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DEFENDANT'S MEANS OF DEFENSE IN CIVIL PROCEDURE

SUMMARY

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CONCEPTUAL GUIDELINES OF RESEARCH

The actuality of the subject. The European Convention on Human Rights establishes the obligation of signatory states to ensure the right to a fair trial for litigants. An essential component of the right to a fair trial is the right to defense in civil proceedings. In addition, the fair trial in civil cases includes in its content the adversarial nature and equality of the parties. *The Constitution of the Republic of Moldova*[1] at art. 16 regulates the principle of equality as a fundamental and indispensable one within the rule of law, according to this principle all persons are equal before the law and can exercise their rights equally without being subject to discrimination.

Both the Constitution and the Code of Civil Procedure (hereinafter - CPC) provide the parties in process equal rights to choose the forms and procedural means of defense within the civil process. Thus, art. 26 of CPC[2] entitled "Contradictory and equal rights procedural requirements" stipulates that the parties enjoy equal, sufficient and adequate possibilities of use of all procedural means to support the position on the factual circumstances and of so that neither party is disadvantaged in relation to the other. Also, the contradictory principle presupposes that the civil proceedings must be organized in such a way that the parties have the opportunity to formulate, argue and prove their position, to choose the modalities and the means of supporting it.

The legal doctrine states that the procedural equality of the parties to the proceedings is ensured by making available to the defendant the possibility of defending himself against the action brought by the plaintiff, promoting the necessary objections and thus arguing his position. The adversarial form of the trial presupposes that the defendant is given the opportunity to hear the summons, without waiting for the commencement of the examination of the case on the merits, to study the evidence presented by the adverse party, to determine his conduct in relation to the claims made against him and to present evidence to defend himself against the plaintiff's claims. The right of the plaintiff to be acquainted with the defendant's attitude towards the trial and the means of defense must also be ensured, in order to present additional evidence combating the defendant's response to the claims made.

All these aspects are essential and indispensable for a fair civil process; their promotion and assurance contribute to the adoption of legal and well-founded judgments. At the same time, thanks to the availability and adversarial nature of the civil proceedings, the correct examination of the civil case depends, to a large extent, on the attitude and conduct of the parties towards the dispute

[1] Official Monitor of the Republic of Moldova no. 1 of 12.08.1994
[2] Official Monitor of the Republic of Moldova no. 130-134 of 21.06.2013

before the court. Respectively, the plaintiff notifying the court initially establishes the limits of the trial of the case, indicating the factual and legal circumstances on which it is based. On the other hand, the defendant may, using the means of defense permitted by law, oppose these circumstances, object to the initiation of civil proceedings for breach of the premises and / or conditions of the plaintiff's right to action, and of plaintiff etc.

Therefore, the defendant has the means to influence the course of the trial; he can use, in this regard, certain means of defending his rights and interests in the process. Or, as a rule, the court ex officio will not adopt any procedural act favorable to the defendant, without an express request from him. Depending on the purposes pursued by the defendant, he must use different means of defense in civil proceedings, each of these modalities having different exercise conditions, legal features and purposes. Therefore, it is absolutely necessary to know all possible means of defense of the defendant, their conditions and effects.

Despite the importance of the defendant's means of defense, this subject has not been the subject of any in-depth research in the Republic of Moldova. Often the use of the defendant's defenses in civil proceedings creates confusion and errors. For this reason, it is necessary to investigate the institution concerned, bringing to the surface the legal nature, functions, types of defense, gaps and contradictions with the formulation of legislative proposals for overcoming them and optimizing the institution.

Description of the research situation and identification of the research problem. Although the defendant's means of defense deserve special scientific attention, we find that at the doctrinal level there is no research that focuses specifically on the study and definition of this institution. Thus, in the specialized literature either the means of defense are analyzed in treaties or monographs of civil procedural law as an overall analysis of the civil process, or are dedicated to the study of only part of the means of defense, such as the institution "Procedural exceptions" is extensively studied in Romanian doctrine.

We also identify that the national civil procedural literature is at the stage of forming an autochthonous doctrine, which should highlight the particularities of the Moldovan civil process. Despite the fact that the national doctrine is in the process of establishment, at present it has managed to research and debate the foundations, the main institutions of the civil process, with certain exceptions, and to refer to certain particularities of the institutions of the civil process. Therefore, in our case, even if at national level there is no systemic and in-depth research of the defendant's defenses, some authors mention the specific aspects of these modalities and examine the legal nature, conditions of exercise and effects of the use of defenses.

The purpose and objectives of the paper. The purpose of the paper is to identify the defendant's means of defense, examining their legal nature, conditions, effects and effectiveness. In order to achieve the purpose of the thesis, we propose the achievement of the following objectives:

1. Identifying and examining the defendant's means of action as defenses, researching national doctrinal views and doctrinal opinions from other countries regarding the legal nature, characteristics, functions, types and role of the defendant's defenses in civil proceedings;

2. Highlighting the characteristic features of the material-legal objections invoked by the defendant;

3. Establishing the particularities and characters of the procedural exceptions as means of defense of the defendant;

4. Determining the legal nature, the conditions of exercise and the effects of the counterclaim;

5. Formulation of *lege ferenda* proposals in order to remedy legislative gaps and improve the civil process.

***Scientific research methodology*.** In order to determine the methodological bases of the research, we must take into account the integral and essential character of the subject that will be subjected to the analysis. In this sense, we considered relevant and appropriate to use the following research methods: historical method, dialectical method, logical methods (systemic analysis, synthesis, induction, and deduction), comparative method, prospective method, synthetic analysis method.

The historical method was used to investigate the genesis, evolution and formation of the institution of the defendant's defenses. Through this method we identified the legal nature, characteristics, purpose and role of different modes of defense.

The dialectical method, this method involves subjecting the analysis of opinions contrary to a phenomenon or process. In studying the defendant's defenses, we examined contradictory doctrinal views to identify the most appropriate solution that will identify and explain the most appropriate role of the defense. Either he formulated his own point of view on the analyzed problem, after examining the contradictory opinions.

Logical methods (systemic analysis, synthesis, induction, deduction) - in the investigation of the defendant's defenses in the civil process were used the laws, categories and logical reasoning, applied in order to identify and systematize different doctrinal opinions in the field, synthesizing national regulations aimed at regulating the defendant's defenses. Also, the logical

methods served to interpret the main doctrinal concepts and the provisions of the civil procedural legislation.

