of course, that is, on the condition that the ECtHR case law in this field is taken into account. As regards the existence of an obligation to reimburse the costs of legal assistance (i.e., those in respect of lawyer whether one appointed by the accused or by the court), the ECtHR has established that such an obligation would not necessarily be incompatible with Article 6 of the ECHR. This would only be so if it adversely affected the fairness of the proceedings (16). No unfairness has been considered to have resulted where the obligation to repay some costs arose following the conclusion of the proceedings in which the person concerned had been represented in them by lawyers appointed in a manner compatible

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12 *Luedicke, Belkacem and Koç v. Germany*, 1978, § 48; *Ucak v. the United Kingdom* (dec.), 2002; *Hermi v. Italy* [GC], 2006, § 69; *Lagerblom v. Sweden*, 2003, § 61.
13 *Kamasinski v. Austria*, 1989, § 74.
14 *Kamasinski v. Austria*, § 85.
15 *Hermi v. Italy* [GC], 2006, § 70; Husain v. Italy (dec.), 2005.
16 *Croissant v. Germany*, no. 13611/88, 25 September 1992. This ruling was followed in *Pfister v. Germany* (dec.), no. 19512/92, 7 September 1993.

with the requirements of Article 6 of the ECHR and the amounts claimed for them are not excessive. In practice, however, the State does not seek to recover the costs incurred in connection with legal aid scheme.

The discontinuation of prosecution on the non-rehabilitation grounds

47. The legal norm from Paragraph 2 of Article 229 of the CPC clarifies that the payment of judicial costs can be imposed not only on the convicted defendant, but also on the accused in relation to whom the criminal prosecution has been discontinued on the so-called grounds of 'non-rehabilitation': *"The payment of judicial costs can also be borne by**... the person in relation to whom the criminal prosecution has been discontinued on the grounds of non-rehabilitation."***(17) First, we observe an inconsistency in this provision, as a criminal case can be discontinued on the grounds of non-rehabilitation not only at the prosecution stage, as provided in the analyzed provision, but also after the case has been sent to the trial court. However, this provision does not address the situation of recovering judicial costs from the defendant if the criminal case has been discontinued by the court during the trial.

48. According to Paragraph 2 Article 285 of the CPC: "A *criminal investigation shall discontinue in cases of a person's non-rehabilitation listed in Article 275 points 4)-9) of the present Code, as well as if there is at least one of the reasons provided in art. 53 of the Criminal Code or if it is established that:*

> *1) the preliminary request was withdrawn by the injured party, a transaction was concluded within the mediation process or the parties have reconciled, which is when a criminal investigation may be initiated only based on a preliminary complaint or if criminal law allows reconciliation;*
>
> *2) the person has not reached the age to be held criminally liable;*
>
> *3) the person committed the prejudicial act in a state of irresponsibility and coercive medical measures are not necessary."*

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17 The law does not give us a legal definition of "non-rehabilitation", but we can deduce it from the interpretation *a contrario* of Article 112 of the Criminal Code of the Republic of Moldova, according to which "Article 112. Judicial rehabilitation.
(1) If the person who executed the criminal punishment has proved to have an irreproachable conduct, upon its request, the court may cancel the criminal records (antecedents) until the expiry of the terms of extinction thereof. The conditions for receiving the request for judicial rehabilitation may be the following:
a) the convict has not committed a new offence; b) at least half of the term provided at art. 11 (1) and (2) has expired;
c) the convict has had an irreproachable conduct;
d) the convict has entirely paid all civil damages it was ordered to pay, as well as the legal expenses;
e) the convict has insured existence by work or other honest means, has reached retirement age or is incapable of work.
(2) Rehabilitation cancels all disabilities and disqualifications related to criminal record."

Point 4)-9) of the Article 275 of the CPC lists the following as grounds for the discontinuation of a criminal investigation, considering them as cases of “non-rehabilitation”:

4) the limitation period has expired or amnesty has been granted;

4^1) the act constitutes a contravention;

5) the perpetrator has deceased;

6) the victim's complaint is missing in cases where criminal prosecution begins only based on their complaint, or the prior complaint has been withdrawn;

7) with regard to a person, there is a final court judgment on the same charge or stating the impossibility of conducting a criminal investigation on the same grounds;

8) there is a non-overturned decision regarding the non-initiation of criminal prosecution, the removal from criminal prosecution, the termination of criminal prosecution, or the dismissal of the criminal case on the same charges concerning a person;

9) there are other circumstances provided by the Criminal Code that call for the exclusion or, as the case may be, exclude a criminal investigation.”

49. Article 53 of the Criminal Code provides for cases of release from criminal liability, also considered as "non-rehabilitation" cases in which the perpetrator of the act may be subject to the payment of judicial costs:

“a) release from criminal liability for minors in the case of committing a minor or less serious offense for the first time;
b) release from criminal liability with the imposition of contravention liability;
c) in case of voluntary renunciation to committing the offence;
d) in case of active repentance;
e) in case of change of status;
f) in case of conditional release;
g) in case the criminal liability is time-barred.”

50. Rehabilitation is a concept of the criminal justice system and is considered by the criminal doctrine and criminal laws, including the Republic of Moldova's, in the light of the functions and purposes of criminal punishment, along with the restoration of social equity, correction/reeducation of the convicted person, special prevention (incapacitation) and general prevention. Rehabilitation targets the person's moral capacities that are relevant to criminal responsibility. Labeling as "non-rehabilitation" cannot be seen separately from the concept of criminal punishment, thus resulting in several negative effects: serious damage to the reputation of the accused, negative publicity, presumption of guilt, problems in employment, impossibility to recover costs incurred under Law No. 1545/1998.

