

Comparative Law Perspectives on Recourse Against Decisions for Which the Law Does Not Provide the Remedy of Appeal

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Abstract

This study examines the legal regime governing recourse against judicial decisions for which the law does not provide the remedy of appeal, analysing the normative foundations, judicial practice, and constitutional considerations that justify maintaining a mechanism of legality review in such situations. The research aims to clarify the conditions under which recourse may be exercised, the categories of decisions that may be challenged, and the extent to which the reviewing court may intervene in the solutions adopted by the first-instance court. Methodologically, the study combines comparative analysis, doctrinal examination, and the evaluation of relevant case law, with particular emphasis on the devolutive, suspensive, and protective effects associated with this extraordinary remedy. The findings demonstrate that recourse remains an essential instrument for safeguarding the legality of criminal proceedings, providing an effective framework for correcting errors of law and reinforcing the principles of the rule of law. Furthermore, the study highlights the importance of well-reasoned judgments, the observance of judicial competence limits, and the consistent application of European Court of Human Rights standards. The implications of the research confirm the necessity of maintaining a coherent system of remedies capable of ensuring a balanced relationship between celerity, procedural efficiency, and the right to a fair trial.

Keywords: criminal recourse, legality review, non-appealable decisions, devolutive effect of recourse, errors of law, ECHR standards in criminal procedure, comparative perspectives.

JEL Classification: K14

1. Introduction

The legal regime governing recourse against decisions for which the law does not provide the remedy of appeal continues to generate both theoretical and practical difficulties, arising from the tension between two fundamental requirements: the need to ensure an effective review of legality and the imperatives of celerity in criminal proceedings. The central issue addressed in this study concerns the proper delimitation of the functions of recourse in such cases and the identification of criteria capable of maintaining a balance between the punitive purposes of the criminal process and the guarantees inherent in the right to a fair trial.

The novelty of this inquiry lies in its comparative examination of the institution of recourse through the lens of European standards, as well as in the reassessment of the

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grounds for recourse in light of recent developments in both national and international jurisprudence.

The research is structured so as to provide, in its first section, the conceptual and normative framework of recourse; in the second, an analysis of the relevant judicial practice; and, finally, a critical evaluation of the procedural consequences accompanied by proposals for improvement. The methodology employed combines doctrinal analysis, the comparative method, the interpretation of procedural criminal norms, and the examination of judicial reasoning.

The study advances several solutions aimed at promoting uniform criteria of admissibility, clarifying the limits of the reviewing court's control, and strengthening the reasoning of judicial decisions, with a view to ensuring coherent judicial practice aligned with the standards of the rule of law.

2. Research and discussion

“Decisions that cannot be challenged by appeal cannot, however, remain pronounced in ‘first and last instance,’ for this would reduce the system of judicial review to a single degree of jurisdiction. In such cases, recourse will be available even in the absence of a prior appeal.”³ This reasoning aligns fully with international law standards, under which states are required to ensure at least one effective remedy against a conviction.⁴

“The exclusion of these decisions from the appeal mechanism does not eliminate the possibility of challenging them by recourse; consequently, recourse constitutes the only ordinary remedy available in such cases.”⁵

Pursuant to Article 437 of the Code of Criminal Procedure, the following judicial decisions may be challenged through this form of recourse:

- judgments delivered by courts of first instance in cases involving minor offences for which the law provides exclusively non-custodial⁶ penalties. The unavailability of appeal for these categories of judgments is justified by the reduced complexity of such cases, which — while requiring a lawful and well-substantiated outcome — do not necessitate examination by three levels of jurisdiction. In this context, the Constitutional Court has reiterated that it falls within the prerogative of the legislator to determine the number of available remedies and the conditions under which they may be exercised, provided that constitutional guarantees are respected (DCC No. 43 of 5 April 2019, § 20; DCC No. 60 of 9 June 2020, § 33). Minor offences and contraventions have therefore not been excluded from the principle of double jurisdiction in criminal matters, the legislator having regulated, in Article 437 of the Code of Criminal Procedure, the possibility of recourse against decisions for which the law does not provide appeal, and correspondingly, in Article 465 of the Contravention Code, recourse

³ Nicolae Volonciu. *Tratat de procedură penală. Partea specială*, vol. II. [Treatise on Criminal Procedure. Special Part, vol. II], Bucharest: Paideia Publishing House, 1996, p. 280.

⁴ Dražan Djukic, *The Right to Appeal in International Criminal Law: Human Rights Benchmarks, Practice and Appraisal*. Leiden: Brill Nijhoff, 2019, 29. ISBN 978-90-04-40187-7.

⁵ Anca-Lelia Lorincz, “Reduction of Number of Degrees of Jurisdiction through the ‘Small Reform’.” *Acta Universitatis Danubius. Juridica* 7, no. 2 (2011): 147–157, at 153. ISSN 2065-0175; 2067-8509.

⁶ In our view, the correct term would be *non-custodial*, since the word *nonprivativ(ă)* does not appear in DEX.” *DEX Online*. Accessed July 15, 2025. <https://dexonline.ro/definitie/nonprivativ%C4%83>.

against judicial decisions delivered in contravention cases.⁷

- judgments for which certain parts have been classified, provided that the merits of the case are not challenged;

- judgments rendered in plea-bargaining proceedings and in cooperation agreement procedures;

- judgments adopted at the preliminary hearing stage;⁸

- judgments delivered on the basis of evidence administered exclusively during the criminal investigation phase;

- judgments of the Supreme Court of Justice. Judgments delivered by the Supreme Court of Justice acting as a court of first instance have been excluded from the category of appealable decisions on the grounds that the presence of judges with the highest level of professional qualification constitutes a sufficient guarantee of diligent and lawful adjudication.⁹

- orders delivered under Article 313 of the Code of Criminal Procedure, through which the examining judge adjudicated complaints challenging prosecutorial decisions concerning the refusal to initiate criminal prosecution, the exclusion of a person from criminal liability, the termination of the criminal investigation¹⁰, the dismissal of the criminal case¹¹, as well as decisions concerning the resumption of criminal prosecution. Courts of recourse routinely dismiss recourse applications submitted against orders not listed in Article 313(6) CPP, as well as those not covered by Article 437(1) points 3/1)

⁷ Decision No. 64 of 11 June 2020 on the inadmissibility of Referral No. 43g/2020 concerning the constitutional challenge of Article 444(1) of the Criminal Procedure Code (recourse against judicial decisions for which the law does not provide the remedy of appeal); Amal Clooney, Philippa Webb, *The Right to a Fair Trial in International Law*, Oxford University Press, 2020, pp. 655-657; Coral Arangüena Fanego, *The Right to a Double Degree of Jurisdiction in Criminal Offences*, in Javier García Roca & Pablo Santolaya, *Europe of Rights: A Compendium on the European Convention of Human Rights*, Brill | Nijhoff, 2012.

