

## **Defence rights and challenges in conducting independent investigations in criminal proceedings**

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### **Abstract**

The independent investigation by the defence lawyer is an essential tool for the effective exercise of the right to defence in criminal proceedings, as reinforced by Article 100(2) of the Criminal Procedure Code of the Republic of Moldova. This gives the defence lawyer the right to request and present relevant objects, documents and information, to hold conversations with individuals and to seek expert opinions, all of which are essential for the effective exercise of the right to defence. This gives the defence lawyer the right to request and present relevant objects, documents, and information; to hold conversations with individuals; and to seek expert opinions, all in the interests of the client, and to substantiate the defence evidence. Doctrinal and practical analysis shows that although these rights are recognised by law, they lack clear mechanisms for their guarantee or enforcement, thereby limiting their practical effectiveness. In this context, the independent investigation by the defence lawyer is a complementary means of evidence management, allowing for the verification of the validity of expert reports, the collection of additional evidence and the support of observations in counter-expert reports, without replacing the powers of the criminal investigation authorities or the court.

From this perspective, a detailed examination of how the rules of the Code of Criminal Procedure and the Law on Advocacy interact is necessary to identify potential limitations and contradictions that may affect the effective realisation of the right to defence and the guarantee of the principle of equality of arms in criminal proceedings.

**Keywords:** independent investigation, defence counsel, administration of evidence, rights of the defence, criminal proceedings

### **Introduction**

(According to Article 1(3), the Republic of Moldova proclaims itself to be "a democratic state governed by the rule of law, in which human dignity, rights and freedoms, and the free development of human personality are supreme values and are guaranteed" (Constitution of the Republic of Moldova). In this constitutional context, the improvement of criminal

procedure legislation aims to ensure real and effective guarantees to protect the fundamental rights and freedoms of all persons involved in criminal proceedings for having committed harmful acts.

In criminal proceedings, the lawyer, in his capacity as a legal specialist, is called upon to provide legal assistance to the suspect, accused, or defendant, with the role of the defence remaining a priority for both the legislator and legal doctrine. In recent decades, multiple measures have been taken to strengthen the status of the defence lawyer, including by extending their rights in the administration of evidence in criminal proceedings.

### **Materials and methods**

This research is based on an integrated analysis of legal norms, doctrine, and judicial practice, aiming to highlight the legal framework and limits on the defence's independent investigation in criminal proceedings. The main materials used include the Criminal Procedure Code of the Republic of Moldova, with an emphasis on the provisions of Article 100(2), the Law on the Bar (2021 edition), the Constitution of the Republic of Moldova and relevant international human rights instruments, which establish the fundamental principles of equality of arms and the right to defence. Professional and internal regulatory documents, such as the Code of Conduct for Lawyers and the Guide for Defence Lawyers, were also consulted to assess the ethical and professional obligations of defence lawyers. Professional and internal regulatory documents, such as the Code of Ethics for Lawyers and the Guide for Defence Lawyers, were also consulted in order to assess the ethical and professional obligations of the defence lawyer in relation to the exercise of independent investigation.

The research methodology consisted of applying several complementary legal analysis techniques. Firstly, a normative and comparative analysis was carried out, aiming to provide a detailed interpretation of Article 100(2) of the CPC and its relationship with other legislative provisions and ECHR standards, in order to identify the rights of the defence lawyer and the limits of their applicability. Secondly, the doctrinal analysis method was used, through the study of specialised works and legal commentaries, in order to capture the doctrinal interpretations regarding the role of the defence lawyer in the investigation. Secondly, the method of doctrinal analysis was used through the study of specialist works and legal commentaries to capture doctrinal interpretations of the role and limits of independent investigation. At the same time, the practical analysis method was applied, highlighting the procedural and institutional obstacles encountered by defence lawyers in the effective exercise of these rights. Finally, the critical and synthetic method enabled the formal legal framework to be correlated with the principles of criminal procedure and professional ethics, highlighting the tensions between the theoretical rights of the defence and their practical applicability.

By combining these methods, the research provides a nuanced picture of independent investigation in criminal proceedings, revealing both the legal instruments available to the defence lawyer and the practical challenges in ensuring an effective right of defence.