The automatic labeling as “non-rehabilitation” of many bases of discontinuation of the criminal case – which can cause the recovering of judicial costs from the defendant’s account, for example the discontinuation of the criminal case due to the expiration of the limitation period, the death of the perpetrator or the withdrawal of the prior complaint of the injured part, can raise issues from the perspective of the principle of presumption of innocence, either by unjustly excluding the State's responsibility for potential errors made in the handling of criminal cases.

Situations when the defendant is below the poverty line, insolvent, deceased or underage

51. Paragraph 3 of Article 229 of the CPC empowers the court to "exempt from the payment of judicial expenses, either fully or partially, the convicted person or the individual who is required to bear the judicial expenses in cases of their insolvency or if the payment of the judicial expenses could substantially affect the financial situation of those who are dependent on them." On the other hand, Paragraph 4 of Article 229 of the CPC offers the court the right to divide the judicial costs among participants/accomplices of the offense: *"In the case of the conviction of several persons in the same case, ... depending on the guilt, the degree of liability, and the financial situation of each of them."*

52. So, in the event that the recovering of expenses from the convicted person's account is not possible due to their financial condition or does not appear to be fair, then – the state bears the expenses and this issue is not revised after the criminal case is concluded, even if the convicted person's financial situation improves to the extent that they can afford these sums of money. This situation differs from the legislation of other states, for example Germany, where the matter of attribution of judicial costs is examined after the judgement of conviction becomes final – at the stage of enforcement the judgement (18) by the office for cost determination attached to the court, when the financial situation of the convicted person may be different from that before the adoption of the conviction judgment.

53. In any case, the author considers the State's waiver of collecting judicial costs in the case of the defendant/convicted person's poor financial situation to be in compliance with the ECHR.

54. Nonetheless, the ECHR has left open the question whether, when such reimbursement could be sought under a national legal system, it would be compatible with Article 6(3) (c) of the ECHR for the State to continue to seek full or partial reimbursement of the costs of the accused's defense after they subsequently established that they lacked sufficient means to bear them.

55. According to Paragraph 5 of Article 229 of the CPC, in the event of reconciliation between the injured party and the accused/guilty person and the criminal process does not end with a conviction judgement, but a decision of discontinuation, the court can either assign the judicial costs to the injured party, or to oblige both parties to pay these expenses. This norm highlights the processual guilt of both parties, including the injured party, as a legal basies to impose judicial costs. This allows the court to force both the injured party and/or the accused to bear, wholly or partially, the judicial costs. Nevertheless, this norm is defected and could generate certain difficulties in practice, as it suggests that in the event of reconciliation between the injured party and the accused, the state is not obliged to bear certain judicial costs, even if during the unfolding of the criminal proceedings the

18 ECtHR, *Croissant v. Germany*, 25 of September 1992, nr. 13611/88, §§13, 37.

prosecutor or the court admit some errors or forms of abuse. The automatic elimination of the state's liability raises issues from the perspective of the ECHR: the perspective of compensation for unlawful acts committed by the authorities must be open to all persons, no matter who initiated the criminal proceedings or the outcome of the process! One must also take into account that, in practice, could arise situations where the state bodies manifests excess of zeal or abuse, combined with the admission of guilt by the accused or finalised with the reconciliation of the parties, etc. Such acts of abuse or errors do not lose their unlawful nature due to the admission of guilt, the reconciliation of parties or the finalisation of the criminal proceedings with some type of agreement, and the state should remain accountable, especially by bearing the judicial costs, at least partially.

56. According to Paragraph 6 of Article 229 of the CPC: "*In case of the convicted person's death that takes place until the moment the judgement enters into force, judicial costs cannot be attributed to their successors.*" In applying this rule, care must be taken to respect the principle of presumption of innocence.

57. From this rule, we infer that judicial costs can be attributed to the convict's successors if the convict dies after the sentence takes effect and the expenses have not yet been paid by the convict. No case law regarding this matter in order to examine the way in which national courts apply Paragraph 6 of Article 229 of the CPC has been identified, nor were any judges from the focus group able to offer examples from their own practice to illustrate the way the aforementioned rule had been applied.

58. First, it should be observed that applying in practice the rule from Paragraph 6 of Article 229 of the CPC could be problematic, as judicial costs can be attributed to the convict (deceased) person's successors in the context of a criminal process in which the successor did not participate, which could raise issues in the light of Article 6§1 of the ECHR (the right to a fair trial) and/or Article 1 of Protocol No. 1 to the ECHR (protection of property).

59. In the case *Silickienė v. Lithuania*, the ECtHR examined the compliance with Article 1 of Protocol No. 1 to the ECHR regarding the confiscation of assets derived from criminal activity, ordered by the court concerning the applicant's husband, who was deceased at the time of the confiscation. In the *Silickienė* case, the ECtHR established the principle that:" persons *whose property is confiscated should be formally granted the status of parties to the proceedings in which the confiscation is ordered"* (19). In the same context, the ECtHR added:" As *regards the balance between that aim and the applicant's fundamental rights, the Court reiterates that, where possessions are confiscated, the fair balance depends on many factors,* ***including the owner's behaviour****. It must therefore determine whether the Lithuanian courts had regard to the applicant's* ***degree of fault or care or, at least, the relationship between her conduct and the offences which had been committed***" (*AGOSI v. the United Kingdom*, 24 October 1986, § 54, Series A no. 108; *Arcuri and Others v. Italy* (dec.), no. 52024/99, 5 July 2001). Though the ECtHR case law cited above refers to the confiscation of assets of criminal origin, we still believe that the transfer of judicial costs advanced/incurred in a criminal case – sums of money of legal origin, to the deceased convicted person's successors, with the purpose of applying Paragraph 6 of art.229 of the CPC, shall take place only in the framework of another proceedings before a court which

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19 ECtHR, *Silickienė v. Lithuania,* n° 20496/02, 10 April 2012, § 50.

would take into account factors, such as the behavior of the successor, their degree of guilt or precaution.