The comparative method was used in order to ascertain and present the particularities of the regulation and application of the means of defense in the national legislation and of other states. In addition, I have set out the similarities and differences in the treatment of this institution in national and foreign doctrine.

Prospective method - this method allowed the establishment of the evolution and development of defense methods, which was achieved by identifying the most optimal and efficient direction for optimizing the national regulatory framework, which will be applied in judicial practice.

The method of synthetic analysis, with the help of which a generalization of the research was carried out, with the presentation of general conclusions. In addition, the proposals of the *lege ferenda* were formulated in order to make the analyzed institution more efficient in the civil process.

Scientific novelty and originality. The study is the only work in the Republic of Moldova that fully and completely examines the defenses of the defendant in civil proceedings. Indigenous specialized work that focuses specifically on the issue of the defendant's means of defense is completely missing. The scientific novelty of this paper consists in conducting a deep and thorough study of the defendant's defenses, based on civil procedural law, national jurisprudence and doctrinal opinions.

In this order of ideas, we point out that we have identified what ways of action of the defendant can be attributed to the category of defenses in civil proceedings; we have determined the role and essence of material-legal objections, signaling the particularities, ways and effects of their use by defendant. The innovative aspect of this paper for the Republic of Modlova is that we have highlighted the procedural exceptions as separate means of defense of the defendant. In addition, the procedural exceptions that can be invoked in civil proceedings have been determined, according to the national civil procedural legislation, and the examination of their legal regime has been carried out.

This scientific approach has addressed the role of counterclaim in the defense system, highlighting the particularities of the submission, examination and effects of admitting the counterclaim. Also, as a novelty for the Republic of Moldova, the modalities of action of the defendant was examined, which, apparently, are not included in the category of means of defense. In this sense, we established that there are some procedural acts of the defendant that can be

included in the category of alternative / atypical means of defense. Respectively, the distinctive features of these atypical modes of defense were outlined.

At the same time, the proposals of *lege ferenda* were formulated in order to improve the institution of the defendant's means of defense.

Theoretical significance and applicative value of the paper. The results of the research are of particular importance for the examination and optimization of the institution of the defendant's means of defense in the civil process. The study of the defendant's means of defense is of both theoretical and practical interest. From a theoretical point of view, the research of the defendant's means of defense allowed the identification, systematization and grouping of these modalities, highlighting the legal characteristics, the conditions of exercise and the effects they produce. From a practical point of view, this scientific approach allows litigants to distinguish between different means of defense of the defendant, to know when, how, for what and which means of defense can be used by the defendant.

Also, from a scientific point of view, this research covers the gap of the non-existence of the specialized paper that would analyze the means of defense of the defendant. In this study was carried out the systematization of doctrinal and legislative concepts on the means of defense of the defendant; highlighting the characteristics of the material-legal objections that the defendant may submit, establishing the categories and objectives of the material-legal objections; exhaustive examination of procedural exceptions that may be raised in civil proceedings; the multi-aspect rendering of the counterclaim filed by the defendant for the purpose of defending against the plaintiff's action; determining the opportunity and efficiency of the defendant's use of alternative / atypical means of defense.

The elaborated concepts, as well as the proposals of *lege ferenda* formulated can be taken into account in the efficiency and optimization of the civil process regarding the regulation of the defendant's means of defense. We believe that the results obtained will be able to provide opinions, references, and useful solutions to judges, lawyers, participants in the trial, teachers, students and all those interested in civil procedure.

The main scientific results submitted for support. Following the study, we submit the following main conceptual benchmarks for support: the material-legal objection is the only way for the defendant to combat the merits of the law, thus denying the defendant the factual and / or legal circumstances invoked by the plaintiff; the submission of the reference is a right of the defendant, not an obligation; procedural exceptions are distinct means of defense for the defendant; the counterclaim is a means of defending the defendant in civil proceedings and comprises two aspects: the defense of a subjective civil right and the defense against the initial action; in addition

to the fundamental or classical means of defense of the defendant, some alternative or atypical means of defense can be identified, namely: the reconciliation transaction and the attraction of the accessory intervener.

Implementation of scientific results. The research results are used in the didactic and scientific process in higher education institutions. In addition, the main methodological guidelines of the paper have been published in specialized journals and have been presented in various international and national scientific forums.

Approval of results. The main methodological landmarks of the paper were presented in various international and national scientific forums, such as: The scientific colloquium "Orientări actuale în cercetarea doctorală", Alecu Russo Balti State University; "Integrare prin cercetare și inovare" national scientific conference with international participation, Moldova State University; Colloquia Professorum Conference "Tradiție și inovare în cercetarea științifică", Alecu Russo Balti State University; International Conference "Promovarea valorilor sociale în contextul integrării europene", University of European Studies of Moldova; International Scientific Conference "Perspectivele și problemele integrării în Spațiul European al Cercetării și Educației", Cahul State University "Bogdan Petriceicu Hasdeu"; International Conference "Procesul civil și executarea silită. Trecut, prezent, viitor", Târgu-Mureș, Romania etc.

On the topic of research, 7 scientific articles were published in journals abroad and in the Republic of Moldova: Actual scientific research in the modern world (Ukraine), Journal of the National Institute of Justice (Republic of Moldova), Scientific Annals of the "Alexandru Ioan Cuza" University of Iasi (Romania), New Legal Gazette (Rusia), Studia Universitatis Moldaviae (Republic of Moldova).

In addition, proposals and recommendations of *lege ferenda* have been submitted in order to improve civil procedural legislation.

Publications on the topic of the thesis – 24 scientific works.

The volume and thesis structure. The thesis contains annotations (in three languages), list of abbreviations, introduction, three chapters, conclusions and recommendations, bibliography. The main part of the thesis consists of 172 pages, and the complementary part of the thesis – 17 pages, including 14 pages of the consulted bibliography. The bibliography consists of 200 titles.

Keywords: fair trail, the right of defense, meanse of defense, material objections, processual exception, counter-claim, statement of defence, settlement agreement, attracting of accessory intervener.

THESIS CONTENT

The **Introduction** describes the topicality and importance of the topic, the purpose and objectives of the thesis, research methodology, description of the research situation, scientific novelty, research hypotheses, theoretical importance and applicative value of the paper, approval of results and summary of thesis chapters.