### **Results and discussion**

The analysis of the duties and role of the defence lawyer in criminal proceedings naturally requires an examination of the institution of the defence investigation as an essential element in realising the right to defence and ensuring the adversarial nature of criminal proceedings. In specialist doctrine, this institution is seen not as an auxiliary activity, but as an organic

component of criminal proceedings, designed to contribute to the discovery of the truth and the achievement of fair justice.

In this context, some researchers (Мартынчик, Е.Г., 2005, p. 61) argue that the institution of defence investigation, conceived as a legal-public entity, is an integral part of the criminal process, viewed as a unified system. According to the author, depending on the objectives pursued, this institution can take a variety of forms and methods of implementation. Thus, the defence investigation may involve the examination and collection of evidence at the pre-trial stage, with a view to combating, in whole or in part, the charges, mitigating the sentence or improving the legal situation of the defendant. It may also be exercised during the trial phase, with the aim of substantiating the requests submitted to the court, including those concerning the exclusion of certain evidence presented by the prosecution, the identification and proposal of evidence for the defence, and effective participation in the examination of such evidence. At the same time, the author admits that the defence counsel may investigate and subsequently try the case on its merits in situations where the defendant challenges the decision.

Therefore, in Professor Martâncic's view, the institution of the defence investigation is not limited to a specific stage of the proceedings, but can be exercised throughout the criminal proceedings, whenever there is a need to identify, propose and invoke evidence capable of influencing the court's inner conviction.

In this regard, the amendments and additions made to the Law on Advocacy of 22 April 2021, which entered into force on 14 June 2021, are relevant. According to the new regulations, the legislator has included, among the types of qualified legal assistance provided by lawyers to individuals and legal entities, under letter g), the conduct of independent investigation activities, which significantly contributes to strengthening the role of the defence in criminal proceedings.

When providing qualified legal assistance to their client, defence lawyers are required to perform their duties with honesty, diligence, good faith and integrity, as well as at the appropriate time, in order to effectively promote and defend the interests of the accused, in accordance with the requirements of a fair trial (Ceahir, A.).

Thus, according to the Code of Ethics for Lawyers in the Republic of Moldova, subject to compliance with legal and ethical rules, lawyers have a duty to defend the interests of their clients, including in relation to their own interests, the interests of other lawyers or the interests of the state.

In accordance with point 2.3 of the Defence Lawyer's Guide, approved by the Council of the Bar Association of the Republic of Moldova by Decision No. 2 of 30 March 2012, lawyers must ensure the consistent, genuine and effective defence of their clients at all stages of the proceedings for which they have undertaken to act. To this end, the defence must be practical and effective, not illusory. The main purpose of a lawyer's work is to represent their client effectively and to ensure the best possible outcome for them in the specific case, using only legal means of defence. The lawyer shall make use of all legal and appropriate means to promote the client's interests and shall take all necessary measures to guarantee the client's right to a fair trial; the lawyer may not participate in the trial without first reviewing the case file and is obliged to thoroughly study all the materials of the case he or she has taken on for representation.

In the same vein, according to point 3.10 of the Guide, the lawyer shall provide clients with the best and most effective advice possible for the resolution, within a reasonable time, of issues related to the criminal case in question, acting diligently, promptly and seriously, by virtue of their professional knowledge and experience.

At the same time, according to point 3.3 of the Defence Lawyer's Guide, the lawyer shall investigate all the circumstances of the case within a reasonable time in order to determine all potential sources of information relevant to the case. In this regard, according to point 3.11 of the aforementioned Guide, the lawyer collects and requests the administration of evidence in accordance with legal procedures, participates in their investigation and formulates requests, enjoying equal rights before the court in relation to all participants in the proceedings.

At the criminal investigation stage (pre-trial stage), the Guide provides the following general recommendations:

"1. In order to ensure participation in all procedural actions in which the client participates, the lawyer shall take measures to plan his or her time appropriately, including requesting the criminal investigation body to comply with the legal deadline for providing information on the date, time and place of the procedural actions;

2. The lawyer shall conduct his or her own investigation into the case and, after assessing the probative value of the information collected, shall request that the relevant evidence be administered in accordance with legal procedures. This investigation may include: 2.1. examining the scene of the crime, documenting relevant details through notes, photographs or video recordings, except where this is of no probative value or impossible for objective reasons; 2.2. identifying potential defence witnesses by talking to people suggested by the client and figuring out if it's a good idea to ask the prosecution to hear them; 2.3. requesting the appointment of an expert or specialist when extrajudicial knowledge is necessary to support the defence's position or refute the charges, and in case of refusal, challenging this decision in accordance with legal procedure.