60. In another case, *Lagardère c. France* (20) (no 18851/07, 12 avril 2012, § 54), ECtHR examined the compliance with Article 6§1 of the ECHR in the context of the criminal court's admission of the civil action and ordering the collection of an amount of money from the plaintiff's account, in a situation where the plaintiff was the successor of his father, who was accused and deceased during his criminal trial. The ECtHR ruled: *"La Cour constate que la mise en cause civile du requérant en sa qualité d'ayant droit est la conséquence directe de ce constat de culpabilité post-mortem, préalable à la fois nécessaire et déterminant pour faire naître les obligations civiles à sa charge. Le requérant ne pouvait dès lors valablement discuter ni du bien-fondé des sommes susceptibles d'être mises à sa charge ni, du moins partiellement, de leur montant, dès lors que cela découlait nécessairement des constats faits par la cour d'appel sous le volet pénal." ("The Court notes that the plaintiff's civil involvement as the heir is the direct consequence of this posthumous finding of guilt, a prerequisite both necessary and determining for the creation of the civil obligations imposed on him. The plaintiff could therefore not validly challenge either the justification of the amounts that could be charged to him or, at least partially, their amount, as this necessarily followed from the findings made by the Court of Appeal under the criminal aspect.")*

61. Finally, when deciding on the issue of the recovery of costs, the courts should be guided by the principles that can be derived from the ECtHR case-law: if in the criminal proceedings the court examines the civil claim and could take a decision that could affect the assets of persons other than the accused (for example, parents or the tutors of the convicted juvenile under Paragraph 7 of art.229 of the CPC) by collecting any damages or expenses, the court should involve that person in the proceedings (*Lagardère v. France, Silickienė v. Lithuania* etc.), as well as take into account factors like the degree of fault or care, the relationship between her conduct and the offences which had been committed; the recovery of costs from the deceased convicted person's successors does not contravene ECtHR case-law, as the ECtHR found it normal that tax debts, like other debts incurred by the deceased, should be paid out of the estate. (*A.P., M.P. and T.P. v. Switzerland*, no. 19958/92, 29 August 1997, § 46).

62. According to Paragraph 7 of art.229 of the CPC:" "*In the case of minor convicts, the parents or guardians of the convicted minor may be obliged to pay the judicial costs if it is determined that they had serious shortcomings in fulfilling their obligations towards the minor*." In this case, as it is with Paragraph 6 of art.229 of the CPC, the law does not provide enlightenment in relation to the mechanism of pay of judicial costs from the parents' account or that of the guardians of the convicted minors, since the focus of the criminal case is the criminal act and the guilt of the minor, no the parents' acts. The situation becomes more problematic, if the minor's parents do not participate in the criminal proceedings.

63. At the same time, Article 63 of the Code of Contravention provides for the contravention of *"Failure or improper fulfilment by parents or by persons who replace them of the obligations of maintenance, education, and training of the child."* In this context, confusion

20 ECtHR, *Lagardère c. France*, no 18851/07, 12 April 2012, § 54.

arises in relation to the issue of whether the judge in the criminal case is bound by the decision in the contravention case under Article 63 of the Contravention Code (which establishes the improper fulfilment of parental obligations towards the minor) before deciding on the payment of judicial costs by the parents or the guardian of the convicted minor, or whether they are competent to conduct an independent examination of the conduct of the accused minor's parent?

64. Following the focus group discussions, a judge has presented a case she had examined in relation to a minor offender that she had convicted and had ordered to pay judicial costs of the criminal case – however, only after the coming of age (18) of the minor. The court had ordered the collection of the costs from the account of the convicted minor, despite having established serious flaws of the parent's part concerning the fulfilment of their parental obligations towards the minor. It should be emphasised that the CPC does not clearly state the judges power to postpone the pay of judicial costs from the minor convict's account until the minor has come of age.

65. The lack of case law, as well the aforementioned criminal case, by which the court postponed the minor's obligation to pay the judicial costs until their coming of age, denotes the courts' hesitation to apply the rule of Paragraph 7 of Article 229 of the CPC.

66. At the same time, the state cannot transfer the entirety of judicial costs to the convicted minor or to their parents. Article 22 from Directive (EU0 2016/800 (21) of 11 May 2016 regarding the procedural guarantees for children within criminal processes obliges the EU member states to bear, in the context of criminal proceedings, the costs that arise as a result of Article 7 (the right to an individual evaluation), 8 (the right to a medical examination and 9 (the right to an audio-video recording of the interrogations), no matter the result of the proceedings. Thus, the judicial costs, such as the audio-video recording, once advanced by the state, shall remain its responsibility.

67. As to the consequences for an accused who fails to pay costs ordered to be recovered, the omission of the convicted person to pay the costs ordered from their account cannot lead to the aggravation of the sentence imposed on them or negatively influence the conviction rendered by the criminal court.

Recovery of costs in criminal cases by the defendant

68. Ordinarily, costs should be granted to successful defendants in criminal cases where the defendant is shown to be innocent, where the prosecution has been brought improperly or negligently, or, eventually, in other cases.

69. Law No.1545/1998, as amended most recently in 2018, regulates situations of compensation for damages, including the reimbursement of judicial costs, caused to the accused through *"unlawful actions committed in criminal and contravention proceedings by*

21 Directive (EU) 2016/800 of 11 May 2016 of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

the criminal investigation bodies, the prosecution, and the courts." Article 2 of the Law No.1545/1998 provides for a confusing definition of the notion of "unlawful actions": *"actions or inactions of the body ... of the criminal investigation body or of the court, which exclude their culpability, whose unlawful nature is manifested through the violation of the general principle, according to which no innocent person can be held liable or tried (errors), or acts of persons in positions of responsibility within the criminal investigation body or the court, manifested through the intentional violation of procedural and substantive norms during criminal or contravention proceedings (offenses);"*

70. Article 6 of the Law No.1545/1998 states that the damage or judicial expenses are to be recovered if they had been caused by unlawful acts in the case of:

a) the judgment of acquittal becoming final and irrevocable;
b) the release of the person from prosecution or the discontinuation of the prosecution on grounds of rehabilitation;
c) the adoption by the court of a decision regarding the annulment of contravention arrest in connection with the rehabilitation of the individual;
d) the adoption, by the investigating judge, in respect of the acquitted person or the one released from prosecution, of a ruling declaring the nullity of the acts or actions of the prosecuting authority or the authority conducting special investigative activities.

