

Theoretical explanations and practices regarding the distinction between the concepts: judicial error, error of law and fundamental vice in the legislation of the Republic of Moldova

PhD. student **Vasilisa MUNTEAN**¹

Abstract

In the research, a doctrinal and legal analysis of the concept of legal error is carried out. The author provides a self-defined definition of the concept addressed and highlights the main causes and conditions for the occurrence of judicial errors. At present, in the specialized legal doctrine of the Republic of Moldova, the problem of defining the judicial error has been little approached. In this respect, this scientific article is a scientific approach aimed at elucidating the theoretical and normative deficiencies and errors that occur in the area of reparation of the prejudice caused by judicial errors. In order to achieve our goal, we aim to create a core of ideas and referral mechanisms that ensure a certain interpretative and decisional homogeneity in the doctrinal and legal characterization of the phrase "judicial error".

Keywords: *judicial error, court, judge, criminal trial, judgment, jurisdiction, criminal investigation.*

JEL Classification: K41

1. Generalities

The activity of the courts as state bodies delegated to the judiciary is governed by a single purpose: the protection of the rights, freedoms and legitimate interests of persons. The achievement of this goal is manifested through the pronouncement of legal acts.

As a rule, the examination of a case ends with the adoption of a judgment, in which the court expresses its views on the merits of the indictment brought by the prosecution or the claims made by the applicant. As a judicial act, the court must meet certain conditions of validity regarding its legality.

The way in which the conduct of the criminal trial and the professional training of those involved in the performance of justice are regulated, exclude, in principle, the risk of judicial errors. However, given that the act of justice is the work of some people, and that any human activity is subject to error, it is possible that judicial errors sometimes occur in the process of criminal justice².

¹ Vasilisa Muntean - Judge at the Chisinau District Court (Buiucani District), PhD student, University of European Political and Economic Studies "Constantin Stere", Republic of Moldova, mihalacheiurie1983@gmail.com.

² Popescu G., *Repararea pagubei materiale sau a daunei morale în cazul condamnării pe nedrept sau al privării ori restrângerii de libertate în mod nelegal*. EIRP Proceedings. Danubius University of

Article 53 (2) of the Constitution of the Republic of Moldova³ establishes that the state has patrimonial responsibility, according to the law, for the damages caused by the errors committed in the criminal trials by the investigative bodies and the courts. Considering the content of this constitutional norm, we can conclude that the basis for the occurrence of the right to reparation for the prejudice caused by judicial errors is the admission of the error in the activity of the criminal prosecution bodies and the courts.

2. The level of investigation of the problem at the moment, the objective of the research

At present, in the specialized legal doctrine of the Republic of Moldova, the problem of defining the judicial error has been little approached. In this respect, this scientific article is a scientific approach aimed at elucidating the theoretical and normative deficiencies and errors that occur in the area of reparation of the prejudice caused by judicial errors.

In order to achieve our goal, we aim to create a core of ideas and referral mechanisms that ensure a certain interpretative and decisional homogeneity in the doctrinal and legal characterization of the phrase "judicial error".

3. Applied methods and materials

The methodological support of scientific research is comprised of a set of theories and concepts specific to the analyzed domain, materialized as a finality in the content of the scientific article through the methods of analysis: a) *logic* (deductive, inductive, specification and so on.), consisting in using the laws, categories and logical reasoning with reference to the synthesis of regulations aimed at defining the notion of judicial error; b) *systemic*, manifested through the research of the legal norms regulating the concept of "judicial error" and which are incorporated into different normative acts; c) *synthetic*, consisting of generalizing the analyzed materials, in order to optimize the national legislation in the field.

In the research carried out, Law no.1545 of 25.02.1998 on the way of reparation of the damage caused by the illicit actions of the criminal prosecution bodies, of the prosecutor's office and of the courts⁴ that form essential and indispensable legal support in the law in order to achieve the objectives envisaged in this paper. Also, in the content of the scientific article were reflected the legal norms of the Civil Code of Republic of Moldova⁵, the Code of Criminal Procedure of Republic of Moldova⁶, as well as the provisions of other normative acts.

Galati, 2011, p. 229.

³ Constitution of the Republic of Moldova of 29.07.1994, Official Gazette of the Republic of Moldova, 1994, no. 1.