⁸ The accused has the right to challenge, by recourse, the judgment terminating the criminal proceedings (see Articles 332 paragraphs (1), (4), (5), 350 paragraphs (1), (2), and 437 paragraph (1) point (13) of the Criminal Procedure Code). Decision No. 83 of 17 July 2025 on the inadmissibility of Referral No. 209g/2024 concerning the constitutional challenge of the phrase “termination of the criminal prosecution on grounds of rehabilitation” in Article 23 paragraph (3) of the Criminal Procedure Code and of the phrase “non-rehabilitation of the person, provided in Article 275 point 4)” in Article 285 paragraph (2) of the same Code, as well as of the provisions of Article 6 letter b) of Law No. 1545 of 25 February 1998 on the procedure for repairing the damage caused by the unlawful acts of the criminal investigation bodies, the prosecution service and the courts (the right to compensation for damage [2]). (point 40).

⁹ Para. 35 of the Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova of 30 October 2009, No. 9, *On the Adjudication of Ordinary Recourse in Criminal Cases*, § 35.

¹⁰ According to § 35 of Constitutional Court Decision No. 32 of 25 March 2021 on the inadmissibility of Referral No. 153g/2020 concerning the constitutional challenge of Articles 313 paragraph (6) and 453 paragraph (1) of the Criminal Procedure Code (recourse and annulment recourse against the orders of the examining judge), “both the decision to discontinue the criminal prosecution and the decision to terminate the criminal proceedings may be challenged by recourse before the Court of Appeal and constitute a sufficient remedy for reviewing any potential abuses committed by the examining judge.”

¹¹ The reference, in the context of Article 437 paragraph (1) point 3/1 and Article 313 paragraph (6) of the Criminal Procedure Code, to the examining judge’s orders concerning the dismissal of the criminal case is imprecise and deficient from the standpoint of legislative drafting technique. Article 286 of the Criminal Procedure Code defines the dismissal of the criminal case as a solution that may be issued by the prosecutor during the criminal investigation. Consequently, we consider it appropriate to correlate the provisions of Article 437 paragraph (1) point 3/1 and Article 313 paragraph (6) of the Criminal Procedure Code with those of Article 286.

and 4) CPP;¹²

- other criminal decisions for which the law expressly provides this remedy — including the examining judge's order authorizing or refusing to authorize special investigative measures or criminal procedural actions (Article 305(8) CPP) (e.g., the order authorizing a search¹³; the order refusing to authorize the search of a domicile and/or the installation therein of audio-video surveillance devices, photographic or filming equipment)¹⁴; the order authorizing the completion of the criminal investigation in the absence of the accused (Article 305(8) CPP and Article 305/1(6) CPP); judicial orders concerning issues related to the enforcement of criminal judgments (Articles 469 – 473 CPP); judicial orders imposing, extending, or replacing preventive measures (Article 196(2) CPP)¹⁵; orders concerning the imposition or extension of pre-trial

¹² Decision of the Criminal Collegium of the Supreme Court of Justice of 8 February 2023, Case No. 1re-7/2023, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=22641 [accessed 15 July 2025]; The Criminal Collegium of the Chişinău Court of Appeal, by its decision of 14 June 2021, dismissed as inadmissible the recourse filed by attorney V. C., upholding the challenged order without modifications, since before the examining judge he had invoked the nullity of the search record. *“In the context of the provisions of Articles 313 paragraphs (1) and (6), 437 paragraph (1) point 3/1, and 449 paragraph (1) point 1) letter c) of the Criminal Procedure Code, the court reached the conclusion that the recourse was inadmissible, the order of the Chişinău District Court, Ciocana seat, of 29 March 2021 being final and not subject to recourse review, as it does not fall within the cases expressly listed in Article 437 paragraph (1) point 3/1) of the Criminal Procedure Code.”* Excerpt from Decision of the Criminal Collegium of the Supreme Court of Justice of 13 October 2021, Case No. 1re-149/2021, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=19622 [accessed 15 July 2025]. See also: Decision of the Criminal Collegium of the Supreme Court of Justice of 8 June 2022, Case No. 1re-30/22, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=20982 [accessed 15 July 2025]; Decision of the Criminal Collegium of the Supreme Court of Justice of 20 April 2022, Case No. 1re-47/2022, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=21067 [accessed 15 July 2025].

¹³ In the case of *Lisovaia v. Moldova*, “the Government pointed to a new remedy—namely Article 305 § 8 of the Criminal Procedure Code—and argued that the applicant could have relied on it as a means of challenging the search warrant. However, the Court notes that this provision was not in force at the material time and was introduced only four years later, i.e. on 27 October 2012.” (ECtHR judgment of 16 January 2018, § 26, available at: <http://hudoc.echr.coe.int/eng/?i=001-180287>) (accessed 19 November 2021). See also: Decision of the Criminal Collegium of the Supreme Court of Justice of 19 December 2022, Case No. 1cs-440/2022, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=22239 [accessed 15 July 2025].

¹⁴ “Moreover, pursuant to Article 305 paragraph (8) of the Criminal Procedure Code, the order of the examining judge adopted following motions concerning the performance of criminal investigative actions or special investigative measures may be challenged by recourse before the court of appeal. The verification of compliance with procedural criminal norms falls exclusively within the competence of the courts, as they are the only bodies capable of assessing in concreto the effects of applying the legal provision to the factual circumstances submitted for judicial examination in each individual case.” Constitutional Court Decision No. 67 of 12 October 2016 on the inadmissibility of Referral No. 84g/2016 concerning the constitutional challenge of certain provisions of the Criminal Procedure Code (§ 32).

¹⁵ “...given the short period for which the preventive measure is applied, challenging the order imposing the preventive measure only together with the judgment or the decision of the court of appeal could deprive the recourse of any practical effect, since by that time the preventive measure may already have expired.” SCJ Decision of 10 October 2024, Case No. 1r-15/24, § 18; available at: https://jurisprudenta.csj.md/search_col_penal.php?id=25262 [accessed 15 July 2025]. In this decision, the Supreme Court of Justice relies on the ECtHR judgment in *Riener v. Bulgaria* (2006), §§ 138–143, in which the Court found a violation of the right to an effective remedy, in conjunction with Article 2 of Protocol No. 4 to the ECHR, due to the domestic courts' failure to effectively examine the applicant's arguments in her recourse against the travel ban imposed on her.

detention or house arrest (Article 329 CPP)¹⁶; orders of the court of appeal refusing to impose seizure for securing the civil action¹⁷; orders rejecting a plea-bargaining agreement (Article 509/2(2) CPP); orders rejecting an application for review¹⁸ (except those delivered by the Supreme Court of Justice — Article 462(4) CPP); the order rejecting a request for the resumption of the trial may also be challenged by recourse (Article 465/6(8) CPP).

- judicial orders concerning the imposition of fines.¹⁹

According to the general rule established by Article 400 paragraph (2) of the Criminal Procedure Code of the Republic of Moldova and Article 327 paragraph (2) of the same Code, judicial orders may be challenged only together with the judgment.²⁰ The exceptions to this general rule are also set out in Article 437 paragraph (2) of the Criminal Procedure Code — namely, in situations where, under the law, they may be challenged separately by recourse, that is, prior to the pronouncement of the judgment.

A recourse lodged against the judgment is deemed to have been filed also against the judicial orders, even if these orders were issued after the judgment being challenged.

The holders of the right to file recourse against judicial decisions for which the remedy of appeal is not provided are the same as those who may file an appeal or a recourse against the decisions of the court of appeal (Article 401 of the Criminal Procedure Code).