In addition to the above, for the purpose of administering evidence, without limitation to the following:

1.1. Examination of the scene of the crime, through thorough investigation of relevant details, taking notes, making photos or video recordings of pertinent aspects, except in cases where the scene of the crime cannot be a potential source of evidence for the defence or is inaccessible for objective reasons;

1.2. Identifying potential defence witnesses by talking to people suggested by the client to figure out who can give statements in their favour. Depending on the circumstances of the case and the info provided by the witnesses, the lawyer decides if it's necessary and appropriate to ask the prosecution to hear them;

1.3. If extrajudicial knowledge is required, by requesting an expert opinion or consulting a specialist, in order to support a certain defence position or to combat the charges, the lawyer requests the appointment of an expert or a specialist under the conditions provided by the legislation in force. In case of refusal, this shall be challenged in accordance with the legal procedure.

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In the same vein, given the need to exercise an effective defence, the defence lawyer admitted to the criminal proceedings, having the status of a subject of evidence gathering in accordance with criminal procedural law, in accordance with Article 100(2) of the Criminal Procedure Code of the Republic of Moldova, for the purpose of administering evidence, shall have the right to:

- 1) request and present objects, documents and information necessary for the provision of legal assistance, including conducting interviews with individuals, if they express their consent to be heard in the manner established by law;
- 2) request certificates, characteristics and other documents from competent bodies and institutions, under the conditions established by law;
- 3) in the interests of legal assistance, request, with the consent of the person they are defending, the opinion of a specialist to clarify issues requiring special knowledge.

Subsequently, according to Art. 100 para. For the purposes of Article 100 of the Criminal Procedure Code of the Republic of Moldova, the task of the defence is to identify and present circumstances that either exonerate the accused or contribute to mitigating their liability.

Within the meaning of Article 100 of the CPC of the Republic of Moldova, the task of the defence is to identify and present circumstances that either exonerate the accused or contribute to mitigating their criminal liability. At the same time, the task of the defence cannot be equated with that of the criminal investigation body, which, according to Article 19(3) of the CPC of the Republic of Moldova, is obliged to take all measures provided for by law to investigate the circumstances of the case in a comprehensive, objective and thorough manner. However, Article 19 of the CPC of the Republic of Moldova enshrines free access to justice and places the primary responsibility for finding the truth on the criminal investigation body and the prosecutor.

However, Article 19 of the Criminal Procedure Code of the Republic of Moldova enshrines free access to justice and places the burden of finding the truth primarily on the criminal investigation body and the prosecutor. In this context, the failure of the defence to fulfil the duties provided for in Article 100 of the Criminal Procedure Code of the Republic of Moldova cannot be interpreted as evidence of the guilt of the person under investigation.

However, the defence lawyer cannot administer evidence using the same evidentiary procedures as the criminal investigation body (Dolea, I. et al., 2005, p. 188).

Furthermore, any person accused of committing a crime is presumed innocent as long as their guilt has not been proven, in the manner established by law, at a public trial, with all the necessary guarantees for their defence, and has not been established by a final conviction. Subsequently, no one is obliged to prove their innocence; the burden of proof lies with the prosecution, and any doubt is to the advantage of the accused. The presumption of innocence is violated if the burden of proof is transferred from the prosecution to the defence (Telfner v. Austria, para. 15).

At the same time, it should be noted that the administration of evidence by the defence is a right and not an obligation, and the fact that the defence did not administer evidence cannot be interpreted as a failure of the defence. The defence determines the appropriateness of administering certain evidence. The verification of evidence, within the meaning of paragraph (4) of Article 100 of the CCP of the Republic of Moldova, is carried out by certain

methods: analysis of the content of the evidence administered, and corroboration with other evidence. The administration of evidence may take place only through the evidentiary procedures provided for in the CCP of the RM (Dolea, I. et al., 2005, p. 189).

In this context, according to point 4.3.3. In the Defence Lawyer's Guide, the defence lawyer admitted to the criminal proceedings has the right to request and present objects, documents, information, certificates, characteristics, and other documents, as well as expert opinions. Other evidence is obtained through the criminal investigation body, the prosecutor, the investigating judge (at the criminal investigation stage). The defence lawyer has the right to participate in all procedural actions carried out at his request. In this regard, it is recommended that the lawyer request the criminal investigation body and/or the investigating judge to participate in the hearing of witnesses proposed by the defence, in the confrontations requested by the lawyer, even if these are carried out between other procedural subjects than the suspect or the accused. Thus, the lawyer is encouraged to adopt an active defence strategy from the outset of the case in order to provide quality assistance to his client.