⁴ Law on the reparation of the damage caused by the illegal actions of the criminal investigation bodies, the prosecutor's office and the courts, no.1545 of 25.02.1998. In: Official Gazette of the Republic of Moldova, 1998, no. 50-51.

⁵ Civil Code no. 1107 of 06.06.2002. In: Official Gazette of the Republic of Moldova, 2002, no. 82-86.

⁶ The Code of Criminal Procedure of R.M. no.122 of 14.03.2003. In: Monitorul Oficial al Republicii

Increased attention has been given to judicial practice in this area, and on this occasion the judgments of the national courts reveal how to apply the law on legal guarantees to compensate for the damage caused by the illegal search at the home of the perpetrator and third party. With the aim to uniform the application of judicial practice in this field, reference was made in the scientific article to the jurisprudence of the European Court of Human Rights, with an indication of the deficiencies found by the European Court regarding the authorization and execution of the search to the competent law institutions.

4. Results and discussions

What do we mean by error? Error is a false representation of the facts. If we refer to the issue that concerns us, by judicial error we mean punishment or enforcement criminal procedural constraint towards an innocent person for committing the offense. Russian author *T. Beker* noted that no matter how well the judges were prepared, however responsible and careful their attitude towards the fulfillment of their obligations, they are never guaranteed against deviations and errors⁷. The existence of judicial errors sabotage all judicial activity, thus contributing to the image of the entire judiciary. Moreover, the judgment can not be considered as fair and equitable, and judicial protection - complete and effective, if a judicial error has been admitted⁸.

In the literature, there is no unanimous opinion on the meaning of the notion of judicial error. According to the doctrinal opinion of the Russian Federation, judicial error is a mistake admitted by the court, manifested by violation of procedural and / or substantive law rules, which contradicts the purpose of the civil proceeding, as a result of which the act of justice becomes illegal⁹. According to another view, judicial error is one of the obstacles that stand in the way of the civil process¹⁰. Thus, the author *I.M. Zaitev* includes in the category of judicial errors any violations admitted by the judges at different stages of the examination of the case¹¹. In another opinion, it is argued that the definition of the notion of judicial error needs to be succinct in order not to create difficulties

Moldova, 2003, no. 104-110.

⁷ Becker TA, *Установление истины как основа предотвращения судебных ошибок в уголовном производстве: автореферат диссертаций кандидата юридических наук (The establishment of truth as the basis for the prevention of judicial errors in criminal proceedings: the author's abstract of dissertations of the candidate of legal sciences)*, Tomsk State University, 2017, p.17.

⁸ Terekhova L.A., *Система пересмотра судебных актов в механизме судебной защиты (The system for reviewing judicial acts in the mechanism of judicial protection)*, Moscow: Wolters Kluwer 2007, p. 6.

⁹ *Idem*, p.19.

¹⁰ Blazomirskaya I.V., *Исправление судебной ошибки в гражданском процессе как составная часть права на судебную защиту (Correction of a judicial error in the civil process as an integral part of the right to judicial protection)*, „Journal. Historical and social-educational thought” (The Russian Federation), 2014, no. 6, p. 222.

¹¹ Skripina S.V., *Понятие, виды и причины судебных ошибок в гражданском процессе (The concept, types and causes of judicial errors in the civil process)*, „Domestic jurisprudence” (The Russian Federation), 2017, no.5, p. 64.

in understanding the essence¹².

We appreciate that we are in the presence of judicial error whenever a person has been finally convicted of a criminal act as an offense, regardless of whether the punishment applied or the deprivation measure was or was not enforced under the condition that such a decision be subsequently abolished or annulled by extraordinary means of redress (review), and in retrial to give a final decision to acquit the person concerned for a new or recently discovered fact that proves to have occurred miscarriage of justice¹³.

The Russian researcher A.A. Ustyugov concludes that the judicial error is manifested by the failure to reach the purpose of the procedure. Judicial error is distinguished by a number of features: 1) it becomes visible from the time of the judgment; 2) bears an intentional character; 3) the finding and removal of the judicial error is made by an authorized person in the order of a special procedure; 4) the specific nature of the samples; 5) occurs independently of the guilt of the judge who adopted the judgment¹⁴.