The Constitutional Court acknowledges that recourse may also be filed with respect to the civil action.²¹

The Supreme Court of Justice declared inadmissible a recourse filed by a lawyer who had lost his license prior to lodging the recourse.²²

¹⁶ Decision of the Criminal Collegium of the Supreme Court of Justice of 29 August 2023, Case No. 1r-arrest-6/2023, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=23653 [accessed 15 July 2025].

¹⁷ See: Decision of the Criminal Collegium of the Supreme Court of Justice of 16 December 2023, Case No. 1r-15/21, available at: https://jurisprudenta.csj.md/search_col_penal.php?id=19912 [accessed 15 July 2025].

¹⁸ See Decision of the Criminal Collegium of the Supreme Court of Justice of 21 November 2024, Case No. 1r-16/24, available at: https://jurisprudenta.csj.md/search_col_penal.php?id=25429 [accessed 15 July 2025]; as well as the Order of the Supreme Court of Justice of 30 January 2025, Case No. 1r-14/24, available at: https://jurisprudenta.csj.md/search_col_penal.php?id=25626 [accessed 15 July 2025]. Order of the Supreme Court of Justice of 3 July 2025, Case No. 1r-11/25, available at: https://jurisprudenta.csj.md/search_col_penal.php?id=26157 [accessed 15 July 2025].

¹⁹ See: Decision of the Criminal Collegium of the Supreme Court of Justice of 13 December 2024, Case No. 1r-18/2024, available at: https://jurisprudenta.csj.md/search_col_penal.php?id=25414 [accessed 15 July 2025].

²⁰ Pursuant to Article 210 of the Criminal Procedure Code, the order by which the lifting of a seizure is ordered, when the grounds for maintaining the measure have ceased, cannot be challenged separately by recourse. Likewise, under Article 161 of the Criminal Procedure Code, a decision regarding the handling of material evidence adopted before the resolution of the criminal case is interlocutory in nature and may be subject to judicial review only together with the final judgment or decision. Supreme Court of Justice Order of 27 November 2025, Case No. 1r-37/2025, § 18, available at: https://jurisprudenta.csj.md/search_col_penal.php?id=26591 [accessed 15 July 2025].

²¹ See points 33 and 34 of Constitutional Court Decision No. 30 of 27 February 2025 on the inadmissibility of Referrals No. 215g/2024 and No. 216g/2024 concerning the constitutional challenges of Article 364¹ paragraph (10) of the Criminal Procedure Code (recourse against the judgment delivered on the basis of evidence administered during the criminal investigation).

²² See point 13 of the Supreme Court of Justice Order of 30 April 2025, Case No. 1r-3/25, available at: https://jurisprudenta.csj.md/search_col_penal.php?id=25915 [accessed 15 July 2025].

The time limit for filing recourse against decisions for which the law does not provide the remedy of appeal is 15 days from the date the judgment is pronounced. The provisions of Articles 402–407 of the Criminal Procedure Code regarding the calculation of the time limit, reinstatement in the time limit, filing after expiry, and withdrawal of the recourse brought against appeal decisions apply accordingly to recourse against decisions for which appeal is not provided.

According to point 16 of the Supreme Court of Justice Plenum Decision No. 22 of 12 December 2005, “*A solution dismissing an appeal (or recourse) as out of time or inadmissible does not entail any review of the challenged decision, since the appellate (recourse) court may not proceed to a factual and legal assessment of that decision except in the context of a recourse lawfully exercised.*”²³

Effects. The effects of this remedy remain unchanged, in the sense that they are identical to those of the appeal.

Suspensive effect. Recourses filed within the statutory time limit against judicial decisions for which the law does not provide the remedy of appeal have suspensive effect on enforcement with respect to both the criminal and civil aspects, unless the law provides otherwise.

Devolutive effect. The court of recourse examines the recourse only in relation to the person to whom the declaration of recourse refers and only with regard to the capacity in which that person participates in the proceedings. The court of recourse reviews the case within the grounds set out in Article 444 of the Criminal Procedure Code²⁴; however, beyond the grounds invoked and the requests made by the appellant, it is obliged to examine the entire case in all its aspects, without worsening the situation of the party in whose favour the recourse was lodged.²⁵

“*The Court observed that the devolutive effect provided in Article 441 paragraph (2) is similar to the devolutive effect of the appellate court provided in Article 409 paragraph (2) of the Criminal Procedure Code.*”²⁶

²³ See point 3 of the Decision of the Criminal Collegium of the Supreme Court of Justice of 16 June 2021, Case No. 1re-103/2021, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=18677 [accessed 15 July 2025].

²⁴ Decision of the Criminal Collegium of the Supreme Court of Justice of 21 July 2020, Case No. 1re-91/2020, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=16474 [accessed 15 July 2025].

²⁵ „*The Court notes that Article 441 of the Criminal Procedure Code regulates the devolutive effect and the limits of recourse lodged against judicial decisions for which the law does not provide the remedy of appeal. Given that, for such decisions, recourse constitutes the only ordinary remedy, paragraph (2) of the same article provides that the examination of the case is not limited solely to the grounds for cassation set out in Article 444 of the Criminal Procedure Code. On the contrary, the contested provision obliges the court of recourse, beyond the grounds invoked and the requests submitted by the appellant, to examine the entire case in all its aspects.*” Constitutional Court Decision No. 100 of 12 July 2022 on the inadmissibility of Referral No. 70g/2022 concerning the constitutional challenge of certain provisions of Article 441 paragraph (2) of the Criminal Procedure Code (the devolutive effect of recourse and its limits) (para. 25).

²⁶ Constitutional Court Decision No. 1 of 12 January 2023 on the inadmissibility of Referral No. 177g/2022 concerning the constitutional challenge of Articles 315 and 364 paragraphs (2) and (3) of the Criminal Procedure Code (the examination of evidence in the adjudication of recourse lodged against judicial decisions for which the law does not provide the remedy of appeal) (para. 22). “*It follows that the devolutive effect provided in Article 441 paragraph (2) is similar to the devolutive effect of the appellate court set out in Article 409 paragraph (2) of the Criminal Procedure Code, which establishes that the appellate court is obliged, beyond the grounds invoked and the requests submitted by the appellant, to examine both the factual and legal aspects of the case, without worsening the appellant’s situation. In other words, the legislator provided that recourse against judicial decisions for which the remedy of appeal is not available shall be*

Unlike recourses lodged against decisions of the appellate court, when examining the recourses provided in Article 437 of the Criminal Procedure Code, the court of recourse, under Article 441 paragraph (2), may quash the challenged act on grounds other than those invoked in the recourse.”²⁷

Non-aggravation of the appellant’s situation. When deciding the case, the court of recourse may not place the person in whose favour the recourse was lodged in a more unfavourable position.