In **Chapter 1 - Analysis of the scientific situation regarding the defendant's means of defense**, the international, national and foreign regulations regarding the defendant's means of defense are examined. The relevant jurisprudence of the ECtHR, which highlights the importance and particularities of the right to defense in civil proceedings, has been subject to research. In addition, the opinions of local and foreign doctrinaires addressing the defendant's defenses in the civil process were analyzed. Therefore, in this chapter we have determined the applicable regulatory framework, the practice of the ECtHR and the views of scientists in the field under investigation. At the same time, in this chapter we identified the scientific problem, the research objectives and the directions of solution.

The right to defense is recognized and regulated in virtually all democratic states, and international legal instruments also refer, to one degree or another, to the importance of guaranteeing and respecting the right to defense. *The International Covenant on Civil and Political Rights*[3] stipulates in art. 14 that “all men are equal before the courts and tribunals. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. " From this text of law we can deduce that the parties in the civil process have the right to have the case examined and resolved fairly and legally, and to achieve this imperative the parties enjoy the opportunity to invoke and bring to the attention of the magistrate with the civil case, to debate in contradiction the validity of those invoked by the adversary. In relation to the above position of the defendant, we can argue that he has at hand certain procedural means that ensure the effective exercise of the right of defense, which allow him to defend his position against the plaintiff's claims, so that the court can decide fair on disputes over civil rights and obligations.

An analogous provision, according to the content and the effects it generates, is included in the *Universal Declaration of Human Rights*[4], therefore, art. 10 stipulates that "every person has

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[3] International Covenant on Civil and Political Rights. New York, 16.12.1966. Ratified by the Decision of the Parliament of the Republic of Moldova no. 217 of 28.07.1990. In: International Treaties to which the Republic of Moldova is a party (1990 - 1998). Official edition. Vol. 1, Chisinau: Moldpres, 1998

[4] Universal Declaration of Human Rights. New York, 10.12.1948. Ratified by the Decision of the Parliament of the Republic of Moldova no. 217 of 27.07.1990. In: International Treaties to which the Republic of Moldova is a party (1990 - 1998). Official edition. Vol. 1, Chisinau: Moldpres, 1998

the right to a fair trial, in public and within a reasonable time, by an independent and impartial tribunal established by law, which shall decide on the violation of his rights and obligations."

Also, the *Convention for the Protection of Human Rights and Fundamental Freedoms*[5] provides in art. 6 that "every person has the right to a fair trial, in public and within a reasonable time, by an independent and impartial tribunal established by law, which shall decide on the violation of his civil rights and obligations." It is worth mentioning that the provisions of the Convention for the Protection of Human Rights have been developed through the jurisprudence of the European Court of Human Rights.

In order to transpose the international guarantees, the Constitution of the Republic of Moldova regulated, within art. 26, the right to defense. According to the constitutional provisions, everyone has the right to react independently, by legitimate means, to the violation of his rights and freedoms, and throughout the process, the parties have the right to be assisted by a lawyer, chosen or appointed ex officio.

Thus, in a trial, criminal or civil, any person has the right to use certain legally enshrined ways to defend his rights and freedoms. Considering the provisions of par. (1) art. 26 of the Constitution, according to which “the right to defense is guaranteed”, is the task of the state to ensure and regulate these modalities and means by which persons will be able to prove and support their procedural position.

While the Constitution aims to establish general principles applicable to all branches of law, concrete solutions and exact regulations on the means of defense of the defendant in civil proceedings are found in the Code of Civil Procedure. From the provisions of art. 22, 26, 27, 56 of the *Code of Civil Procedure of the Republic of Moldova* we deduce the characteristics of the principle of the right to defense and guarantees of the defendant's means of defense. In the matter of civil process, the specialized doctrine divides the right to defense into two meanings: material and formal.

Therefore, even if the Code of Civil Procedure does not expressly regulate the principle of the right to defense as in the case of civil procedural laws of other states, guaranteeing the right to defense is based on ensuring equality before the law and justice, adversariality and availability of civil proceedings. However, one cannot imagine the contradictory nature of the civil process if the defendant will not be able to formulate, argue and prove his position in the process, it cannot be

[5] Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, 04.11.1950. Ratified by the Decision of the Parliament of the Republic of Moldova no. 1298 of 24.07.1990. In: International Treaties to which the Republic of Moldova is a party (1990 - 1998). Official edition. Vol. 1, Chisinau: Moldpres, 1998

about equality and availability in rights of the participants in the process if the defendant is deprived of liberty. choosing a means of defense as he sees fit.

In this context, Professor Ioan Leș states that "the principle of the right to defense goes beyond the interest of the parties, as its observance also contributes to the discovery of the truth in the civil process. This also explains the interest of enshrining the principle of the right to defense in various international documents.[6]

Instead, the Romanian *Code of Civil Procedure*[7] within art. 13 para. (1) stipulates that "the right to defense is guaranteed". And in the content of par. (2) of the same article provides for the content of the right of defense, so it includes "the possibility [of the parties] to participate in all phases of the proceedings. They can get acquainted with the contents of the file, propose evidence, make defenses, present their claims in writing and orally and exercise legal remedies, in compliance with the conditions provided by law.

The *Code of Civil Procedure of France*[8] still does not expressly refer to the right to defense, but the provisions of art. 14 establishes the rule according to which the court cannot rule on the merits without the parties to the trial being heard or summoned. That is, before settling a civil case, the judge is obliged to give the parties the opportunity to argue and support his position, or at least they must be legally summoned in order to inform them of the date and place of the examination of the case, thus having the opportunity to attend the court hearing. In addition, according to the French doctrine[9], within art. 18 to 20 of the French Code of Civil Procedure regulates the fundamental principle of civil proceedings, which presupposes the freedom of the parties to choose their means of defense. This principle is seen as one of the conditions for the exercise of fair justice. The provision contained in art. 30 of the French Code of Civil Procedure, according to that text of law, the right to discuss the merits of the plaintiff's claims constitutes the content of the defendant's right of action. Therefore, under French law, the defendant's defenses are one of the means of exercising the right of action.