The reasons for the occurrence of judicial errors can be diverse, such as: excessive burden on judges, staff shortage, insufficient training and education of judges, lack of a proper working chart of judges, leading to a hasty and superficial case analysis, inadequate remuneration of judges, insufficient technical and material endowment of courts, deficiencies in the selection mechanism of judges with emphasis on moral and ethical dimensions, increased complexity of criminal and contraventional cases¹⁵, lack of specialization of judges in the lack of uniformity of the judicial practice, the permanent updating of the legislation, the imperfection of procedural law and the contradiction of many of its provisions, the existence of time limits for carrying out procedural actions, the superficial examination by the institution the complexity of complex cases in order to finalize their examination more quickly, the poor quality of postal services, the irresponsible attitude of some judges etc.

Some authors have divided the reasons for the occurrence of judicial errors in objective reasons, such as: workload, lawmaking and subjective reasons: the level of training and the moral qualities of magistrates, the superficial attitude in the exercise of service duties etc¹⁶.

¹² Anishina DI, Faizulina GS, *Файзулина Г.С. Судебная ошибка в гражданском судопроизводстве: понятие, проблемы, предупреждение (Judicial error in civil legal proceedings: concept, problems, warning)*, "Journal of Science. Society. Education" (The Russian Federation), 2017, no.3, p. 67.

¹³ Barac L. *Câteva considerații cu privire la procedura reparării pagubei materiale sau a daunei morale în caz de eroare judiciară sau în caz de privare nelegală de libertate ori în alte cazuri (Some considerations regarding the procedure for repairing material damage or moral damages in the event of a judicial error or in case of unlawful deprivation of liberty or in other cases)*, June 25, 2017, www.juridice.ro/382615/ (visited 13.08.2017).

¹⁴ Ustyugov A.A. *Судебные ошибки: проблемы, интерпретации, понятия (Judicial errors: problems, interpretations, concepts)*, „Young scientist” (The Russian Federation), 2013, no. 5, pp. 556-557.

¹⁵ Степанова НА, Степанова Н.А. *Классификация ошибок, допускаемых при производстве по уголовным делам (Classification of errors allowed in criminal proceedings)*, „Jurisprudence and law enforcement practice” (The Russian Federation), 2016, no. 1, p. 45.

¹⁶ Majorova LV, Nazarov A.D. *Следственные и судебные ошибки, связанные с неправильным*

In Romanian literature, the judicial error is defined as the situation that is manifested by the conviction or imprisonment of an innocent person, as a result of mistakes in the process of criminal justice¹⁷. Judicial error may arise from the lack of knowledge of essential facts or circumstances by the court, the use of distorted evidence (through criminal activities), the corruption of the judicial bodies that investigated or tried the case, the existence of contradictory judgments¹⁸.

In another definition, a legal error is the error committed in the trial of a case, consisting in the misstatement of the facts, which resulted, in the criminal proceedings, in the final conviction or imprisonment of an innocent person or the exoneration of one persons guilty of committing an offense¹⁹. Judicial errors are mistakes made by judges or prosecutors in court proceedings. Judicial errors form the basis for the exercise of ordinary or extraordinary ways of attack. They can also generate an indemnity obligation of victims²⁰. It has also been mentioned that the judicial error refers to a procedural defect, which is so fundamental that it invalidates the final judicial decision and once known, may lead to another judicial solution diametrically opposed to the one affected by this defect²¹.

Judicial errors are divided into: procedural errors that exist when the judicial task does not solve the basic task of the criminal proceedings, which refers to the offense and the person who committed it, and criminal errors related to the qualification of the deed incriminated and punishment²².

In order to determine in which circumstances the actions of the responsible persons within the criminal investigation bodies and the courts can be qualified as judicial errors, it is proposed to use two interdependent criteria: ethical and legal. The essence of the first criterion refers to equity, the supreme principle that governs the relations between people and which is reflected in the state-citizen, society-personality. Being an ethical category by nature, equity goes beyond moral relations and is a beginning for law, law, justice²³.

применением уголовного закона и нарушениями его запретов (Investigative and judicial errors related to improper application of the criminal law and violations of its prohibitions), „Siberian legal bulletin” (The Russian Federation), 2016, no. 3, p. 28.