Extensive effect. The court of recourse examines the case also in relation to persons in respect of whom no recourse was lodged or to whom the recourse does not refer, and it may issue a ruling concerning them as well, provided it does not worsen their situation.²⁸

Grounds. “*The Constitutional Court notes that, according to Article 444 of the Criminal Procedure Code and, respectively, Article 466 of the Contravention Code, the grounds for declaring recourse are intended to remedy errors of law.*”²⁹

The function of recourse, as also revealed through the comparative analysis of modern justice systems, is not limited to a formal review of the legality of judicial acts. Rather, it serves to protect the very credibility and fairness of the criminal process. This perspective is likewise confirmed at the international level, where remedies are regarded as essential institutional mechanisms for correcting judicial errors and maintaining jurisprudential coherence.³⁰ Consequently, the regulation of the grounds for recourse under Article 444 of the Criminal Procedure Code embodies these fundamental values, providing the normative framework necessary to remedy errors of law capable of affecting the fairness of the act of justice. Doctrine further emphasises that the existence of an effective remedy serves not only to correct errors but also to strengthen the legitimacy of the courts through impartial review of the first-instance decisions.³¹

The grounds for lodging recourse against judicial decisions for which the remedy of appeal is not available, pursuant to Article 444 of the Criminal Procedure Code, are the following:

examined by the court of recourse under the same conditions as by an appellate court.” Constitutional Court Decision No. 100 of 12 July 2022 on the inadmissibility of Referral No. 70g/2022 concerning the constitutional challenge of certain provisions of Article 441 paragraph (2) of the Criminal Procedure Code (the devolutive effect of recourse and its limits) (para. 26).

²⁷ Order of the Supreme Court of Justice of 8 December 2025, Case No. 1r-arrest-4/2025, available at: https://jurisprudenta.csj.md/search_col_penal.php?id=26430 (accessed 19 November 2025).

²⁸ “19. *Given that the same order imposed a fine on two persons, one of whom did not lodge a recourse, the court of recourse, acting in accordance with Article 443 of the Criminal Procedure Code, shall, for the same reason and by extension, issue a ruling also in respect of the senior precinct officer....*” SCJ Decision of 13 December 2024, Case No. 1r-18/2024, available at: https://jurisprudenta.csj.md/search_col_penal.php?id=25414 (accessed 19 November 2024).

²⁹ Constitutional Court Decision No. 64 of 11 June 2020 on the inadmissibility of Referral No. 43g/2020 concerning the constitutional challenge of Article 444 paragraph (1) of the Criminal Procedure Code (recourse against judicial decisions for which the law does not provide the remedy of appeal).

³⁰ Geert-Jan Alexander Knoops. *Redressing Miscarriages of Justice: Practice and Procedure in National and International Criminal Law Cases*. Ardsley, NY: Transnational Publishers, 2006, 18. ISBN 978-1571053688; Nicolae-Alexandru Moiceanu. “The Compliance with the Right to a Double Degree of Jurisdiction in the Matter of Plea Agreement.” *International Journal of Legal and Social Order* 1 (2021): 352–369. ISSN 2810-4188; Taylor R. Dalton “Appeals to Fairness: Can the Appeal Process at ICC Enhance Its Legitimacy?” *University of California, Davis Journal of International Law* 31, no. 2 (2025): 66–113.

³¹ Taylor R. Dalton, *op. cit.*, 2025, p. 83.

1) Failure to comply with the rules on jurisdiction by subject matter or by status of the person.

2) The court was not composed according to law or the provisions on alteration of the panel or incompatibility of the judge were violated. This ground encompasses: improper composition of the court, manifested either by non-observance of rules on the number of judges, or by the case being adjudicated by persons who did not have, or had lost, the status of judge; violation of the rule on the immutability of the judicial panel, according to which the panel must remain the same throughout the proceedings (with the exception provided by Article 31 paragraph (3) CPC)³². Under Article 6 § 1 of the ECHR, the court must be “*established by law*.”³³ This expression reflects the rule-of-law principle (*Jorgic v. Germany*, § 64³⁴; *Richert v. Poland*, § 41³⁵) and refers both to the legal basis for the existence of the “*court*” and to the court’s compliance with the rules governing its activity (*Gorguiladze v. Georgia*, § 68³⁶), as well as the lawful composition of the judicial panel in each case (*Posokhov v. Russia*, § 39³⁷; *Fatullayev v. Azerbaijan*, § 144³⁸; *Kontalexis v. Greece*, § 42³⁹).

3) The hearing was not public, except in cases where the law provides otherwise.

4) The case was adjudicated in the absence of the prosecutor, the accused, the defence counsel, the interpreter, or the translator, when their presence was legally mandatory.

5) The case was adjudicated at first instance without the lawful summoning of a party, or where a party, although lawfully summoned, was unable to appear and to inform the court of this impossibility.

³² The Criminal Collegium of the Supreme Court of Justice held in the reasoning of its decision that “...according to the allocation sheet, the case was assigned to the panel composed of judges I. I., S. F., and L. U., who commenced the examination of the case; however, the decision under appeal was continued and delivered by judges S. T., S. F., and S. G. (file references 166, 186, 193–200). Moreover, the case file does not contain an order of the president of the court substantiated on the criteria prescribed in Article 31 paragraph (3) of the Criminal Procedure Code and point 14 of the Regulation on the Procedure for Constituting the Judicial Panel and Replacing Its Members, concerning the replacement of judges I. I. and L. U. These circumstances clearly demonstrate that the courts of first instance and appeal did not adjudicate the criminal case in accordance with the law, as they adopted decisions lacking the legal reasoning on which the solution must be based, with the reasoning contradicting the operative part of the judgment, and the court not being composed in accordance with the law, in violation of Articles 31 and 33. Accordingly, the ordinary recourses are well-founded.” Decision of the Criminal Collegium of the Supreme Court of Justice of 3 October 2020, Case No. 1ra-1828/2020.

³³ Constitutional Court Judgment on the interpretation of Articles 116 paragraphs (2) and (4) and 136 paragraph (1) of the Constitution (extension of the mandate of certain judges until the appointment of their successors). In: *Official Gazette of the Republic of Moldova*, No. 416–422/100 of 2 December 2016.

³⁴ ECtHR judgment in *Jorgic v. Germany*, 12 July 2007, § 64. [Cited 22 March 2022] Available at: <http://hudoc.echr.coe.int/eng?i=001-81609>.

³⁵ ECtHR judgment in *Richert v. Poland*, 25 October 2011, § 41. [Cited 21 March 2022] Available at: <http://hudoc.echr.coe.int/eng?i=001-107165>.

³⁶ ECtHR judgment in *Gorguiladze v. Georgia*, 20 October 2009, § 68. [Cited 20 March 2022] Available at: <http://hudoc.echr.coe.int/eng?i=001-95161>.

³⁷ ECtHR judgment in *Posokhov v. Russia*, 4 March 2003, § 39. [Cited 20 March 2022] Available at: <http://hudoc.echr.coe.int/eng?i=001-65527>.

³⁸ ECtHR judgment in *Fatullayev v. Azerbaijan*, 22 April 2010, § 144. [Cited 20 March 2022] Available at: <http://hudoc.echr.coe.int/fre?i=001-98401>.

³⁹ ECtHR judgment in *Kontalexis v. Greece*, 31 May 2011, § 42. [Cited 20 April 2022] Available at: <http://hudoc.echr.coe.int/eng?i=001-104951>.

6) The challenged decision does not include the reasons on which the solution is based, or the reasoning contradicts the operative part, or the operative part is unclear, or the operative part of the written judgment does not correspond to the operative part pronounced after deliberation.