At the same time, according to Art. 53 para. (1) lit. d), g) of the Law on the Bar (amended by Law No. 67 of 22.04.2021 amending the Law on the Bar), the lawyer has the right: "request and obtain from courts, law enforcement agencies, public authorities, holders of public registers, and other organisations, under the conditions established by law, information, references, and copies of documents necessary for the provision of legal assistance; to summon and hear persons, to order extrajudicial expert examinations as the ordering authority, to investigate territories, premises, property, with the consent and participation of the owner or his representative, as well as to perform other procedural actions necessary to ensure legal assistance."

Despite the expansion of the regulatory framework on the rights of defence lawyers and the growing recognition of the role of independent investigation by lawyers in criminal proceedings, the national legislative framework raises certain systemic difficulties. Thus, although Article 100(2) of the CPC of the Republic of Moldova enshrines the rights of the defence counsel in the administration of evidence, and the amendments made since 2021 to the Law on the Bar have broadened their scope, the effective applicability of the procedural rules contained in the special legislation remains questionable. This situation derives directly from the provisions of Article 2(1) and (2) and Article 3(1) and (2) of the CPC of the Republic of Moldova.

This situation derives directly from the provisions of Article 2(1) and (4) of the CCP of the Republic of Moldova, according to which criminal proceedings are governed exclusively by the Constitution, international treaties to which the Republic of Moldova is a party and the Code of Criminal Procedure, and the rules of a special nature are only applicable in the event of a conflict between the provisions of the Code of Criminal Procedure and those of the special law. Consequently, even though the Law on Advocacy provides for extensive rights for defence lawyers, their concrete application in criminal proceedings is restricted or conditioned by the requirements and limitations established by the CPP. Consequently, even if the Law on the Bar provides for extensive rights for defence lawyers, their actual application in criminal proceedings is restricted or conditioned by the requirements and limitations established by the CPC.

This raises the issue of compatibility between general criminal procedural rules and those of special legislation governing the legal profession, which in turn calls into question the effectiveness of defence counsel's independent investigation and their ability to fully exercise their rights under the law.

It has been rightly stated that "the list of legal sources of criminal procedural law stipulated in Article 2 of the CPC of the Republic of Moldova is exhaustive, which means that criminal procedural legal rules contained in laws other than those indicated therein cannot be directly applied in the regulation of criminal procedural legal relations." (Dolea, I. et al., 2005, p.6).

Therefore, the legislator failed to include the rights of lawyers, enshrined in Articles 53(d) and 53 (g) of Law No. 67 of 22 April 2021, which amends the Law on the Bar, in the rules of the Code of Criminal Procedure. This omission makes it impossible for defence lawyers to exercise these rights effectively in criminal proceedings, thereby creating a discrepancy between the specific regulatory framework for the legal profession and the general rules of criminal procedure.

Next, we will analyse the rights of the defence lawyer in the administration of evidence, as regulated by Article 100(2) of the CCP of the Republic of Moldova.

In general, Article 100 of the CPC of the Republic of Moldova provides for "the procedural means by which relevant facts may be collected in a criminal case and establishes certain general rules regarding the collection of evidence." (Dolea, I., 2020, p.349) In practice, evidence is collected by the criminal investigation body and the prosecutor, with the court having no right to intervene in this process on its own initiative. The defence lawyer, on the other hand, may contribute to the administration of evidence exclusively by exercising the rights conferred by Article 100 of the CPC of the Republic of Moldova.

With regard to the right of the defence counsel to request objects, documents and information necessary for the provision of legal assistance, as well as to conduct interviews with individuals who agree to be heard, to request certificates, characteristics and other documents from various competent bodies and institutions, it is noted that the legislation in force does not provide for any remedy in the event of a refusal to make these documents available to the defence. Consequently, organisations or officials are not obliged to provide the documents requested by the lawyer and are not legally liable for refusal, except in cases where the documents can be obtained under the Law on Access to Information of Public Interest and the Administrative Code, in respect of the general right of access to information.