The Code of Civil Procedure of Bulgaria[10] provides in art. 8 para. (1) that each party must have the right / opportunity to be heard by the court before ruling on their rights and interests by a

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[6] Leș I., Treaty of civil procedural law. Vol. 1. Bucharest: Universul Juridic, 2014, p. 67
[7] Romanian Code of Civil Procedure. [cited 05.02.2018]. Available: http://www.dreptonline.ro/legislatie/codul_de_procedura_civila_noul_cod_de_procedura_civila_legea_134_2010.php
[8] Code de procédure civile français. [cited 05.02.2018]. Available: https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070716&dateTexte=20050514
[9] Zakhvataev V. New Code of Civil Procedure of France. Kiev: Istyna, 2004, p. 38
[10] Code of civil procedure of Bulgaria. [cited 05.02.2018]. Available: http://www.lawoffice-bg.net/userfiles/Code%20of%20Civil%20Procedure.pdf

judgment. Alin. (2) art. Article 8 of the Bulgarian Code of Civil Procedure stipulates that the parties shall present the facts on which their claims are based and provide evidence in support of the allegations. In addition, the court must give the parties an opportunity to become acquainted with the defenses and arguments of the opposing party, the object, stage and stage of the proceedings, and must give the parties the opportunity to comment on these issues.

In a similar manner, the *Code of Civil Procedure of Kazakhstan* [11] in art. 15, with the marginal title "Contradictory and equality of the parties", par. (1) stipulates that the parties have equal opportunities to defend their position. And para. (2) art. 15 provides that the parties, independently, choose the position in the process, the modalities and the means of defending it. For example, the defendant alone will decide whether to take a defensive stand against the plaintiff's claims, choosing to deny the claims made, or to acknowledge the plaintiff's claims or to take an offensive position - by bringing a counterclaim in this regard, or he may show complete indifference to the trial, fail to appear at a court hearing and fail to communicate to the court his position on the plaintiff's claims.

In order to ensure the right to defense of the parties, art. Article 12 of the *Code of Civil Procedure of the People's Republic of China*[12] provides that, in the examination of the case, the parties have the right to participate in the proceedings, which presupposes the realization of the right of defense and the adversarial nature of the civil proceedings. We consider that the "right to participate in the debate" includes the possibility for the parties to support their position, to present and combat the evidence of the opposing party, to discuss the merits and legality of the arguments of the opposing party, to draw conclusions on the merits of the case, invoke material objections and processual exceptions.

On the other hand, the *Quebec Code of Civil Procedure* [13]regulates the assurance of the parties' rights of defense in a specific way. Thus, art. 20 provides that the parties to the proceedings are required to cooperate, in particular, to keep the other party permanently informed of the facts and particulars relied on, which will lead to a fair debate on the case. The parties are also required to communicate to each other the facts on which they base their defense in the proceedings, as well as the evidence which they intend to administer. So, while most of the legislation under review

[11] Civil Procedure Code of the Republic of Kazakhstan. [cited 05.02.2018]. Available: https://online.zakon.kz/Document/?doc_id=34329053#pos=743;-76
[12] Civil Procedure Law of the People's Republic of China. [cited 05.02.2018]. Available: http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn029en.pdf
[13] Code of Civil Procedure of Quebec. [cited 05.02.2018]. Available: http://legisquebec.gouv.qc.ca/en/showdoc/cs/C-25.01

establishes the obligation to guarantee the principle of the right of defense in the court, the Quebec Code of Civil Procedure has chosen to establish this obligation in the parties, in order to create cooperation between the parties. In this regard, it should be noted that Quebec's civil procedural law always seeks to reconcile the parties to the dispute, so that they can resolve the dispute on the basis of an amicable settlement. Therefore, we consider that this obligation of mutual information and communication also pursues the purpose of creating a dialogue between the parties, so that both pursue the interest of solving the case by finding a compromise solution.

It should be noted that the CPC does not expressly define the means of defense in civil proceedings, nor does it list what actions of the defendant are attributed to the category of defense modalities, leaving the legal doctrine to assess this institution. The local legislation only refers to the notion of means of defense, without providing a definition of this notion.

Although the legislation in force does not list which procedural acts constitute means of defense of the defendant, the specialized doctrine has highlighted the following ways of defense of the defendant: material objections, procedural exceptions / objections and counterclaim. Analogous to the defendant's means of defense, the domestic legislation does not give any definition to these nominated acts, leaving the doctrine to describe them.

In accordance with the national provisions, a special importance is recognized to the objections within the procedure in the ordinance, conclusion which is based on the provisions of art. 352-354 of the CPC. In this order of ideas, art. 352 para. (2) The CCP recognizes the debtor's right to object to the claims allowed by the court order. Thus, "within 10 days of receiving the copy of the ordinance, the debtor is entitled to submit […] his reasoned objections against the admitted claims". In the order procedure, the whole process takes place without summoning the parties and the judge resolves the case only on the basis of the documents submitted by the parties. For this reason, the debtor's formulation and submission of objections is the only possibility to obtain the rejection of the creditor's claims. In this context, we will cite the provisions of art. 352 para. (4) of the CPC, under which "the court […] examines the debtor's objections without summoning the parties, without concluding a report and is limited to the admissibility of the objections in terms of validity and veracity." Depending on the admissibility of the debtor's objections, the court will order either their admission and the annulment of the order, or the rejection of the objections and the maintenance of the court order.

The Moldovan legislator treats the institution of counterclaim in a limited way. Within art. 172-173 CPC is limited only to the purpose and conditions of initiating the counterclaim. Within art. 172 para. (1) of the CPC, it appears that the main objective of the counterclaim is to simultaneously adjudicate the defendant's claims against the plaintiff with the initial action, in

order to reduce the costs and time required to resolve civil cases. In this sense, "until the beginning of the judicial debates, the defendant has the right to file a counterclaim against the plaintiff in order to be tried together with the initial action" (art. 172 paragraph (1) of the CPC).

Compared to the legislation of the Republic of Moldova, the procedural legislation of Romania is more explicit in regulating the means of defense of the defendant in the civil process. In this sense, art. 31 of the Romanian Code of Civil Procedure stipulates that “defenses formulated in court may be substantive or procedural”. It is clear from the wording of this law that the defendant's defenses can be of two kinds, namely: material objections and procedural exceptions. Substantive defenses or material-legal objections, the name widely used in domestic practice and doctrine, concern the invocation of certain circumstances against the merits of the case, ie the material-legal report submitted to the court showing that the plaintiff's claims are to be rejected as unfounded. With the help of the procedural defenses, the defendant reports, without referring to the merits of the case, the violation of some procedural rules by the plaintiff, so that the continuation of the process is not possible. The category of procedural defenses includes procedural exceptions or, otherwise called, procedural-legal objections.