In *Boldea v. Romania*,⁴⁰ the ECtHR held that the provisions of Article 6 § 1 of the Convention require national courts to give reasons for their decisions; however, this obligation does not entail a detailed answer to every argument raised. It is sufficient that the courts genuinely examine the essential issues brought before them, and that the reasoning of the judgment reflects the arguments forming the basis for the decision.

In *García Ruiz v. Spain*,⁴¹ the ECtHR reiterated that, according to its established case law, judicial decisions must be reasoned in such a way as to sufficiently indicate the grounds on which they are based. The extent of this obligation may vary depending on the nature of the decision and must be assessed in light of the circumstances of the case as a whole.

These grounds fall within the category of insufficient reasoning of the judgment, regarded as a formal (procedural) defect. For the higher court to exercise effective review, judgments must contain reasoning both in fact and in law, ensuring the objective administration of justice in a state governed by the rule of law. Thus, according to the ECtHR's consistent jurisprudence, in order to reflect the principle of good administration of justice, judicial decisions should adequately state the reasons on which they are based. The purpose of judicial reasoning is to demonstrate to the parties that their arguments have been heard, thereby contributing to greater acceptance of the court's decision. In addition, the requirement to provide reasons compels judges to base their reasoning on objective arguments that take into account the rights of the accused.

7) The constituent elements of the offence were not met, or the court delivered a conviction for an act other than the one with which the defendant was charged, except in cases of legal reclassification to a more lenient provision. Under criminal law, the constituent elements of the offence are the object, the subject, the objective element, and the subjective element; the absence of any one of these elements precludes criminal liability. To establish the absence of an element, the court must make reference to the actual factual circumstances.⁴² Where the court has convicted a person for an act other than the one for which he was sent to trial⁴³, it has exceeded the limits of adjudication

⁴⁰ ECtHR judgment in *Boldea v. Romania*, 15 February 2007. Available at: <https://hudoc.echr.coe.int/rum?i=001-122801> [accessed 10 October 2025].

⁴¹ ECtHR judgment in *García Ruiz v. Spain*, 21 January 1999. Available at: <https://hudoc.echr.coe.int/rum?i=001-58907> [accessed 11 October 2025].

⁴² "At this point, the Criminal Collegium notes that, under the situation of 'failure to meet the constituent elements of the offence,' one must understand those cases in which a person has been convicted, yet his or her actions do not meet the constitutive elements of the respective offence (the person is not a subject capable of committing that offence, the objective or subjective element is missing, or the causal link between them is absent)." Decision of the Criminal Collegium of the Supreme Court of Justice of 22 July 2020, Case No. 1ra-1311/2020, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=16483.

⁴³ "With regard to the constituent elements of the offence provided in Article 303 paragraph (1) of the Criminal Code, the court of recourse notes that the object of the offence is the activity of the judiciary. An optional object of the offence is the judge's person, in situations where actions are directed against him or her in order to restrict the rights granted by the Criminal Procedure Code or other legislative acts. In such circumstances, judges — as subjects of criminal proceedings — may be recognised as injured parties in the criminal case. From the act imputed to C.I. in the indictment, the expanded Criminal Collegium finds that C.I. is accused of actions aimed at influencing a witness in a contravention procedure pending before the

set out in Article 325 paragraph (1) of the Criminal Procedure Code. Regarding the situation of legal reclassification to a more lenient criminal provision, this may occur, for example, when the accused is found to have committed a single offence rather than a concurrence of offences, or an offence such as homicide committed under the influence of strong emotional disturbance rather than intentional homicide. In this context, the applicable sentencing regime for one prejudicial act or another becomes decisive.

8) The defendant was convicted for an act that is not provided for by criminal law. The principle of legality of offences is enshrined in criminal legislation, and violation of this principle requires the quashing of such a judgment, as it undermines the very purpose of the criminal process — namely, to hold criminally liable only those who have committed offences. In its case law, the ECtHR has established that Article 7 of the Convention must be interpreted and applied so as to ensure effective protection against arbitrary prosecution, conviction, and punishment (see *Del Río Prada v. Spain* [GC], 21 October 2013, § 11⁴⁴; *Rohlena v. Czech Republic* [GC], 27 January 2015, § 50⁴⁵; *Vasiliauskas v. Lithuania* [GC], 20 October 2015, § 153⁴⁶; *Koprivnikar v. Slovenia*, 24 January 2017, § 45⁴⁷).

9) Penalties were applied outside the limits prescribed by law, or were incorrectly individualized in relation to the provisions of the Criminal Code. The courts failed to take into account the rules laid down in Articles 75–88 of the Criminal Code. This ground for recourse arises when courts do not apply penalties within the statutory minimums or maximums, do not grant reductions or increases as required by mitigating or aggravating circumstances, or do not correctly individualize penalties in cases of concurrence of offences.

*“Judicial practice shows that an excessively harsh penalty generates feelings of injustice, offence, resentment, and distrust in the law, which may lead to consequences contrary to the intended purpose. Likewise, an overly lenient sentence generates contempt for the punishment and is insufficient both for the offender’s rehabilitation and for preventing the commission of new offences.”*⁴⁸

It would be illogical for appellants to request verification of the sentence imposed where no penalty was applied and an acquittal was issued.⁴⁹

10) the convicted person had previously been finally judged for the same act, or

first-instance court. Therefore, it is established that these actions of Curjuc Igor were not directed at the object of the offence under Article 303 paragraph (1) of the Criminal Code — which can only be the activity of the judiciary — but were directed towards a person other than those exhaustively listed in the provisions of Article 303 paragraph (1) of the Criminal Code.” Decision of the Criminal Collegium of the Supreme Court of Justice of 22 September 2020, Case No. 1ra-711/20, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=16898

⁴⁴ ECtHR judgment in *Del Río Prada v. Spain* [GC], 21 October 2013, § 11. Available at: <https://hudoc.echr.coe.int/rum?i=001-127697> [accessed 12 October 2025].

⁴⁵ ECtHR judgment in *Rohlena v. Czech Republic* [GC], 27 January 2015, § 50. Available at: <https://hudoc.echr.coe.int/rum?i=001-151051> [accessed 3 November 2025].

⁴⁶ ECtHR judgment in *Vasiliauskas v. Lithuania* [GC], 20 October 2015, § 153. Available at: <https://hudoc.echr.coe.int/rum?i=001-158303> [accessed 17 October 2025].

⁴⁷ ECtHR judgment in *Koprivnikar v. Slovenia*, 24 January 2017, § 45. Available at: <https://hudoc.echr.coe.int/rum?i=001-170456> [accessed 15 October 2025].

⁴⁸ Decision of the Criminal Collegium of the Supreme Court of Justice of 15 December 2020, Case No. 1ra-1383/20, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=17661.

⁴⁹ Decision of the Criminal Collegium of the Supreme Court of Justice of 16 November 2021, Case No. 1ra-1393/2021, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=19888.

a ground for excluding criminal liability exists, or the penalty has been removed by a new law or annulled by an act of amnesty, or the defendant has died, or reconciliation of the parties has occurred in the cases provided by law.

11) the defendant was wrongly acquitted on the grounds that the act committed is not provided for by criminal law, or the criminal proceedings were wrongly terminated on the grounds that a final judgment already existed in respect of the same act, or a ground for excluding criminal liability existed, or the penalty was removed by a new law or annulled by an act of amnesty, or the defendant had died.