71. Thus, according to Article 6 of the Law No.1545/1998, the formerly accused person/defendant will be able to claim for the recovery of the damage, including the judicial costs incurred within the criminal case, only if they are acquitted by a final judgement, freed from criminal investigation or the process is discontinued on the non-rehabilitation basis. According to Article 275 of the CPC, the following grounds of discontinuation of the criminal case are considered of "rehabilitation": 1) the act of the offence does not exist; 2) the act is not considered an offense by the law; 3) that act does not fulfill the elements of the offense.

74. According to the law, the discontinuation of the criminal case on the grounds of non-rehabilitation does not grant the right to the recovering of costs incurred by the former accused, even if these cases finalized without the reversal of the presumption of innocence. Moreover, the prosecutor or judge could commit an unlawful act when convicting the defendant. However, Law No. 1545/1998 does not formally open up the path of recovery of judicial costs or of other damages in such cases.

75. Thus, in accordance with Article 3 and 6 of Law No. 1545/1998, it is inferred that following an acquittal judgement, the former accused would not have the automatic right to the compensation of the damage and of the judicial costs incurred within the criminal case in which he has been acquitted. The law conditions the compensation of the damage and judicial costs on the illegal nature of the act by which the accused's rights were limited. An unlawful act, from the law's point of view, means - decisions of the criminal justice authorities through which they have ordered certain procedural actions, such as: illegal detention on remand, illegal preventive arrest, declaration not to leave the locality or country, illegal prosecution; illegal conviction, illegal confiscation of property, illegal submission to unpaid community work; illegal conduct of searches, seizures, illegal dismissal or suspension from work (position), as well as other procedural actions that limit the rights of individuals or legal entities; the carrying out of special investigative measures in violation of legal provisions. Thus, the law actually refers to almost every type of decision adopted by the criminal investigation body, the prosecution, the investigative judges and the courts during the prosecution phase and the measures or activities and court rulings. However, the law does not explicitly state that it would be applicable towards other procedural measures that limit the person's rights, such as home arrest, provisional release under judicial control or provisional release on bail, which could lead to inconsistent judicial practice.

76. Despite the provisions of the Law No. 1545/1998, the national courts case law followed another course in relation to the recovery of expenses and damages in favor of the acquitted person; in the case of the acquittal of the accused, the courts usually do not attempt to establish the illegal nature of the measure of arrest or other procedural measures adopted by the prosecutor or judge within the criminal case. Thus, in the case *Topală Sergiu v. the Ministry of Justice* (22) the court argued:

*"According to art.2 para 1 of Law nr.1545-XIII of 25.02.1998, unlawful actions are: actions or omissions of the criminal investigative body or of the court that exclude their guilt, the illegal nature of which manifests through the violation of the general principle, which dictates that no innocent person shall be held accountable or subjected to trial; (errors) or acts of people holding a position of responsibility, within the criminal investigative body or within the court that manifest through the intentional violation of the procedural and material norms during criminal proceedings ... From the first part of the notion presented through the law, numerous essential elements of unlawful actions are inferred: actions or inactions of the criminal investigative body or of the court, which are not necessarily illegal and exclude their guilt; but the illegal nature of which manifests through the violation of the general principle, according to which no innocent person should be held accountable and tried. In other words, in order to classify the actions or inactions of the criminal investigative body or of other courts as illegal actions, it is not imperative that state agents should neglect the law during, for example, the drafting the order of detention on remand, the indictment, the issuance of an arrest warrant, etc... The legislator, through Article 2 of the Law No.1545, voices **that even if the agents' actions are legal, in the sense presented above, the illegal nature is manifested through the violation of the general principle, according to which no innocent person should be held accountable and tried**; and in the event that this happens, the person should be compensated. The court finds that, through the Prosecutor's Office ordinance, ... it was decided to remove Topala Sergiu from the criminal prosecution... that the act does not fulfill the elements of the offense... the fact that Topala Sergiu had been charged is established... the court concludes that once the order of the Anti-Corruption Prosecutor's Office of 11.07.2018, by which the decision was made to discontinue the criminal investigation of Topala Sergiu, has been adopted, the plaintiff has the right to claim the recovery of the damages caused by the unlawful actions of the criminal investigative body,*

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22 Case *Topală Sergiu v. the Ministry of Justice* regarding the recovering of damages caused by unlawful actions of the criminal investigative body, file nr.2-6544/19, sentence of the Court of Chișinău, central headquarters, of 25.10.2019, https://jc.instante.justice.md/ro/pigd_integration/pdf/f06cb8b6-d14f-40ae-ae1a-a9ccaebb8442

of the Prosecutor's Office, of the courts… The court will not accept the arguments of the defendant, stating that the recovering of moral damage is baseless, as the plaintiff criminal liability was not engaged, he has not been attributed the label of convict, i.e., it is not necessary for a person to obtain the status of a convict…"

77. The case law cited above has been confirmed by the SCJ, that has stated: "*the illegal nature of the actions of the criminal investigative body manifests through the violation of the general principle, which dictates that no innocent person shall be held accountable or subjected to trial; and charging the accused, with the consequent discontinuance of the criminal case, equates to their illegal criminal prosecution*." (23).