¹⁷ Olteanu A., *Analiza cazurilor de revizuire în reglementarea procesual penală (Analysis of cases of revision in the criminal procedural regulation)*, http://old.mpublic.ro/jurisprudenta/publicatii/analiza_cazurilor_de_revizuire.pdf (visited 14.09.2017).

¹⁸ Yurova K.I., Alikumov V.V., *Виды следственных и судебных ошибок в уголовном процессе (Types of investigative and judicial errors in the criminal process)*, „Journal of Innovative Science” (The Russian Federation), 2016, no. 5, p. 32.

¹⁹ Stepanova N.A., *op.cit.*, p. 43.

²⁰ Ciuncan D., *Dictionar de procedură penală (Dictionary of criminal procedure)*, Bucharest: Universul Juridic, 2015, p. 101.

²¹ Studiu cu privire la crearea mecanismului național de remediere și compensare pentru erorile judiciare și vicii de procedură (Study on the establishment of a national remedy and compensation mechanism for judicial errors and procedural defects), <http://agent.gov.md/wp-content/uploads/2016/12/Studiu-eroare-judiciara-.pdf> (visited 13.08.2017).

²² Salas D., *L’erreur judiciaire*, Paris: Dalloz, 2015, p. 45.

²³ Caraman I. *Erorile judiciare și puterea lucrului judecat - res judicata (Judicial errors and power of trial - res judicata)*, National Scientific Conference with International Participation Integration through Research and Innovation, 28-29 September 2016. Summary of Communications, Volume

According to *I.Caraman*, one of the main conditions for the occurrence of judicial errors is the conduct of the participants in the trial, especially the parties who often show a lack of good faith in the exercise of their procedural rights and aim to mislead the judge to obtain a favorable decision. In order to counteract any abuses by the litigants, good theoretical and practical training of judges is necessary²⁴.

The finding and removal of judicial errors can be made by using appeals (appeal, appeal, review) by the participants in the trial. However, there are situations in which appeals do not have the desired effect. Thus, in the opinion of the author *V.Daghie*, the judgments handed down on appeal are often no better than the ones appealed, and sometimes the wrong decisions replace the right ones, irrevocably going into the power of the trial²⁵.

The legal significance of the judicial error. Is interested in the fact that in the Criminal Procedure Code, the Code of Civil Procedure²⁶ and the Code of Contravention²⁷ the legislator uses three closely related terms: "judicial error", "error of law" and "fundamental vice".

In the Code of Criminal Procedure, the notion of "judicial error" is used twice but without the legislator explaining the meaning of this term. The first reference to the notion of judicial error is found in Article 23 of the Code, entitled "Ensuring Victims' Rights following Crime, Abuse service and judicial errors". Although in the name of the nominated article the phrase "judicial error" exists, the legislator no longer refers in the content of the article to that notion.

In the second situation, the term "judicial error" is used in the context of indicating the grounds for re-examining the case. Under Article 435 (2) (c) of the Code of Criminal Procedure, when examining the appeal, if it is found that the judicial error can no longer be corrected, the court of appeal may order that it be re-judged in court call.

A special situation is found in the Code of Criminal Proceedings of the Republic of Moldova, which excludes from the use of the term "judicial error" and operates exclusively with the basic vices notion that affected the decision to terminate the contravention process (art.380 paragraph (1)) and error (Article 466). Thus, according to art.380 paragraph (1) of the Code, the resumption of the contravention process which has ceased can only take place in the case of discovering new circumstances or in the case of the detection of a fundamental defect, which affected the decision to terminate the contravention process.

The term error of law is used in Article 466 (a) to (l) of the Code of contravention. According to the rule concerned, court orders for contravention

I, Chişinău: CEP USM, 2016, p. 213.

²⁴ Caraman I., *op.cit.*, pp. 212-213.

²⁵ Daghie V., *Căile de atac de reformare în procesul civil (Remedies for rectification in the civil process)*, Bucharest: Naţional, 1997, p. 11.

²⁶ The Civil Procedure Code of the Republic of Moldova no.225 of 30.05.2003, published in the Official Gazette of the Republic of Moldova, 2003, no. 111-115.

²⁷ The Contravention Code of the Republic of Moldova No.218 of 24.10.2008, published in the Official Gazette of the Republic of Moldova, 2009, no. 3-6.

issued by the courts of law may be appealed against in order to correct the errors of law.