The first situation concerns the existence of *res judicata*, meaning that no person against whom a final judgment of conviction, acquittal, or termination of proceedings has been delivered may be prosecuted or tried again for the same act, even if the act receives a different legal classification (*non bis in idem*).

In another situation, grounds for excluding criminal liability existed, such as amnesty, pardon, prescription of criminal liability, or lack of a prior complaint. Finally, the penalty may have been removed by a new criminal law. The defendant's death leads to the quashing of the judgment, since it naturally eliminates criminal liability, which is governed by the principle of personal responsibility.

12) the act committed was given an incorrect legal classification. Legal classification is a matter of law, which places it within the issues subject to review by the court of recourse. This does not touch upon the merits, as the merits concern establishing whether the prejudicial act exists and assessing all factual circumstances. Therefore, determining whether the act constitutes an offence and which offence it constitutes is a matter of law. The factual findings must be accepted by the court of recourse as established by the lower courts, while the legal classification is subject to rigorous review and may be modified. Incorrect classification occurs when the court retains the commission of one offence (robbery) instead of another (aggravated robbery), or a completed offence instead of an attempt, or a concurrence of offences instead of a single offence. In the case of an acquittal, challenging the legal classification is irrational.⁵⁰

13) a more lenient criminal law has intervened. This ground reflects the *melior lex* rule in criminal law, according to which, when a more lenient law appears between the moment of committing the offence and the final adjudication, it shall be applied to the defendant.⁵¹

⁵⁰ "With regard to the grounds for recourse invoked by the administrator of 'M' SRL and provided in points 10) and 12) paragraph (1) of Article 427 of the Criminal Procedure Code—namely, that the penalties were individualised contrary to legal provisions and that the act committed was given an incorrect legal classification—the Criminal Collegium notes that, in the present case, these grounds for cassation are not applicable. This is because the defendants were acquitted of the offences imputed to them; thus, in such circumstances, their actions were not legally classified under any criminal provision, meaning that challenging the legal classification is illogical when no classification was carried out by the court in the first place. Likewise, it is illogical to request the review of a penalty where no penalty was imposed. Moreover, the content of the recourse does not contain arguments substantiating the cassation grounds invoked. Consequently, invoking the cassation grounds set out in points 10) and 12) paragraph (1) of Article 427 of the Criminal Procedure Code is merely declaratory in this case and cannot constitute a matter for judicial examination." Decision of the Criminal Collegium of the Supreme Court of Justice of 16 November 2021, Case No. 1ra-1393/2021, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=19888.

⁵¹ "The expanded Criminal Collegium notes that the appellant, as grounds for lodging the recourses, invoked the provisions of Article 427 paragraph (1) points 6) and 10) of the Criminal Procedure Code, namely the

14) the Constitutional Court has declared the legal provision applied in the case to be unconstitutional.

15) an international court, by a judgment rendered in another case, has found a violation of human rights and fundamental freedoms at the national level, which can also be remedied in the present case. In the field of fundamental human rights, where there is a discrepancy between domestic law and international conventions, the provisions of the international conventions to which the Republic of Moldova is a party shall apply. The Supreme Court of Justice, being able to react more promptly to violations of the Convention than the legislature, and invoking Article 4 paragraph (2) of the Constitution (“Where there is inconsistency between treaties concerning fundamental human rights to which the Republic of Moldova is a party and its internal laws, the international regulations shall prevail”), applies the Convention directly, including the judicial precedents created by the ECtHR.

A recourse shall be lodged in writing, by means of an application which, according to Article 445 of the Criminal Procedure Code, must contain:

- 1) the name of the court to which the recourse is submitted;
- 2) the name and surname of the appellant, his or her procedural capacity, or the indication of the person whose interests he or she represents, and the address of the appellant;
- 3) the name of the court that delivered the judgment, the date of the judgment, the name and surname of the defendant in respect of whom the judicial decision is challenged, the established facts, the operative part of the judgment, and the identification of the person who lodged the recourse;
- 4) the content and grounds of the recourse, with arguments demonstrating the illegality of the challenged decision and the requests of the appellant, indicating the invoked cassation grounds and formulating proposals regarding the requested decision;
- 5) the date on which the recourse is lodged and the appellant’s signature.

The recourse application shall be submitted to the court whose judgment is being challenged, in as many copies as there are parties in the proceedings. A person held in custody may submit the application for recourse to the administration of the detention facility, without attaching any copies.

After the expiry of the statutory time limit for lodging the recourse, the court that delivered the judgment shall forward the criminal case, together with the recourse, to the court of recourse within 5 days.

situations in which the challenged decision does not contain the reasoning on which the solution regarding the penalty is based, and where an individualised penalty was applied contrary to the legal provisions. At the same time, after analysing the case materials, the expanded Criminal Collegium finds that, in this case, a ground for recourse not invoked by the appellant is applicable—namely, the ground provided in Article 427 paragraph (1) point 13) of the Criminal Procedure Code, in the sense that a more lenient law has intervened for the benefit of the convicted person; this ground is confirmed in the present case... Having analysed the legal classification of the defendant’s actions on the basis of the evidence thoroughly examined by the first-instance court and the court of appeal, the court of ordinary recourse considers it necessary to reclassify those actions, pursuant to Article 10 of the Criminal Code and Law No. 179 of 26 July 2018 for the amendment of certain legislative acts, in force as of 17 August 2018, which was adopted after the decision of the court of appeal was delivered and introduced amendments to the provisions of Article 190 of the Criminal Code that are favourable to the defendant.” Decision of the Criminal Collegium of the Supreme Court of Justice of 30 October 2018, Case No. 1ra-986/2018, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=12222.

Waiver of recourse and withdrawal of recourse shall be carried out under the conditions established for appeals, which apply accordingly.

Preparatory procedural acts of the court of recourse. After the recourse has been received, the following preparatory acts shall be completed:

- a judge shall be designated to prepare the case for trial; “The designation of the judge responsible for preparing the case is carried out randomly, according to rules similar to those applicable in first-instance or appellate proceedings”;⁵²

- the case shall be set for hearing, and copies of the recourse shall be served on the interested parties.

Before the actual examination of the recourse, it is not excluded that an application for transfer of the case may be lodged and resolved by the Supreme Court of Justice.⁵³

The Criminal Panel of the Supreme Court of Justice finds that the reasons invoked in the request for transfer, which concern the alleged lack of impartiality of the judges of the Bălți Court of Appeal, are unfounded and merely declaratory, as they represent subjective assumptions.⁵⁴

Annual leave of the judges of a court does not constitute a lawful ground for transferring the adjudication of criminal cases received during that period to another court of the same level.⁵⁵

Taking into account the position previously held by the appellant within the Chișinău Court of Appeal, and with a view to ensuring objective criteria of judicial impartiality in the adjudication of the recourse against the order of the examining judge, safeguarding the confidence of litigants, including that of the local population, in the justice system, and avoiding any suspicion, as well as ensuring the objective, prompt and thorough resolution of the case and the proper conduct of proceedings, the Criminal Panel of the Supreme Court of Justice ordered the transfer of the case from the Chișinău

⁵² Igor Dolea. *Codul de procedură penală al Republicii Moldova (Comentariu aplicativ)* [The Criminal Procedure Code of the Republic of Moldova (Practical Commentary)], 2nd ed. Chișinău: 2020, 1143.