According to legal scholars (Dolea, I., 2009, p.15), although Article 100(2) of the Criminal Procedure Code of the Republic of Moldova establishes specific powers for the defence in criminal proceedings, the provision "is currently declaratory in nature, lacking clear procedural guarantees to ensure the effective implementation of these rights". Furthermore, paragraph (2) emphasises that the defence may exercise its powers "in the manner provided for by the Code", but the Criminal Procedure Code does not contain specific rules governing the procedure for exercising these powers. Furthermore, paragraph (2) emphasises that the defence lawyer may exercise his or her powers "in the manner provided for by the Code", but the Criminal Procedure Code does not contain any special rules governing the specific procedure for requesting or presenting objects or documents, these actions being governed by general rules applicable to all parties to the proceedings. The criminal procedural legislation of the Republic of Moldova does not explicitly define the terms "objects",

"information", "conversations", "certificates" or "characteristics", with the exception of the term "objects".

The criminal procedural legislation of the Republic of Moldova does not explicitly define the terms "objects", "information", "conversations", "certificates" or "characteristics", with the exception of the term "documents". According to Article 157(1) of the CCP of the Republic of Moldova, documents constitute material evidence and include any written, audio, video or electronic records originating from natural or legal persons and containing circumstances relevant to the case. According to paragraph (2) of the same article, documents are attached to the case file by order of the criminal investigation body or by court decision and are kept in the case file. According to paragraph (2) of the same article, documents shall be attached to the case file by order of the criminal investigation body or by court decision and shall be kept for the entire duration of the case. If necessary, the original documents may be returned to their holders, provided that this does not affect the case, and copies thereof shall be kept in the case file.

Under this rule, various documents may be requested and submitted, such as health certificates, archival materials, departmental normative acts, and other documents relevant to the criminal case. The term "information" in Article 100(2) of the CCP of the Republic of Moldova is not classified as evidence but refers to communications or data that provide insight into a situation or clarify a person or a fact. At the same time, the legislation does not provide for specific mechanisms for the implementation of the right conferred on the defence by Article 100(2)(a) of the CCP of the Republic of Moldova.

At the same time, the legislation does not provide for specific mechanisms for the exercise of the right conferred on the defence counsel by Article 100(2)(a) of the CPC of the Republic of Moldova. Similarly, there are no legal obligations for natural or legal persons, state bodies and institutions to make objects, documents, information, certificates or characteristics available to the defence counsel. With regard to the request and presentation of objects, it is important to note that objects relevant to the criminal case are obtained mainly by the criminal investigation body through procedural actions, such as searches, seizures, inspections, and examinations.

With regard to the request and presentation of objects, it is important to note that objects relevant to the criminal case are primarily obtained by the criminal investigation body through the specific procedural act of seizure. The lawyer lacks the competence to perform this action. For this reason, the acquisition of objects by the defence lawyer must be carried out voluntarily, with the express consent of the holder.

To ensure the legality and clarity of the procedure, it is recommended that the lawyer obtain a written request from the holder of the object. In addition to the mandatory elements, this request should indicate: the circumstances and time when the object was acquired, its distinctive features, the purpose of transferring the object to the lawyer, as well as confirmation that no coercive measures were used to obtain it. If necessary, the signature of the person drawing up the request may be notarised. The voluntary transfer of the object may also be carried out in the presence of at least two persons who can attest to the voluntary and consensual nature of the transfer.

In other words, for the administration of evidence, pursuant to Article 100(2)(1) of the Criminal Procedure Code of the Republic of Moldova, the defence lawyer admitted to the

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criminal proceedings has the right to request and submit objects, documents and information necessary for the provision of legal assistance, including to request and submit objects, documents and information necessary for the provision of legal assistance, including to request and submit objects, documents and information necessary for the provision of legal assistance, including The term "conversation" in this context refers to an informal chat or discussion. It does not constitute a procedural action, such as a hearing or confrontation.

The term "conversation" in this context refers to an informal chat or discussion. It does not constitute a procedural action, such as a hearing or confrontation, which are official evidentiary procedures for obtaining statements.

In view of the aforementioned legal provision, the legislator has established a procedural means of obtaining information that can subsequently be used as evidence in criminal proceedings, namely conversations with individuals. The defence lawyer is authorised to conduct such conversations with eyewitnesses to the offence or with other persons who have relevant knowledge of the circumstances of the case. However, this activity is carried out exclusively with the express consent of the person concerned, which emphasises the voluntary and non-coercive nature of the procedure.