When examining the grounds under Article 466 (a) - (l) of the Code of Contravention, we can see that they are very varied and result in the submission of the file at a retrial because of the existence of errors of law. By way of example, we mention some of the errors of law: the provisions on competence have not been respected; the hearing was not public; the case was tried without the legal quorum of a party; the judgment under appeal does not contain the grounds on which the decision is based; the constituent elements of the contravention have not been met; the offender was sanctioned for an unforeseen code of conduct; sanctions have been applied to limits other than those prescribed by law; the offender was subjected before the contravention to the deed; the wrongful act was committed; there was a more favorable law for the offender; the Constitutional Court declared unconstitutional the provision of the law applied, etc.

Regretfully, the Code of Contravention does not regulate the compensation procedure for the detection of fundamental flaws. Under these circumstances, it would appear that, from the formal point of view, the legislature excluded the possibility of bringing actions for damages for procedural defects (judicial errors) detected in the contravention proceedings. However, taking into consideration the provisions of art. 382 para. (6) and art. 384 para. (6) of the Code of Contravention, which makes direct reference to the application of the norms of criminal law in the examination of the contravention cases, we conclude that the right to indemnity procedural defects in the contravention proceedings are possible, by directly applying the provisions of the Criminal Procedure Code.

This conclusion is reinforced by the evolution of the jurisprudence of the European Court of Human Rights, where no distinction is made between the contravention and criminal proceedings, but it is pointed out that both procedures need to be governed by the guarantees of a fair trial (*Fomin vs. Moldova*, no. 36755 of 11.10.2011, *Guțu vs. Moldova* no. 20289 from 07.09.2007 etc.).

More details on the correlation between the notions of judicial error and the error of law are found in the Plenary Session of the Supreme Court of Justice no.9 of 30.10.2009 "On the Judgment of the Ordinary Appeal in the Criminal Case"²⁸. Although the Supreme Court of Justice does not define the notion of interest, we can infer that, in the supreme court's view, the notions of judicial error and error of law would be synonymous. According to point 31 of Judgment of the Plenary of the Supreme Court of Justice no. 9 of 30.10.2009, if the court of appeal establishes an error of law committed by the court of first instance, it will show what constitutes the unlawful nature of the activity of the court of first instance, expresses the violation committed by the law, as well as the remedies by analyzing the matter of regulation and jurisprudence. If the contested decision is inadequately reasoned, but the solution is lawful, the appeal court will correct this judicial error.

In the Code of Criminal Procedure of R.M. the legislator prefers to operate

²⁸ Judgment of the Plenum of the Supreme Court of Justice of R.M. no.9 of 30.10.2009 "On the judgment of the ordinary appeal in the criminal case" (visited 12.09.2017).

with a notion of alternative, called a fundamental flaw in the previous procedure that affected the ruling. Thus, in Article 6 (4) of the Code, the defect of fundamental importance in the previous procedure which has affected the judgment is defined as an essential violation of the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, other treaties international, by the Constitution of the Republic of Moldova and other national laws. In other words, a vice is called fundamental because it refers to the violation of fundamental rights of the person in the course of judicial proceedings.

In the light of the Code of Criminal Procedure, the discovery of a fundamental flaw in the previous procedure is a basis for the extraordinary ways of reopening the criminal proceedings completed both at the criminal investigation stage and at the judicial stage. Thus, finding a fundamental flaw at the criminal investigation stage may be a basis for resuming criminal prosecution (Article 287 paragraph (4)), repeated prosecution, committing the same act (Article 22 (3)).

The discovery of a fundamental flaw gives the person an opportunity to appeal against a judgment that has become irrevocable. In accordance with Article 453 (1) of the Code of Criminal Procedure, irrevocable judgments may be appealed by way of an appeal for annulment in order to correct the errors of law committed in the examination of the case, where a fundamental defect in the previous procedure has affected the judgment under appeal.

In the specialized doctrine, it is mentioned that fundamental vice is a procedural violation that may or may not affect a judgment or a judicial solution, but not necessarily on the substance of the case. A vice can evolve into a legal error when it affects the merits of the case. For example, it is procedural defect to use coercive evidence by torture and that can affect the fairness of the process, but not the cause of the case, that is, the solution of the whole process²⁹.