⁵³ See also the Order of the Criminal Panel of the Supreme Court of Justice of 23 August 2021, Case No. 1cs-196/2021, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=19246 (accessed 22 October 2021).

⁵⁴ “...representing only subjective assumptions of the party, which are not confirmed by any incontestable circumstances or objective data, and the impartiality of judges is to be resolved in the procedure provided for in Articles 33–35 of the Criminal Procedure Code.” Order of the Criminal Panel of the Supreme Court of Justice of 6 September 2021, Case No. 1cs-207/2021. The Criminal Panel of the Supreme Court of Justice also notes that, from the materials submitted for adjudication, it results that the parties did not file motions for recusal of the judicial panel (file references 76, 80, 83). Available at: http://jurisprudenta.csj.md/search_col_penal.php?id=19310 (accessed 22 October 2021).

⁵⁵ In this context, the Criminal Collegium notes that the arguments invoked by the Acting President of the Comrat Court of Appeal, F.D., regarding the fact that judges C.L., M.A., and G.S. were on annual leave and were therefore blocked in the PIGD system for case allocation, are not relevant to any circumstances that would generate a legal ground — of the categories enumerated — for transferring the case to another court of equal rank. Moreover, the Regulation on the Procedure for Random Distribution of Cases for Examination in Courts, approved by SCM Decision No. 110/5 of 5 February 2013, to which the author of the request refers, does not provide that, after the motivated order blocking (selecting) a judge who is on annual leave, the president of the court must initiate the procedure for transferring the case to another court of equal rank if, for that period, other judges who are available and compatible to examine the incoming cases are temporarily and justifiably absent. Decision of the Criminal Collegium of the Supreme Court of Justice of 20 September 2022, Case No. 1cs-274/2022, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=21665 (accessed 20 September 2022).

Court of Appeal to another court of equal jurisdiction.⁵⁶

*The Criminal Collegium of the Court of Appeal notes that the repeated and manifestly unfounded submission of applications for recusal constitutes an obvious lack of respect toward the court and other participants in the proceedings.*⁵⁷ The court of recourse, by an order, imposed a judicial fine for the repeated and manifestly unfounded filing of recusal requests.⁵⁸

Procedure for examining recourse. The recourse is examined with the summoning of the prosecutor, the defence counsel, and the other parties.⁵⁹ The participation of the prosecutor and the defence counsel in the hearing of the court of recourse is mandatory. The absence of the defendant, the injured party, the civil party, or the civilly liable party, if they have been legally summoned, as well as the absence of their representatives, does not prevent the examination of the recourse; however, if necessary, the court of recourse may declare their presence mandatory, informing them

⁵⁶ See: Order of the Criminal Panel of the Supreme Court of Justice of 28 April 2021, Case No. 1cs-114/2022, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=20748. By the Decision of the Criminal Collegium of the Chişinău Court of Appeal of 8 June 2022, it was ordered: “To admit the recourse filed by petitioner Andrei Şalari. To quash the order of the Chişinău District Court, Ciocana seat, of 12 March 2020; To declare null the order of 26 December 2019 issued by the prosecutor of the Chişinău Municipality Prosecutor’s Office, Main Office, R.O., on the discontinuation of the criminal prosecution and dismissal of the criminal case, as well as the order of 28 January 2020 issued by the Deputy Chief Prosecutor of the Chişinău Municipality Prosecutor’s Office, R.D., rejecting the complaint; To resume the criminal investigation and remit the case materials to the Chişinău Municipality Prosecutor’s Office, Main Office, for the elimination of the infringements identified.” See also: Decision of the Criminal Collegium of the Supreme Court of Justice of 26 October 2022, Case No. 1re-104/2022, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=21778 (accessed 26 October 2022).

⁵⁷ “...this tactic employed by the petitioner is part of a well-calculated and premeditated plan: the motions for recusal are prepared in advance, and the petitioner holds them already drafted and reasoned, regardless of the circumstances or the manner in which the proceedings develop. Each hearing is thus intended to be interrupted by a recusal request submitted by him, which clearly demonstrates the petitioner’s intention — to endlessly delay the examination of the complaint and to show disregard both for the court and for the other participants in the proceedings, who appear at the hearings in a disciplined manner and perform their duties honestly and correctly. Yet complaints submitted under Article 313 of the Criminal Procedure Code must be examined urgently... In the situation described, the lack of an adequate and prompt reaction from the court to such behaviour on the part of participants in the proceedings — behaviour which requires discipline and procedural order — may affect both the proper conduct of the criminal proceedings and the image of justice in the eyes of the other participants, who, in such cases, do not take part in a solemn and adversarial judicial process, but merely witness a unilateral manifestation of will by one participant, who pursues a single goal — not the administration of justice, but its ridicule and endangerment.” (Excerpt from the Decision of the Criminal Panel of the Court of Appeal of 12 July 2018, Case No. 12r-11/18.)

⁵⁸ Analysing the case materials and the arguments submitted in support of the lodged recourses, the Criminal Collegium finds that the conclusion of the court of recourse regarding the imposition of a judicial fine — on the grounds that repeated requests were filed in bad faith and abusively, with the aim of delaying the proceedings, misleading the court, or pursuing other malicious intentions — is justified and corresponds to the case materials. Decision of the Criminal Collegium of the Supreme Court of Justice of 10 November 2022, Case No. 1r-6/2022, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=21939 (accessed 18 November 2022).

⁵⁹ Where a public hearing has taken place before the first-instance court, the absence of such a hearing at the stage of an appeal may be justified by the special features of the proceedings in question, taking into account the nature of the national system of remedies, the purpose of the powers exercised by higher courts, and the way in which the claimant’s interests were actually presented and defended before the superior court, particularly in light of the nature of the issues to be determined by it. ECtHR judgment in *Botten v. Norway*, 19 February 1996, § 39, available at: <https://hudoc.echr.coe.int/eng?i=001-57970>.

accordingly.⁶⁰ The presence of the defendant held in custody is mandatory, except where he refuses to be escorted to the hearing.

The Constitutional Court does not see how the provisions of Article 447 paragraph (1) of the Criminal Procedure Code raise a constitutional issue from the perspective of the right to defence guaranteed by Article 26 of the Constitution, given that paragraph (2) of Article 447 grants the interested party the right to submit a written reference. Likewise, paragraph (3) of Article 447 of the Criminal Procedure Code empowers the court to order, by a reasoned ruling, that the hearing be conducted with the participation of the parties if it considers the case to be of particular interest for jurisprudence, as well as upon a reasoned request by the parties.⁶¹

The presiding judge announces the case in which the recourse has been lodged, then announces the names of the judges composing the panel, the prosecutor, the defence counsel, and, where applicable, the interpreter or translator, and verifies whether motions for recusal have been filed.

The appellant speaks first, followed by the other participants in the hearing. If one of the recourses has been lodged by the prosecutor, the prosecutor speaks first. In proceedings before the Supreme Court of Justice, oral submissions may not exceed 30 minutes for each participant, and they may not exceed the scope of the arguments set out in the recourse.