From a doctrinal perspective (Vizdoagă and Ceachir 2019, 10), the conversation is an informal investigative tool, different from official procedural acts, such as hearings or confrontations, which produce direct evidentiary effects in the case file. The conversation serves as a means of obtaining preliminary information, allowing the defence lawyer to outline the defence strategy and identify relevant sources of evidence, without, however, substituting the powers of the prosecution or the court. Therefore, the right to conversation is an extension of the defence counsel's independent investigation, but is conditional on the consent of the persons involved and on the procedural limits provided by law.

At the same time, criminal procedural law does not provide for specific mechanisms to ensure the authenticity of the information obtained by the defence lawyer during conversations with individuals. Although this method is recognised by law as part of the defence lawyer's evidence collection, the results obtained do not automatically become evidence in criminal proceedings. In practice, information obtained through conversations can be used to substantiate the defence strategy and to identify other sources of evidence, but it does not have direct probative value.

Only if the persons with whom the conversation was held are subsequently heard by the criminal investigation body or in court do their statements acquire the legal status of evidence, in accordance with Article 93 of the Criminal Procedure Code of the Republic of Moldova. Thus, the conversation serves as a preliminary investigation tool, giving the defence lawyer the opportunity to discover relevant circumstances of the case and to prepare requests for the administration of evidence or other procedural actions, without, however, replacing the powers of the criminal investigation authorities.

From this perspective, the conversation reflects the role of the defence counsel's independent investigation: a means of accessing information necessary for the defence, but conditional on the consent of the persons concerned and the limits provided by law. The legal limitation of the direct effects of this information highlights the importance of subsequent official procedural acts, through which the data obtained becomes evidence and can influence the court's decision. Therefore, the conversation is a preliminary stage, complementary to

official evidence, which supports the effective exercise of the rights of defence and strengthens the procedural strategy.

Consequently, we agree with the authors who note the absence of an effective, law-regulated mechanism for the realisation of the defence counsel's right to administer evidence during the pre-trial phase of criminal proceedings. This right "remains a mere declaration, devoid of any procedural effectiveness" (Vizdoagă and Ceachir 2019, 10).

Furthermore, although defence lawyers have been granted the right to summon and hear persons, in accordance with Article 53(g) of the Law on Advocacy, this right is not expressly regulated by the Criminal Procedure Code of the Republic of Moldova. Consequently, its exercise remains uncertain and lacks clear mechanisms for implementation and enforcement in criminal proceedings. This situation highlights a discrepancy between the rights granted to the defence lawyer by professional law and the actual procedural framework regulated by the CPC. In practice, without clear rules on the modalities of summoning and hearing, as well as without sanctions for non-compliance, the defence lawyer cannot directly transform the information obtained into official evidence. As a result, the right to summon and hear persons remains a preliminary investigative tool, complementary to the actions of the criminal investigation authorities, but limited in its probative value.

Thus, in order to be effective, the exercise of this right depends on the consent of the persons concerned, the cooperation of the institutions involved and the subsequent integration of the statements obtained into official proceedings, either through a hearing by the criminal investigation body or in court. This highlights the need to strengthen the procedural framework to ensure the effective application of the defence rights during the collection of evidence.

Unlike the defence, the criminal investigation body has procedural mechanisms and levers for administering statements. Firstly, Article 313 of the Criminal Code of the Republic of Moldova establishes criminal liability for the refusal or evasion of a witness or injured party to make statements; secondly, the criminal investigation body may access the following procedural institutions, such as: summons (Articles 235-243 of the Criminal Procedure Code of the Republic of Moldova), compulsory attendance (Article 199 of the Criminal Procedure Code of the Republic of Moldova), judicial fine (Article 210 of the Criminal Procedure Code of the Republic of Moldova). The defence lawyer does not have the power to compel individuals to disclose information necessary for the defence in a criminal case; in such cases, the defence lawyer has no choice but to convince them of the need to provide explanations to establish the truth and defend human rights and freedoms.

At the same time, under doctrine, if the lawyer has had conversations with certain individuals, that information may be forwarded to the criminal investigation body, which must hear those individuals as witnesses. If the lawyer has had conversations with the individual, he or she may record these conversations on video or audio with the person's consent or may propose that the person draw up an explanatory note, certified by a notary, to serve as a basis for the person's hearing by the criminal investigation body or the court (Dolea, I. et al., 2005, p.189).