In this context, we must mention that the legislation of the Republic of Moldova does not make a clear distinction between substantive and procedural defenses, generally regulating only the objections of the parties. And, according to the local doctrine, these objections are divided into material objections, which corresponds to the substantive defenses, and the procedural objections, respectively - procedural defenses, if we refer to the notions used by the Romanian legislation.

Similar to the national provisions, the main means of invoking the defenses within the Romanian civil process is the objection. Therefore, art. 205 para. (1) of the Romanian Code of Civil Procedure defines the objection as “the procedural act by which the defendant defends, in fact and in law, against the request for summons”. And in accordance with par. (2) of the same article, the objection shall contain also:

“b) the procedural exceptions which the defendant invokes in relation to the plaintiff's claim;

c) the answer to all the claims and the factual and legal reasons of the request”.

In other words, taking into account the provisions of art. 31 of the Romanian Code of Civil Procedure, the defendant in the response will formulate his substantive and procedural defenses.

Another means of defense of the defendant, as mentioned *above*, is the counterclaim. In this sense, art. 209 para. (1) of the Romanian Code of Civil Procedure provides that "if the defendant has, in connection with the plaintiff's claim, claims arising from the same legal relationship or closely related to it, may file a counterclaim." From this rule we deduce that the counterclaim is a means for the defendant to exercise a right against the plaintiff, a claim to be tried simultaneously

with the plaintiff's action, given that the parties' claims derive from the same legal relationship or closely related.

The French legislature has dedicated an entire title to the defenses in the Code of Civil Procedure, so in the first Book Title 5, with the marginal name "Means of defense", the main defenses of the parties in the civil process are regulated. Substantive defenses and procedural exceptions are recognized as defenses. According to the regulation of art. 71 of the Code of Civil Procedure of France, by defense of substance is understood any argument that aims to reject the opponent's claims as unfounded, after the substantive examination of the case. And art. 73 defines procedural exceptions as those means by which the party seeks the suspension or termination of the process, showing the violation of certain procedural rules. Basically, we meet the same provisions as in the Romanian civil procedural legislation.

Before examining the French legislation on the institution of counterclaim, it should be noted that, according to the French Code of Civil Procedure, civil actions fall into two categories: the initial action and the incidental action (Articles 53 to 70 of the Code of Civil Procedure). of France). Therefore, the counterclaim is seen as an incidental action by which the original defendant claims to obtain an advantage, other than the simple rejection of the opponent's claims (art. 64 of the Code of Civil Procedure of France).

In the civil process in Germany, in accordance with the provisions of art. 277 of the *German Code of Civil Procedure*[14], the defendant formulates his defenses by means of the reference, in which he indicates the means of defense he intends to use. And within art. 282 of the Code of Civil Procedure, the German legislature provided for some of the defenses of the parties, so in court each party must present to the court its defenses, in particular statements, rejections, objections, reasons for defense, evidence and objections to the evidence presented by the opposing party, in an optimal term, according to the particularities of the process, and to diligently follow the promotion of his defenses during the examination of the case.

Similarly, Russian civil procedural law indirectly refers to the defendant's defenses. Thus, according to the provisions of art. 149 para. (2) of *the Code of Civil Procedure of the Russian Federation*[15] the defendant or his representative, in preparing the case for debate presents to the plaintiff or his representative and the court, written objections to the plaintiff's claims, ie the defendant must present the reference defends against the plaintiff's claims. And art. 150 para. (1)

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[14] Code of Civil Procedure of Germany. [cited 05.02.2018]. Available: http://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html#p1021

[15] Civil Procedure Code of the Russian Federation, dated November 14, 2002 N 138-FZ. [cited 05.02.2018]. Available: http://www.consultant.ru/document/Cons_doc_LAW_39570/

point 3) of the Code of Civil Procedure of Russia establishes for the court the obligation to hear the defendant about the circumstances of the case, to ask what objections the defendant raises to the plaintiff's claims, also by what evidence can confirm the objections invoked. As we can see, as in the case of German law, the Code of Civil Procedure of Russia does not refer in any way to the procedural exceptions that the parties may raise, but merely regulates the invocation of material objections against civil action.

Identically, Russia's civil procedural law also regulates the institution of counterclaim. According to art. 137 of the Code of Civil Procedure of Russia, the defendant is entitled to bring a counterclaim against the plaintiff to be tried together with the initial action, its submission is made according to the general rules of bringing the action.

We find similar provisions in the *Code of Civil Procedure of Ukraine*[16] (art. 128 - 131), according to which the judge gives the defendant time to present the reference and evidence, and if he does not present them until the start of judicial proceedings, he will be revoked. To propose and present evidence in the trial, unless it is impossible to present evidence in preparation of the case for debate.

"In addition, according to the Ukrainian civil procedural law, the court may summon the parties to a preliminary hearing, which takes place in preparation of the case for debate, to try to reconcile the parties, materialize the plaintiff's claims and the defendant's objections, and determine what evidence is presented or will be presented by the parties"[17].

The analysis and research of the defendant's means of defense in civil proceedings is undoubtedly of great scientific importance, given that their guarantee depends on the conduct of a fair civil trial in accordance with the principles of equality and adversarial proceedings. But, at the same time, it is of remarkable practical interest in that the defendant will be able to plan his defense in a trial and choose a suitable means of defense. Therefore, depending on the particularities and effects of a defense, the defendant will be able to exercise adequate defense against the plaintiff's action. In addition, from a practical point of view, it is no less important for the magistrate to be able to distinguish different means of defense of the defendant, in order to assess whether they fall within the procedural limits and whether they are exercised in compliance with legal requirements.