There is a fundamental flaw and if the decisions of the hierarchically inferior courts contain serious errors of law in that they do not contain the grounds on which the solutions are based, violate the provisions of Articles 2 and 6 of the European Convention on Human Rights, it affects the rights of the injured party³⁰.

We mention that the notion of judicial error also exists in procedural-civil law, but without being explicitly defined. Thus, in accordance with Article 445 (c) of the Code of Civil Procedure, the judicial error is the basis for the appeal court to submit a retrial.

More extensive regulation of the way of reparation of the prejudice caused by judicial errors and criminal prosecution is provided in the Law on the way of reparation of the prejudice caused by the illicit actions of the criminal prosecution bodies, of the Prosecutor's Office and of the courts no.1545 of 25.02.1998. In the Law, the legislator uses the expression illicit actions of the body empowered to

²⁹ Study on the establishment of a national remedy and compensation mechanism for judicial errors and procedural defects, <http://agent.gov.md/wp-content/uploads/2016/12/Studiu-eroare-judiciara-.pdf> (visited 13.09.2017).

³⁰ Furdui S., *Sinteză de soluții motivate cu privire la judecarea recursului în cazul semnării unui viciu fundamental în cadrul procedurii precedente, ce afectează hotărârea pronunțată* (Summary of reasoned solutions to the appeal in the event of a fundamental defect in the previous proceedings, which affects the judgment given), „Revista Națională de Drept”, 2012, no. 5, p. 28.

examine cases of offenses, the criminal investigation body or the court, as equivalent to the notion of judicial error.

Article 3 paragraph (1) of Law no.1545 of 25.02.1998 establishes the list of unlawful actions for which material and moral damage can be repaired: illegal detention, illegal application of preventive measures in the form of arrest, statement not to leave the locality or the country, illegal taking of criminal responsibility, illegal condemnation, illegal confiscation of property, illegal obedience to community service, etc.

In the system of the European Convention on Human Rights (the Convention) and the jurisprudence developed on its behalf, the notion of judicial error as a general rule is associated with criminal matters. It derives from the idea of a factual error committed by the court which, being called upon to rule on the basis of a criminal charge, pronounces the conviction of an innocent person.

5. Conclusions and recommendations

Generalizing the ones outlined, we come to the conclusion that:

1) Judicial error is a concept closely related to the merits of the case. In national law, judicial error has no coherent regulation. Both the Code of Criminal Procedure, the Code of Contraventions and the Code of Civil Procedure are summarized in the sequential reproduction of the phrase "judicial error", but without giving that notion a proper definition.

On the other hand, Law no.1545 of 25.02.1998 lists a number of violations of fundamental rights in the criminal proceedings in connection with the application of special coercive measures (arrest, detentions, searches, etc.) and special insurance measures seizures, searches, lifting, etc.), but does not refer to violations of procedural nature, affecting the merits of the case. Consequently, we come to the conclusion that in national law there is no clear delimitation of procedural violations attributable to the category of judicial errors.

2) There are differences between the concepts of error of law and error of fact. Thus, judicial error is a grave, categorical violation that affects the merits of the case and changes the solution to the whole process of judgment. For example, the expiry of the prescription for criminal liability was not taken into account and the person was convicted.

The error of law is manifested through preliminary actions, which can influence the proper conduct of the trial but do not affect the final solution. For example, it is an error of law not to have a party to the proceedings, misapplication of a preventive measure or non-compliance with the provisions on jurisdiction. The errors of law are not so serious as to alter the final solution to the process. They can be corrected by cassation by the higher court and not always have the consequence of granting the right to reparation.

The judicial error must not be confused with the material error admitted in the content of the judicial act, the correction mechanism of which is provided by art.249 of the Civil Procedure Code.

3) We conclude that the fact of the occurrence of the judicial error is a factual circumstance, called a fundamental flaw and which, because of its gravity, can decisively influence the decision of the court. At first sight, being unknown, this flaw of a fundamental nature affects the substance of the case and can hardly be detected.

In order to unify the legal framework, we recommend amending the provisions of the Criminal Procedure Code and the Code of Conduct by substituting the expressions: fundamental flaw in the previous procedure, which affected the stipulated decision (Article 6 (44) of the Code of Criminal Procedure) , a fundamental flaw in the previous prosecution that affected the respective decision (art. 287 (4) of the Code of Criminal Procedure) and the fundamental flaw that affected the decision to terminate the contravention process (art.380 of the Code of Contravention) the phrase "judicial error".