It has been noted that "the conduct of discussions by the defence lawyer differs from the actual hearing in certain respects, namely: firstly, in the conduct of discussions, as provided for in Article 100 of the Criminal Procedure Code of the Republic of Moldova, the consent

of the person is required; secondly, it does not preclude criminal liability for giving false testimony or for refusing to testify." (Dolea, I. 2009, p.193). Therefore, the person with whom the discussions are held not only has the right not to make statements to the lawyer, but may at any time refuse to continue the discussion and, finally, even if they agree to make statements, they may not answer one or more of the questions asked and shall not be liable for evading the giving of statements.

For the purpose of evidence gathering, the defence lawyer is entitled, in the interests of legal assistance, to request, with the consent of the person they are defending, the opinion of a specialist to clarify issues that require special technical or scientific knowledge.

In practice, the opinion of a specialist is sought when it is necessary to obtain an independent assessment of the validity of the conclusions of an expert report, which the defence lawyer considers dubious, incomplete or inconclusive. Although such advice cannot replace or substitute the official conclusions of the judicial expert report, it may constitute grounds for challenging certain statements made by the expert or for supporting the observations expressed in a counter-expert report.

Currently, to make use of specialist knowledge, the lawyer may submit a request to the criminal investigation body, asking for the specialist's involvement in the criminal investigation. In accordance with Article 100(2)(3) of the Criminal Procedure Code of the Republic of Moldova, a defence lawyer admitted to criminal proceedings has the right, in the interests of legal assistance and with the consent of the person they are defending, to request the opinion of a specialist to explain issues that require special knowledge. This regulation must be aligned with Article 87 of the Criminal Procedure Code of the Republic of Moldova, which defines a specialist as a person called upon to participate in the performance of a procedural action in cases provided for by law.

This provision must be correlated with Article 87 of the CPC of the Republic of Moldova, according to which the specialist is the person called upon to participate in the conduct of a procedural action in the cases provided for by law, without being interested in the outcome of the criminal proceedings. The expert must have sufficient special knowledge and skills to assist the criminal investigation body or the court, thus ensuring the reliability and objectivity of the assessment of the technical or scientific evidence in question.

Thus, the expert's opinion is a complementary tool for the defence, allowing the lawyer to verify and thoroughly support the evidence in favour of the client, without substituting the role of the criminal investigation authorities or the court, while respecting procedural limits and the principles of impartiality.

## **Conclusions**

Article 100(2) of the Criminal Procedure Code of the Republic of Moldova establishes the fundamental legal framework for the exercise of the rights of defence counsel in the administration of evidence, which is the basis for independent investigation in criminal proceedings. Through its provisions, the law recognises essential rights for effective defence: requesting and presenting objects and documents, conducting interviews with individuals and consulting specialists to explain issues requiring special knowledge. These tools enable the defence lawyer to identify additional evidence, verify the validity of expert

conclusions and formulate requests and objections in a possible repeat expert examination, without, however, replacing the role of the prosecution or the court.

In practice, however, the effective exercise of these rights is significantly limited. The Code of Criminal Procedure does not provide clear mechanisms to ensure respect for the rights of the defence and does not establish sanctions for refusal to cooperate by individuals or legal entities, thereby substantially restricting the lawyer's ability to fully exercise their powers. In addition, the amendments to the Law on the Bar (2021) formally extend the scope of the defence lawyer's rights, but their integration into the criminal process is conditioned by the provisions of Article 2 of the CPC of the Republic of Moldova, which limits the normative sources exclusively to the Code of Criminal Procedure, the Constitution and international treaties, thus marginalising the concrete applicability of the rights provided for in other normative acts.

This situation highlights a systemic tension between the formal recognition of the rights of the defence and their actual possibility of implementation. Although independent investigation provides the defence lawyer with a valuable tool for protecting the client's interests and verifying evidence, the lack of procedures in criminal procedural law, effective procedural remedies and clear guarantees affects its effectiveness. Consequently, a uniform and coherent interpretation of Article 100(2) of the CCP is required, in line with the principles of independent investigation, to ensure an effective balance between the powers of the defence and the powers of the state, guaranteeing the effective protection of the rights of persons subject to criminal proceedings. References

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