78. Although, in the case of acquittal, Law No. 1545/1998 opens the path for the accused to recover damages and judicial costs, this prospect is not entirely certain if the accused is charged with multiple offenses and acquitted for only one or some of them. In this regard, notable is the following case law of the SCJ:" *The Supreme Court of Justice has critically assessed the allegations of the court of appeal in its decision-making process, which state that the acquittal of the plaintiff for the commission of the offenses stipulated in Article 179 Paragraph 1, Article 287 Paragraph 3 of the Criminal Code, grants him the right to request the compensation of the damage… the criminal process related to this person has not been finalized by an acquittal sentence on all charges, which would demonstrate the unlawful nature of all actions undertaken by the criminal investigation body and the prosecution throughout this process, on the contrary, it resulted in the discovery of a crime and the finding of the guilt of the guilty person. This way, it is not possible to define the actions of the criminal investigative body that could be considered unlawful according to art. 6 let. c) of the Law regarding the manner of repairing the damage caused by the unlawful actions of the criminal prosecution bodies, the prosecutor's office, and the courts, Law no. 1545-XIII of 25 February 1998. The claimant has also not provided proof that they would have challenged the investigation judge in relation to the unlawful actions of the criminal investigative bodies, of the prosecutor and that the court would have found violations or misconducts within the criminal process. Therefore, in the case materials, there is no definitive and irrevocable procedural act by the investigating judge or the higher hierarchical authority, through which the actions of the criminal investigation body were deemed illegal, and the claimant would have been acquitted in full on all the charges brought against him in the criminal trial."* (24). Thus, the SCJ seeks to determine whether the specific procedural action was ordered with legal violations in order to recover damages and court costs in a situation where the accused is acquitted for one of the charges but convicted for another.

79. According to Article 4 of the Law No. 1545/1998, the damage cause by unlawful actions of the criminal investigative bodies or of the courts would not be compensated by the state in the event of the reconciliation between the accused and the injured party, as well as in the event that the person hinders the establishment of the truth within the criminal process or the judicial examination, through self-incrimination. Nevertheless, this provision is not applied in the cases where the individual has self-slandered, has self-incriminated following violent treatment, threats or unlawful actions.

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23 Decision of the SCJ of 23 February 2022, file nr. 2ra1797/21.

24 Decision of the SCJ of 14 September 2022, file nr. 2ra831/22.

80. Article 4 of Law No. 1545/1998 is criticisable, as the perspective of compensation of the accused by the state for the unlawful acts committed by the bodies of the state should not depend on who initiates the criminal proceedings or if the proceedings ends with the reconciliation of the victim and the accused or another type of agreement. Furthermore, many questions arise from the norms that limit the perspective of the recovery of costs in the event that the case is discontinued on the so-called grounds of non-rehabilitation, without the examination of each individual case through the perspective of its own specific characteristics.

81. In order to compensate the costs incurred according to Law No. 1545/1998, the interested person (acquitted) should file a lawsuit for the repair of the damage against the Ministry of Justice within 3 years from the date when the right to repair the damage arises (for example, from the moment the acquittal judgment becomes final).

The court discretion in awarding the costs of proceedings (limiting the amount of expenses, etc.) and criteria for awarding costs and expenses

82. Article 229 of the CPC leaves to the court a wide margin of discretion in deciding the issue regarding the person from whom the court fees are to be recovered:

"(2) The court may oblige a convicted person to refund judicial expenses, except for the amounts paid to interpreters, translators and defence counsels if the defendant is granted an attorney providing the legal assistance guaranteed by the state when this is required in the interests of justice and the convicted person does not have the necessary financial means.

(3) The court may exempt a convicted person or a person who must pay judicial expenses from paying such expenses in whole or in part if they are insolvent or if the payment of judicial expenses would substantially influence the financial condition of persons supported by them.

(4) If several persons are convicted in the same case, the judicial expenses shall be divided depending on their guilt, degree of liability and the financial condition of each of them."

83. Thus, when deciding the matter of "how much to collect" and "from whose account", the law offers the judge a very wide margin of discretion, granting the possibility to recover the costs entirely or partially from the accused person's account, from the injured part or from the state. The law mentions that the court will take into account criteria, such as the guilt (without, however, clarifying that it refers to the guilt in committing the offense or the procedural fault of the participant in the criminal proceedings for any procedural act), the degree of liability of each participant of the process, if the judicial costs are a result of the mixed liability following the contribution of the accused's part, the state's body part or of the injured party's part. The financial condition of the convict is also an important criterion in the decision-making process regarding the recovering of expenses from their account, as well as the reasonable nature of the requested expenses. In practice, the courts do not hesitate to reduce the size of the requested amounts, especially the lawyers' fees, when considered excessive or unnecessary.

84. Following the focus groups discussions, it was confirmed that in the event that the defendant is accused of more offenses, and for some is convicted and for others – acquitted, the judicial costs are collected only in relation to the offense for which the person has been convicted.

Who decides whether the costs are recoverable? Is any decision on recovery of costs subject to appeal?

85. If the criminal case ends at the prosecution stage, according to Paragraph 6 of Article 285 of the CPC, the prosecutor, once the criminal investigation has been ceased, solves several matters, including the recovering of judicial expenses. The prosecutor`s order can be challenged before the investigation judge.

86. Once the criminal case has been examined in the court, the latter either discontinue the case on the grounds of non-rehabilitation or adopts a conviction judgement, it may also order the recovery of costs from the convicted person's account. The trial court ruling is subject to appeal.

87. In the event that the accused is acquitted or the case is discontinued on the grounds of rehabilitation, the former accused (acquitted, meaning rehabilitated) can initiate a civil case against the Ministry of Justice (the State) in the trial court in order to recover the damage caused and the judicial costs incurred in the criminal proceedings. The ruling of the trial court is subject to appeal. In all these cases, the claimant can request and benefit from legal assistance guaranteed by the state (legal aid).

88. The law does not establish any explicit maximum or minimum limits regarding the awarding or reduction of sums requested as costs: the court is guided by their reasonable and necessary nature.