Even if the defendant's means of defense deserve special scientific attention, we find that at the doctrinal level there is no research that focuses primarily on their study and definition. Thus, in the specialized literature either the means of defense are analyzed in treaties or monographs of

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[16] Civil Procedure Code of Ukraine. [cited 05.02.2018]. Available: http://meget.kiev.ua/kodeks/gpk

[17] **Dumitrașcu D.** The reference in the civil procedural legislation of the Republic of Moldova. In: Actual scientific research in the modern world, Issue 8 (28) Part 3, August 2017, p. 109

civil procedural law with the character of analysis as a whole, or are dedicated to the study of only a part of the means of defense, such as the institution of "procedural exceptions" , which is extensively studied in Romanian doctrine.

In this order of ideas, we identify that the national civil procedural literature is at the stage of forming an autochthonous doctrine, which should highlight the particularities of the Moldovan civil process. Although the national doctrine is in the process of being established, at present it has managed to research and debate the main foundations and institutions of the civil process, with certain exceptions, and to refer to certain particularities of the institutions of the civil process. Therefore, even if there is no systemic and in-depth investigation of the defendant's defenses at national level, some authors mention the specific aspects of the defendant's defenses and examine the legal nature, conditions of exercise and effects of the use of the defenses.

The national literature states that 'by virtue of the principle of adversarial proceedings and *equality of arms,* the defendant, by virtue of his availability, may exercise his right to a defense against the plaintiff's civil action[18]. Also, in this paper[19], the authors establish that in the civil process the defendant has the following means of defense against the plaintiff's claims: legal objections and the counterclaim.

The author Bâcu A. does not expressly refer to the notion of "means of defense of the defendant", instead analyzes a broader notion, which would include the means of defense of the defendant, namely "means of action specific to the defendant". "By means of action of the defendant are meant the possible forms of manifestation in the process, namely:

• Total or partial recognition of the plaintiff's claims (art. 60 para. (2) C.p.c.).

• Challenging the validity of the opening of the civil process or the way in which it takes place (possibility resulting from the contradictory nature of the civil process).

• Formulation on the merits of its own claims"[20].

Analyzing the local doctrine, we identify that most authors do not refer specifically to the defendant's defenses, but mention the importance of ensuring equality and adversarial proceedings, as well as the judge's obligation to hear both parties to the trial, to allow them to present explanations. and the evidence on which it is based. In this regard, Professor Cojuhari Alexandru argues[21] that the judge should give the defendant the opportunity to present his objections to the

[18] Belei, E., et al. Civil procedural law. The general part. Chisinau: Lexon-Prim Publishing House, 2016, p. 264
[19] *Ibid*., p. 264 – 265
[20] Bâcu, A. Civil procedural law: General part: univ. Chisinau: Tipogr. "Print-Caro", 2013, p. 278
[21] *Civil Procedure Code of Moldova: Commentary / Resp. ed. Kozhukhar A.N., Railean A.A. Chisinau: Universitas, 1992, p. 286*

plaintiff's civil action, to determine whether or not it will be necessary to present additional evidence in the civil process.

The authors Savva A. and Tihon V. claim that, in principle, the right to a defense 'includes in its content the possibility for the parties to take note of all the documents in the file, to make requests, to request evidence, to exercise provided by law, to file requests for recusal, etc.[22] " . In addition, according to the principle of adversarial proceedings, 'the court must give the parties the opportunity to support and argue their claims, to adduce evidence, to challenge the evidence requested by the opponent, to raise and rebut procedural objections. In other words, no measure can be ordered by the court without giving the parties the right to defend themselves. Hence the existence of an indissoluble link between the contracdictory principle and the principle of the right to defense"[23].

Author Orlova, L.M. examining the legal nature of the counterclaim specifies[24] that the counterclaim, substantive objections, procedural objections, the right of recusal and the denial or non-recognition of the plaintiff's claims (originally *отрицания иска*) belong to the category of procedural means of defense of the defendant in civil proceedings. Therefore, the defendant has the right to choose any of the defenses, including the counterclaim. The choice to exercise a certain type of defense will be made depending on the nature of the plaintiff's material and legal claims.

Of particular interest is the work of the Russian author Deryuzhinsky N. in which the legal nature and regulation of the legal institution of the material and procedural objections of the defendant are analyzed. The Russian researcher mentions that in the science of civil procedural law, the defense department represents a distinct interest and importance compared to other civil process institutions, resulting from the fact that their studies have had the effect of creating new directions in the study of civil process.[25]

As mentioned *above*, most of the authors agree on the acts that form a means of defense of the defendant in the civil process. In the same vein, the author Zagorovsky A. claims that the category of defenses includes: [26]material objections, procedural objections and counterclaims.

Contemporary Russian doctrine, while remaining faithful to the majority views of previous authors, recognizes as defenses of the defendant as objections (material and procedural) and

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[22] Savva, A., Tihon, V. Civil procedural law (general part). Chisinau: Bons Offices, 2012, p. 62
[23] *Ibid*., p. 58
[24] Orlova, L.M. The rights of the parties in the civil procedure / scientific. ed. Tadevosyan V.S. Minsk: Publishing house of BSU im. IN AND. Lenin, 1973, p. 120
[25] Deryuzhinsky, N. Objections and objections in the Russian civil procedure. St. Petersburg, 1889, p. 3
[26] Zagorovsky, A. Essays on civil proceedings in new administrative and judicial and judicial institutions. Odessa, 1892, p. 160 - 169

counterclaim. Therefore, it is stated that[27] the principle of equality of parties in civil proceedings ensures that the parties have equal opportunities to defend their interests in the resolution of the dispute by the court. Means of exercising these rights of defense of the defendant are the objections against the civil action and the counterclaim.

Authors Vasin, V.N. and Kazantsev, V.I. reiterates that[28] the principle of procedural equality also gives the defendant the opportunity to defend himself against the plaintiff's claims. The law establishes two such means: 1) objections against the action, 2) the counterclaim.

Analogously, some doctrinaires state that[29] the legislation equally offers identical possibilities to both parties to the process for the defense of their rights. The main way of defending the defendant against the action is the objections. In addition to the objections, as a means of defending the defendant, the cited authors also mention that the defendant is entitled, until the pronouncement of the judgment, to file the counterclaim.[30]

Likewise, the Romanian doctrine appreciates the means of defense of the defendant. Scholars Hilsenrad A. and Stoenescu I. state that 'according to the principle of equal rights of the parties and the principle of the rights of the defense, the defendant is a party with procedural rights equal to the plaintiff's rights and the law grants him to defend his rights and interests in the process, the same protection as the plaintiff".[31] In the category of means of defense, the authors analyze the defenses in substance (which corresponds to the material-legal objections, according to our doctrine), the procedural exceptions and the counterclaim.