4) According to its legal nature, the institution of reparation for damage caused by judicial errors is civil law. The fact that the damage occurs in the course of criminal proceedings does not affect the legal nature of this institution. The civil legal nature of the relationships that occur in the process of repairing the damage caused to persons by judicial errors is determined by the fact that these relations are patrimonial, occur on the initiative of the injured person and are governed by norms contained in the civil law. The method of regulating social relations for reparation of the prejudice caused by judicial errors is enacting, as these relationships can only be born on the initiative of the rehabilitated person.

Bibliography

- Anishina DI, Faizulina GS, *Файзулина Г.С. Судебная ошибка в гражданском судопроизводстве: понятие, проблемы, предупреждение (Judicial error in civil legal proceedings: concept, problems, warning)*, "Journal of Science. Society. Education" (The Russian Federation), 2017, no. 3.
- Becker T.A., *Установление истины как основа предотвращения судебных ошибок в уголовном производстве: автореферат диссертаций кандидата юридических наук (The establishment of truth as the basis for the prevention of judicial errors in criminal proceedings: the author's abstract of dissertations of the candidate of legal sciences)*, Tomsk State University, 2017.
- Blazomirskaya I.V., *Исправление судебной ошибки в гражданском процессе как составная часть права на судебную защиту (Correction of a judicial error in the civil process as an integral part of the right to judicial protection)*, „Journal. Historical and social-educational thought” (The Russian Federation), 2014, no. 6.
- Caraman I. *Erorile judiciare și puterea lucrului judecat - res judicata (Judicial errors and power of trial - res judicata)*, National Scientific Conference with International Participation Integration through Research and Innovation, 28-29 September 2016. Summary of Communications, Volume I, Chișinău: CEP USM, 2016.
- Ciuncan D., *Dicționar de procedură penală (Dictionary of criminal procedure)*, Bucharest: Universul Juridic, 2015.

- Daghie V., *Căile de atac de reformare în procesul civil (Remedies for rectification in the civil process)*, Bucharest: Național, 1997, p. 11.
- Furdui S., *Sinteză de soluții motivate cu privire la judecarea recursului în cazul semnalării unui viciu fundamental în cadrul procedurii precedente, ce afectează hotărârea pronunțată (Summary of reasoned solutions to the appeal in the event of a fundamental defect in the previous proceedings, which affects the judgment given)*, „Revista Națională de Drept”, 2012, no. 5.
- Majorova LV, Nazarov A.D. Следственные и судебные ошибки, связанные с неправильным применением уголовного закона и нарушениями его запретов (Investigative and judicial errors related to improper application of the criminal law and violations of its prohibitions), „Siberian legal bulletin” (The Russian Federation), 2016, no.3.
- Popescu G., *Repararea pagubei materiale sau a daunei morale în cazul condamnării pe nedrept sau al privării ori restrângerii de libertate în mod nelegal*. EIRP Proceedings. Danubius University of Galati, 2011.
- Salas D., *L'erreur judiciaire*, Paris: Dalloz, 2015.
- Skripina S.V., *Понятие, виды и причины судебных ошибок в гражданском процессе (The concept, types and causes of judicial errors in the civil process)*, „Domestic jurisprudence” (The Russian Federation), 2017, no. 5.
- Stepanova NA, Степанова Н.А. Классификация ошибок, допускаемых при производстве по уголовным делам (Classification of errors allowed in criminal proceedings), „Jurisprudence and law enforcement practice” (The Russian Federation), 2016, no. 1.
- Terekhova L.A., *Система пересмотра судебных актов в механизме судебной защиты (The system for reviewing judicial acts in the mechanism of judicial protection)*, Moscow: Wolters Kluwer 2007.
- Ustyugov A.A. Судебные ошибки: проблемы, интерпретации, понятия (Judicial errors: problems, interpretations, concepts), „Young scientist” (The Russian Federation), 2013, no. 5.
- Yurova K.I., Alikumov V.V., *Виды следственных и судебных ошибок в уголовном процессе (Types of investigative and judicial errors in the criminal process)*, „Journal of Innovative Science” (The Russian Federation), 2016, no. 5.