Should there be a presumption for or against a costs award?

89. In its case law, the SCJ has stated: "*The order to remove the accused person from prosecution, as well as a judgement acquitting the person on the grounds that the act committed does not meet the elements of the offense, grants the person the right to claim compensation for the damage caused by the unlawful actions of the criminal investigation authorities*." (25). From here arises a quasi-automatic right, or at least a presumption, for the acquitted person to be compensated, no matter if the procedural action through which their rights have been limited was illegal or not. Thus, when deciding the matter of awarding damages and expenses, the court should concentrate on the size of the claimed amounts

25 Decision of College CCCA of CSJ of 15 February 2023, file nr. 2ra1521/22.

or on the causal link between the procedural act claimed to be illegal and the requested sums as judicial expenses.

90. The author believes that such an approach raises many issues. From the ECtHR case law, it does not follow that a presumption regarding whether or not to compensate the costs of the proceedings depending on the result of the criminal case (acquittal or conviction) should exist, but that each case is to be assessed individually: even in the event of the conviction of the accused, a measure of preventive arrest could be applied, contrary to Article 5 of the ECHR, as a result – the awarding compensation being necessary (26).

III. Conclusions and recommendations

91. The issues that raise the most attention in the matter of judicial costs, in the light of the national legal framework and case law in the Republic of Moldova, are:

1) which other types of costs, at the moment not provided for by law or not admitted by courts in practice, should be considered as judicial costs and, consequently, - be recoverable?
2) How to quantify certain types of costs so that they can be practically and effectively charged?
3) From whom should the costs be recovered in certain particular situations (in the event of discontinuance of the criminal proceedings; in case of the death of the convicted person; in case of an underage offender; in case of injured party withdrawing their preliminary complaint or in case of the settlement agreement between the parties; etc.)?

92. The regulatory framework in general and the CPC in particular, regarding the judicial costs in criminal cases is overall sufficient in order to solve the majority of potential issues that could arise in practice in relation to the compensation of judicial costs incurred by the participants in criminal proceedings. However, the restrictive interpretation of the law by the courts, particularly of Article 227 of the CPC, does not allow the recovery of certain categories of cost that seem to be justified and can appear as time, technical means, etc. evolve. At the same time, a renewal of the legal basis is necessary, for example, the renewal of the Government's Decision No. 270 of 15.03.2006, which would update and/or would establish certain fixed tariffs for certain cost categories (for e.g., the forced appearance of the witness, the missed salary of the witness due to their participation in court hearings or other procedural acts) incurred by individuals – participants of the criminal process.

An eventual revision of the criminal procedure framework could be realized in the direction of:

26 According to the Law no.145/1998, compensation to be awarded to the person acquitted or removed from prosecution include moral damage and material damage, the latter also including judicial expenses/costs.

- Modernising the CPC provisions regarding judicial expenses by expanding the list of recoverable expenses or by indicating the nature/category of expenses that are recoverable (eg., direct expenses etc.);

- Specifying the parties to the criminal proceedings who must bear judicial expenses in specific situations which are not currently covered by the CPC (Romanian CPC could serve as an example);

- Regulating the issue of quantification of expenses in secondary legislation (Methodologies of the Prosecutor's Office regarding the costs of criminal justice bodies, Recommendations of the Lawyers' Union (which is currently being done), Methodologies developed by the Ministry of Justice for the calculation of expenses incurred by witnesses, translators, experts and other participants in the criminal proceedings).

93. Law No. 1545/1998 is outdated and surpassed by the national courts case law, includes confusing norms that do no resonate with the principle of legality. Therefore, it needs to be replaced with another legal framework that would regulate the cases of judicial costs incurred by the accused persons that have not been acquitted, or in other cases in which the presumption of innocence has not been reversed, the persons' fundamental rights have been severely restricted. At present, such a draft law is being considered. The classification of grounds of discontinuance of the criminal case as "rehabilitation" and "non-rehabilitation" raises many issues from the perspective of the principle of presumption of innocence. The discontinuation of the criminal case on such grounds as "non-rehabilitation" should not automatically mean that the former accused would not have the right to recover certain judicial costs incurred within the criminal case in which the presumption of innocence has not been reversed. The solving of the matter regarding the attribution of judicial costs would be more just if each case were assessed individually, and not automatically labelled as one of "non-rehabilitation".

94. The interpretation of the legal framework regarding the judicial costs within a criminal case cannot be made in isolation from the case law of ECtHR, which is evolving continuously. When recovering judicial expenses, the principle of presumption of innocence should be, particularly, taken into account.

95. Though the ECHR law does not provide for a presumption upon the recovery of judicial costs, the case law of Moldovan courts has established such a presumption in favour of the person that has had a successful outcome within the criminal proceedings, which is not contrary to the ECtHR case law.

96. The law grants Moldovan judges a large margin of discretion when deciding the costs issue, their size and the person they should be collected from. Nonetheless, great caution should be manifested regarding the collection of the costs from the account of the convicted minor' parents, of the successors of the deceased convict, in the event that they do not participate in the criminal case in which the matter of judicial costs is decided.

97. Though the SCJ case law regarding the judicial costs can be identified, it refers only to the norms of the CPC which are frequently applied. The contents of the legal norms that are truly problematic (Paragraph 2, Paragraph 4 of Article 228 of the CPC, Paragraphs 5-7 of Article 229 of the CPC) or that are susceptible to an ambiguous interpretation (point 5 para.2 of Article 227 of the CPC) remain confused and needs to be clarified, preferably by the highest court. At the same time, the SCJ's case law engine should be improved, especially as to allow/ease the identification of case law by the key words and law articles. It is worth mentioning the quite recent appearance, following the ECtHR example, of thematic briefs prepared by the SCJ apparatus: the work in this direction should be encouraged.