In the doctrine it was appreciated that the means of defense represent a component of the right to defense or of the notion of "defense", which is one of the forms in which the right of action can be exercised. In this order of ideas, the author Vasile Andreea before defining the procedural exceptions, specifies that they are part of the notion of "defense", and it can be seen as a complex right, of procedural nature, whose content consists of a plurality of prerogatives, among which we mention the notification of the court, the administration of evidence, defenses and exceptions, appeals, etc." [32]

The Romanian literature appreciates the fact that the defendant's means of defense in civil proceedings are of particular importance not only because they are a practical utility for the defendant to defend and argue his position, but also because the guarantee of the exercise means

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[27] Civil procedural law of Russia / Ed. Alexia P.V., Amaglobeli N.D. Moscow: Unity-Dana, 2005, p. 150
[28] Vasin, V.N., Kazantsev, V.I. Civil procedure. Moscow: Publishing Center "Academy", 2008, p. 111
[29] Civil Procedure / Ed. M.K. Treushnikov. Moscow: Statute, 2014, p. 337 - 338
[30] *Ibid*., p. 338
[31] Hilsenrad, A., Stoenescu, I. The civil trial in R.P.R. Bucharest: Scientific Publishing House, 1957, p. 137
[32] Vasile A., Procedural exceptions in the new Code of Civil Procedure. Bucharest: Hamangiu, 2013, p.1

of defense ensure the realization of the fundamental principles of the judicial procedureTherefore, the scientist Leș Ioan mentions that “the court must provide the parties with the possibility to support and argue their claims, to invoke evidence, to fight the evidence requested by the opponent, to raise and fight the procedural exceptions. Therefore, no measure can be ordered by the court without granting the parties the right to defend themselves”.[33]Additionally, the doctrinaire Leș Ioan, analyzing the content of the adversarial principle, claims that "adversariality offers optimal possibilities for finding out the truth and is at the same time a guarantee of the realization of the right to defense and equality of parties before the judiciary."[34]

The French doctrine defines defense as 'a means of meeting the plaintiff in order to establish the justification for the action (well-founded or unfounded) and, at the same time, a denial of the plaintiff's right'.[35] The French authors distinguish[36] three ways of defending the defendant: substantive defenses, exceptions and fines. It should also be noted[37] that French law lays down strict rules on the invocation of exceptions and non-acceptance. These two defenses are examined by the French courts only if they were raised at the beginning of the trial *(in limine litis*). Therefore, in French law, exceptions and fines do not constitute means of defense by which the defendant highlights irregularities in the legal procedural relationship between the plaintiff and the court, without referring to the substance of the dispute. The doctrine[38] considers that the ends of non-receipt are intermediate ways of defense; they fall between real exceptions and substantive defenses. Given that it does not deal with procedural defenses, in a narrow sense, nor with substantive ones, but invokes issues that prevent the court from examining the merits, such as the plaintiff's inability to stand trial. However, the current terminology in the French trial is rather imprecise; some substantive defenses leading to the adoption of a decision favorable to the defendant are called fines.

In civil proceedings in the United States of America, as a rule, the defendant presents his defenses in legal proceedings. Debates include the submission of the case by the plaintiff and the hearing of the defendant's version. Currently, in the USA, both the common law system and the modern procedure allow the defendant to defend himself by reference to the merits, and to use "technical defenses", which do not combat the merits of the plaintiff's claims, but invoke certain

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[33] Leș, I. The new Code of Civil Procedure: commentary on articles. Bucharest: C.H. Beck, 2015, pp. 31
[34] *Ibid*., p. 32
[35] Vincent, J., Guinchard, S. Civil proceedings. 24th edition. Dalloz, 1996, p. 130, apud Lozneanu, V. Substantive exceptions in the civil process. Bucharest: Lumina Lex, 2003, p. 10
[36] Herzog P., Weser M. *Civil Procedure in France*. Columbia University, 1967, p. 268
[37] *Ibid*., p. 268-269
[38] *Ibid*., p. 269

the court should not examine the merits of the dispute and terminate the proceedings[39] (as, for example, the applicant's application does not contain all the necessary elements). The general rules regarding the presentation of defenses in the civil process in the USA are provided in the Federal Rules of Civil Procedure. In accordance with art. 12 of these rules[40], the defendant is obliged to present the defenses and objections within 21 days from the communication of the plaintiff's request. The same time limit is provided for the plaintiff, in the event that the defendant files a counterclaim. Also, art. 12 (b) of the Federal Rules of Civil Procedure provides non-exhaustively the objections by which the defendant may defend himself: lack of material jurisdiction of the court, lack of personal jurisdiction, violation of territorial jurisdiction, etc. So, we note that the defendant, in the US civil lawsuit, can defend himself by three means: substantive defenses, procedural exceptions and counterclaim.

Italian doctrine and law do not expressly identify the defendant's defenses, merely analyzing the actions he may take. In this regard, the authors[41] mention that after receiving the summons, the defendant must appear in court at least 5 days before the date set for the first hearing, to submit the file to the registry / court chancellery, which contains: copy of the summons, original answer to the plaintiff's claims (reference), a copy of the reference for the plaintiff, the documents on which he bases his objections and the power of attorney of the lawyer, as appropriate. According to art. 125 and 167 of the Italian Code of Civil Procedure, the reference (comparsa diponse) must contain the name of the court before which the action is pending, the parties, the factual and legal grounds on which the defendant is based, other claims on which the defendant formulates them. In addition, the reference must contain a statement of all counterclaims and compensation that the defendant wishes to make.[42]

Chapter 2 - The defense of the defendant through material-legal objections and procedural exceptions, is dedicated to the in-depth investigation of material-legal objections and procedural exceptions. In this section of the paper, the analysis of the legal nature, particularities and categories of material-legal objections was performed. As a novelty, we examined the notion, legal nature and legal regime of procedural exceptions, identifying the following procedural exceptions that can be submitted in civil proceedings in the Republic of Moldova: exception of lack of procedural capacity, exception of lack of procedural quality, exception of lateness, the exception of res judicata, the exception of lis pendens, the exception of incompetence, the

[39] Yeazell S.C., Schwartz J.C. *Civil Procedure*. New York: Wolters Kluwer, 2016, p. 264
[40] Federal Rules of Civil Procedure. [cited 01.08.2020]. Available: https://www.uscourts.gov/sites/default/files/civil-rules-procedure-dec2017_0.pdf
[41] Cappelletti M., Perillo J.M. *Civil Procedure in Italy*. Springer-Science+Business Media, B.V, 1965, p. 167
[42] *Ibid*., p. 169

exception of unconstitutionality, the exception of illegality, the exception of the nullity of the procedural act, the exception of revocation and the exception of obsolescence.