If the parties invoke the necessity of administering new evidence, they must indicate such evidence, the means by which it may be obtained, and the reasons that prevented its submission before the first-instance court.

The parties have the right to reply on matters arising during the course of the debates.

When adjudicating the recourse, the court verifies the legality and soundness of the challenged decision on the basis of the case file and any new documents submitted before the court of recourse, and it is obliged to rule on all grounds invoked in the recourse.

The grounds listed in points 1)–4), 8), 9), and 13)–15) of Article 444 of the

⁶⁰ “According to Article 66 paragraph (1) of the Criminal Procedure Code, the defendant has the right to defence. The court shall ensure that the defendant is given the opportunity to exercise the right to defence by all means and methods not prohibited by law. Pursuant to Article 70 paragraph (1) point 1) and paragraph (3) points 1) and 2) of the Criminal Procedure Code, the lawyer participates in the criminal proceedings as defence counsel at the request of the defendant. At the request of the defendant, the court shall request the appointment of a lawyer providing state-guaranteed legal aid from the coordinator of the territorial office of the National Council for State-Guaranteed Legal Aid, where the participation of defence counsel is mandatory and the defendant does not have a chosen lawyer. According to Article 239 paragraphs (1) and (3) of the Criminal Procedure Code, the summons shall be handed personally to the person summoned, who shall sign the acknowledgment of receipt. The acknowledgment of receipt shall be submitted to the process server, who shall forward it to the issuing court. Under Article 449 paragraph (2) and Article 417 paragraph (1) points 3) and 8) of the Criminal Procedure Code, the decision of the court of recourse must include the name and surname of the defence counsel, the factual and legal grounds leading to the dismissal of the recourse, as well as the reasons for the solution adopted.” Decision of the Criminal Collegium of the Supreme Court of Justice of 3 November 2020, Case No. 1re-162/2020, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=17080.

⁶¹ Constitutional Court Decision No. 92 of 1 August 2024 on the inadmissibility of Referral No. 133g/2024 concerning the constitutional challenge of the provisions of Article 447 paragraph (1) of the Criminal Procedure Code (the procedure for examining recourse against judicial decisions for which the law does not provide the remedy of appeal) (para. 26).

Criminal Procedure Code shall always be examined by the court of recourse *ex officio*, while those listed in points 5)–7), 10), and 12) of Article 444 shall be examined only when they have affected the decision to the detriment of the defendant.

Taking into account the particularities of recourse lodged against judgments for which the law does not provide the remedy of appeal, it should be noted that, when examining recourse, the court of recourse cannot review the merits of the case; it must accept the factual findings established by the first-instance court. This model is likewise characteristic of European systems, in which the superior court's review is confined to legality and does not involve the administration of new evidence.⁶² International doctrine confirms that recourse traditionally has a strictly legal character, without re-examining the merits.⁶³

Pursuant to Article 448 paragraph (2) of the Criminal Procedure Code, the court of recourse is obliged to rule on all grounds raised in the recourse (only those provided for in Article 444 CPC).⁶⁴

The court verifies whether the law has been correctly applied, whether the court has considered all relevant facts, and whether the discretion granted by law has been exercised properly.⁶⁵

In its jurisprudence, the ECtHR⁶⁶ has held that the appellate court, as well as the court of recourse — where the law does not provide the remedy of appeal — has the obligation to examine a case both in fact and in law. Such courts may not proceed to an overall assessment of the defendant's guilt or innocence without hearing the defendant and without directly evaluating the evidence presented by the parties; otherwise, the proceedings before them do not satisfy the requirements of a fair trial guaranteed by Article 6 of the Convention. As a consequence, we conclude that a decision of the court of recourse — where the law does not provide the remedy of appeal — based exclusively on the analysis of the evidence administered by the first-instance court is unlawful.

Decisions of the court of recourse. When adjudicating a recourse, the court shall adopt one of the following solutions:

– *dismiss the recourse*, maintaining the challenged decision, if: the recourse is unfounded; the recourse is lodged out of time; the recourse is inadmissible.

– *admit the recourse*, quashing the decision, in whole or in part, and adopt one of the following solutions: order the acquittal of the person or the termination of the criminal proceedings in the cases provided by the Criminal Procedure Code; re-examine the case and adopt a new decision; order a retrial by the first-instance court where the administration of additional evidence is necessary.

The decision of the court of recourse is final, with the possibility of being challenged only by means of an extraordinary remedy, if the respective conditions and

⁶² Małgorzata Wąsek-Wiaderek. "A New Model of Appeal Proceedings in Criminal Cases: Acceleration v. Fairness? A Few Remarks from the Perspective of the Standards of Protecting Human Rights." *Studia Iuridica Lublinensia* 30, no. 4 (2021): 187–207, at 189. <https://doi.org/10.17951/sil.2021.30.4.187-207>.

⁶³ John D. Jackson and Sarah J. Summers. *The Internationalisation of Criminal Evidence*. Cambridge: Cambridge University Press, 2012, 236–241, <https://doi.org/10.1017/CBO9781139093606>.

⁶⁴ Mihai Poalelungi, Igor Dolea, Tatiana Vîzdoagă, et al. *Manualul Judecătorului pentru cauze penale [The Judge's Manual for Criminal Cases]*. Chișinău, 2013, 418.

⁶⁵ Supreme Court of Justice Order of 27 November 2025, Case No. 1r-16/2025, para. 10, available at: https://jurisprudenta.csj.md/search_col_penal.php?id=26572

⁶⁶ ECtHR judgment in *Tierce and Others v. San Marino*, 25 July 2000. Available at: <https://hudoc.echr.coe.int/rum/?i=001-63325> [accessed 13 October 2025].

grounds are met.

According to Article 466 paragraph (4) point 2) of the Criminal Procedure Code, the decision of the court of appeal becomes final on the date of its pronouncement. Recourse against decisions rendered by the court of appeal, acting as a court of recourse, is not provided by law. Recourse may be exercised only against final acts. Thus, irrevocable acts — such as the Decision of the Court of Appeal examining the recourse against the judgment — cannot be challenged by recourse.

3. Conclusions

The analysis carried out demonstrates that recourse against decisions for which the law does not provide the remedy of appeal constitutes an indispensable safeguard for maintaining the legality of criminal proceedings and for preventing the consolidation of errors of law in final judgments. The study has shown that this remedy has a distinct function from that of appeal, being oriented toward verifying the legal coherence of first-instance solutions and ensuring their compatibility with constitutional and conventional standards.

The findings indicate that the limits of recourse, as normatively configured, allow the court to exercise sufficient control to correct essential defects, while imposing adherence to the factual findings of the first-instance court, in accordance with European models of judicial review.

At the same time, the investigation reveals the need to strengthen judicial practice in relation to the grounds for recourse, the reasoning of judgments, and the consistent application of the principle of non-aggravation of the appellant's situation. The practical value of the results concerns: the development of practical guidelines for courts and defence counsel; clarification of the criteria for admissibility of recourse; harmonisation of the interpretation of Article 444 of the Criminal Procedure Code; and integration of ECtHR standards into the analysis of cassation grounds. The implementation of these measures may contribute to increased predictability of jurisprudence and to the consolidation of a modern, efficient, and coherent model of legality review in criminal matters.

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