Annex 1. Questions for the focus group discussions per group

1. Which costs/expenses (for which procedural actions/acts) in practice are more difficult to quantify/establish?

2. Under what conditions is requested the recovery of translation expenses, taking into account the requirements of Article 6 § 3 (e) of the ECHR – the right of the accused person—"e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court?"

3. What are the most common problems encountered in practical activity regarding the recovery of court costs in criminal cases;

4. If, by a court judgment, the defendant is convicted for one charge, but acquitted for another, should she/he bear all the costs caused by the criminal trial or part of it?

5. Article 227 Paragraph 2 of the Criminal Procedure Code (CPC) lists the costs in the criminal cases, and point 5 says "5) spent in connection with the performance of procedural actions in the criminal case.": Do you consider that the existing legal framework is sufficient or should be amended to allow the State to collect other legal costs and expenses, in addition to those expressly listed in Article 227 Paragraph 2 (1) of the CPC (paid or to be paid to witnesses, the injured party, their representatives, experts, specialists, interpreters, translators and procedural assistants; 2) spent on keeping, transporting and investigating *corpus delictus*; 3) which are to be paid for legal aid; 4) spent for restitution of the value of objects damaged or destroyed in the process of carrying out the judicial expertise or reconstructing the events)?

6. What costs/expenses in a criminal procedure in practice are not collected but would be fair to collect from the convicted person?

7. How would you see the financial quantification of a criminal case for the purpose of subsequent recovery of costs: according to the time spent by the prosecution/court for the examination/resolution of the criminal case, according to the seriousness of the crime charged, or according to other factors?

8. Do you think it is fair and welcome to transpose the "loser pays" principle from the civil procedure to the criminal procedure? Or should the State bear/assume certain advanced legal costs in criminal cases? Why?

9. Should there be a presumption for or against a costs award?

10. Should the law establish criteria when awarding costs?

11. Should the personal situation of the defendant be taken into consideration (ex. income, number of dependents, disability, health issues, including mental health, age, etc.), or should there be situations of exemptions of costs? If yes, based on what criteria?

12. Should costs be recoverable in respect of expenses incurred personally when a defendant was also receiving legal aid?

13. What possibilities of contesting the amount of costs should be applicable?

14. If the charged person is acquitted, do you think it would be fair for the injured party, instead of the State, to bear certain costs of criminal proceedings?

Annex 2. Relevant provisions of the national legislation

Criminal Procedure Code of the Republic of Moldova

Article 227. Judicial expenses.

(1) Judicial expenses are those incurred in accordance with the law to ensure the proper conduct of criminal proceedings.

(2) Judicial expenses include the sums:

1) paid or to be paid to witnesses, the injured party, their representatives, experts, specialists, interpreters, translators, and procedural assistants;
2) incurred for the preservation, transportation, and examination of the objects of the offense;
3) to be paid for providing state-guaranteed legal assistance;
4) incurred for the restitution of the value of objects damaged or destroyed during the performance of judicial expertise or reenactment of the offense;
5) incurred in relation to performing procedural actions in the criminal case.

(3) Judicial expenses shall be paid from state-allocated funds unless the law provides otherwise.

Article 228. Compensation of expenses incurred by persons participating in the criminal process.

(1) In the manner provided by criminal procedural law, the following judicial expenses incurred by witnesses, the injured party, the civil party, procedural assistants, interpreters, translators, experts, specialists, and the legal representatives of the injured party and the civil party will be compensated from the sums allocated by the State:

1. expenses incurred in connection with appearing upon summons before the criminal investigation authority and the court;
2. accommodation expenses;
3. the average salary for the entire period of participation in the criminal process;
4. expenses for the repair or restoration of objects that were damaged as a result of their use in procedural actions at the request of the criminal investigation authority or the court.

(2) Public authorities, enterprises, institutions, and organizations are required to maintain the average salary for the entire period during which the injured party, their legal representative, procedural assistant, interpreter, translator, specialist, expert, or witness participated in the criminal process at the summons of the criminal investigation authority or the court.

(3) The expert and specialist are also entitled to reimbursement for the cost of materials that belong to them and were used in performing their task.

(4) The expert, specialist, interpreter, and translator are entitled to a reward for fulfilling their obligations, except in cases where they performed the task as part of their job duties.

(5) The expenses incurred by the persons mentioned in paragraph (1) will be recovered at their request based on a decision of the criminal investigation authority or the court, in the amount established by the applicable legislation.

Article 229. Payment of judicial expenses.

(1) Judicial expenses shall be incurred by a convicted person or by the state.

(2) The court may oblige a convicted person to refund judicial expenses, except for the amounts paid to interpreters, translators and defense counsels if the defendant is granted an attorney providing the legal assistance guaranteed by the state when this is required in the interests of justice and the convicted person does not have the necessary financial means. Judicial expenses may also be paid by the convicted person exempted from punishment or applied a punishment, and by the person in whose regard the criminal investigation was discontinued on non-rehabilitation grounds.

(3) The court may exempt a convicted person or a person who must pay judicial expenses from paying such expenses in whole or in part if they are insolvent or if the payment of judicial expenses would substantially influence the financial condition of persons supported by them.

(4) If several persons are convicted in the same case, the judicial expenses shall be divided depending on their guilt, degree of liability and the financial condition of each of them.

(5) Should a criminal investigation be discontinued as a result of a reconciliation of the injured party and the accused/defendant, the court may impose judicial expenses on the injured party on the accused/defendant or on one of the parties.

(6) Should the convicted person decease prior to the sentence enter into force, judicial expenses may not be imposed on his/her successors.

(7) If the convicted person is a juvenile, the parents or the tutors of the convicted juvenile may be obliged to pay judicial expenses provided serious drawbacks in performing their obligations to the juvenile are established.”

Article 285. Discontinuance of criminal investigation.

…..

(2) A criminal investigation shall discontinue in cases of a person’s non-rehabilitation listed in art. 275 points 4)-9) of the present Code, as well as if there is at least one of the reasons provided in art. 53 of the Criminal Code or if it is established that:

1) the preliminary request was withdrawn by the injured party, a transaction was concluded within the mediation process or the parties have reconciled, which is when a criminal investigation may be initiated only based on a preliminary complaint or if criminal law allows reconciliation;

2) the person has not reached the age to be held criminally liable;

3) the person committed the prejudicial act in a state of irresponsibility and coercive medical measures are not necessary.

Article 275. Circumstances precluding criminal prosecution.

Prosecution may not be initiated, and if it has been initiated, it may not be carried out and will be discontinued in cases where:

….

4) the limitation period has expired or amnesty has been granted;

4^1) the act constitutes a contravention;

5) the perpetrator has deceased;

6) the victim's complaint is missing in cases where criminal prosecution begins only based on their complaint, or the prior complaint has been withdrawn;

7) with regard to a person, there is a final court judgment on the same charge or stating the impossibility of conducting a criminal investigation on the same grounds;

8) there is a non-overturned decision regarding the non-initiation of criminal prosecution, the removal from criminal prosecution, the termination of criminal prosecution, or the dismissal of the criminal case on the same charges concerning a person;

9) there are other circumstances provided by Criminal Code that call for the exclusion or, as the case may be, exclude a criminal investigation."

Criminal Code of the Republic of Moldova

Article 53. Release from criminal liability.

A person who has committed an act that contains the signs of a criminal offense may be released from criminal liability by the prosecutor in criminal proceedings and by the court in cases of:

a) minors;
b) release from criminal liability with the imposition of contravention liability;
c) in case of voluntary renunciation to committing the offence;
d) in case of active repentance;

e) in case of change of status;
f) in case of conditional release;
g) in case the criminal liability is time-barred.

Law No. 1545/1998 regarding the way to repair the damage caused by the illegal actions of the criminal investigation bodies, the prosecutor's office and the courts

Art.1 - The present law constitutes the basic legislative act regulating the cases, the manner and the conditions of the state's patrimonial liability for the damage caused by unlawful actions committed in criminal and contraventional cases by the criminal investigation bodies, the prosecutor's office and the courts.

Art.2 - (1) For the purposes of this law, the following notions are defined:

unlawful actions - actions or inactions of the body empowered to examine cases concerning contraventions, of the prosecuting body or of the court, which exclude their guilt, the unlawful character of which is manifested by violation of the general principle, according to which no innocent person can be held accountable and cannot be prosecuted, (errors) or acts of responsible persons of the prosecution body or the court, manifested by intentional violation of procedural and material rules during the criminal or contraventional proceedings (offenses);

Art.3 - (1) In accordance with the provisions of this law, shall be compensated the material and moral damage caused to a natural or legal person as a result of:

a) unlawful apprehension, unlawful application of preventive measures in the form of arrest, declaration not to leave the locality or the country, unlawful criminal liability;

(b) unlawful conviction, unlawful confiscation of property, unlawful community service;

(c) unlawful search, seizure, unlawful seizure of property, unlawful discharge or suspension from work (office), as well as other procedural actions restricting the rights of natural or legal persons in criminal proceedings or in criminal proceedings

(d) unlawful placing under unlawful arrest, unlawful contravention detention or unlawful imposition of a fine for contravention by the court;

e) conducting special investigative measures in violation of the provisions of the legislation;

f) unlawful seizure of accounting documents, other documents, money, stamps, as well as following blocking of bank accounts.

(2) The damage caused shall be compensated in full, regardless of the fault of the responsible persons in criminal investigation bodies, prosecutor's offices and courts.

Art.4 - (1) The damage caused by the unlawful actions specified in this law shall not be compensated by the state in case of reconciliation of the suspect, the accused, the defendant with the injured party, as well as in case the person, in the process of criminal prosecution or judicial investigation, prevents, by self-report, the establishment of the truth.

(2) The presence in the actions of the natural person of self-incrimination, self-report shall be established by the criminal prosecution, prosecution office or court.

(3) The provisions of this Article shall not apply to the cases when the natural person has committed self-incrimination, self-reporting as a result of violent treatment, threats and other unlawful actions.

Art. 5 - (1) Cases concerning compensation for material and non-material damage shall be examined in accordance with the rules of civil procedure in force. The body representing the State in court on this category of cases is the Ministry of Justice.

(2) An application for compensation of damages shall be filed within 3 years from the date of the right to compensation of damages.

Art.6 - The right to compensation for damages, in the amount and in the manner established by this law, arises in the case of:

a) the acquittal sentence becomes final and irrevocable;

b) the person is removed from criminal prosecution or the criminal prosecution is terminated on grounds of rehabilitation;

c) the adoption by the court of the decision on the annulment of the criminal arrest in connection with the rehabilitation of the individual

d) adoption by the investigating judge, under the conditions of Article 313 paragraph (5) of the Code of Criminal Procedure, with regard to the acquitted or discharged person, of the decision on declaring null and void the acts or actions of the criminal prosecution body or the body exercising special investigative activity.

Art.7 - In the cases referred to in Art.3 para. (1), the natural or legal person shall be compensated or reimbursed:

a) the salary and other income derived from work, constituting his or her main source of subsistence, of which he or she has been deprived as a result of unlawful actions;

(b) the pension or allowance the payment of which has been withheld as a result of unlawful arrest and detention

(c) property (including deposits and interest thereon, obligations on State loans and earnings thereon) confiscated or forfeited to the State by a court of law or seized by a criminal prosecution authority, as well as seized property

d) fines levied as a result of the enforcement of the court sentence and court costs incurred by the individual in connection with the unlawful actions;

(e) sums paid by him/her for legal assistance;

(f)expenses for her treatment, treatment resulting from the unlawful actions (ill-treatment) inflicted on her;

g) expenses incurred in connection with summonses to a criminal prosecution body, public prosecutor's office or court.