The civil procedural legislation of the Republic of Moldova expressly recognizes the possibility for the defendant to use the material-legal objections as "tools" of defense against the plaintiff's action. The Code of Civil Procedure of the Republic of Moldova, by art. 56 para. (1) states that "the participants in the trial are entitled […] to object to the proceedings, arguments and considerations of the other participants […]", in the category of participants in the trial are also the parties, the plaintiff and the defendant. Therefore, the defendant is not the only holder of the right to raise objections in civil proceedings; this right is also enjoyed by the plaintiff, the main interveners and accessories, the persons initiating the process in the interests of others, etc.

Material-legal objections are the main and most commonly used means of defense of the defendant in civil proceedings. The domestic doctrine held that the material-legal objections "relate to the factual and legal circumstances on which the plaintiff relies in order to persuade the court not to admit the action, ie to adopt a decision rejecting the plaintiff's claims".[43]

I identified that the material-legal objections of the defendant fall into two categories: objections in fact and objections in law. By objections in fact the defendant invokes or denies certain situations, such as in the action for debt collection, the defendant states that he does not owe anything, whether he has paid the debt. If the defendant defends himself with the help of legal objections, then he invokes a substantive rule of law which will have the effect of rejecting all or part of the plaintiff's claims, such as the defendant showing that the civil legal act is contrary to public policy or morals; argues that the object of the legal act is impossible. In practice, the defendant uses both categories of material-legal objections at the same time, indicating the circumstances of the case with reference to the provisions of the law. The objections in fact and in law, as a rule, coexist, being simultaneous, thus ensuring the effective defense of the defendant

The material-legal objections according to their object are divided into:

1) material objections which deny the plaintiff's considerations;

2) material objections by which the defendant invokes his own factual and legal circumstances.

In the first category we attribute the defendant's defenses by which he does not acknowledge the facts shown by the plaintiff (simple denial), argues that the factual circumstances do not create legal effects or that the legal circumstances do not relate to the case, and according to another provision the plaintiff's claim can not be admitted. These material-legal objections are strictly

[43] Belei, E., et al. Civil procedural law. The general part ..., p. 265

limited to those set out by the plaintiff, with the aim of discussing the merits of the applicant's considerations, without the defendant invoking certain additional circumstances to which the opposing party did not refer.

By material objections by which the defendant invokes his own factual and legal circumstances, we mean the situation where the defendant invokes other factual and legal grounds than those shown by the plaintiff. Compared to the first category of objections, these objections are more complex for the defendant, in that they need to be proved by means of evidence. Respectively, if the defendant agrees to use these objections, he also assumes the burden of proof.

From the description of these two types of material objections, their difference becomes obvious. First, the substantive objections which deny the plaintiff's considerations are limited to the facts relied on by the plaintiff, and the other category of objections complicates the examination of the case by reference to new circumstances. Thus, the judge will have to verify not only the validity of the circumstances set out by the plaintiff, but also to assess the facts shown by the defendant. However, it will undoubtedly contribute to the full and in all respects examination of the case, which will lead to the adoption of a legal and well-founded decision.

The second means of action of the defendant by which he can defend himself is the procedural exception. The procedural exception is the defendant's means of defense by which he tends to stop the examination of the plaintiff's action, citing procedural irregularities. The literature[44] has considered that the object of procedural exceptions is, in general, procedural irregularities, and the purpose of procedural exceptions is to sanction these irregularities, with the consequences that the law provides, depending on the violation.

We note that the procedural exception is not a means of defense characteristic only of the defendant; the other participants in the trial, even the plaintiff, still have the opportunity to invoke procedural exceptions. But, given the defendant's procedural position, "the procedural exception is used by him, being often considered his prerogative."[45]

The contradictory nature of the civil proceedings and the equality of the parties allow the defendant to discuss what the plaintiff invoked in the summons. We are of the opinion that the defendant can combat, in this sense, two aspects:

- subjective civil law or legitimate interest: we consider combating the existence of the legal relationship of substantive law between the parties (this can be achieved by the defendant invoking certain factual circumstances of the case which show that the

[44] Deleanu I. *Considerations regarding the procedural exceptions in the context of the provisions of the Draft of the New Code of Civil Procedure*. In: Romanian Journal of Private Law no. 4/2009, pp. 28-29
[45] Deleanu I. *Considerations regarding the procedural exceptions* ..., p. 29

plaitiff's subjective right does not exist, or the plaintiff is not its holder, whether the subjective right has not been violated; or, the defendant can defend himself in law, by invoking certain provisions of the normative acts that will determine the rejection of the plaintiff's claims);

- right of action: here we refer to the plaintiff's observance of the premises and conditions of the right to action (for example, the defendant invokes the incompetence of the court; shows that there is an irrevocable judgment on the same dispute; raises the exception of lateness, etc.).

The effects of admitting the material-legal objections consist in the total or partial rejection of the plaintiff's claims as unfounded. While the admission of the procedural exception leads to the postponement, suspension, termination of the process, removal from the application or even rejection of the action, depending on the type of procedural exception allowed.

The procedural exception invoked and admitted by the court reaches its finality, which consists, as mentioned *above*, in sanctioning the procedural irregularity. The sanction that intervenes differs depending on the allowed procedural exception. For the exception to be effective, it must be invoked in compliance with the legal provisions, taking into account the particularities of the procedural exception raised. In this regard, we consider it useful to classify procedural exceptions into absolute exceptions and relative exceptions. The doctrine[46] considered that the absolute exceptions concern the violation of the imperative rules of the trial and can be invoked by any of the participants or by the court ex officio, at any stage of the trial, unless the law provides otherwise. And the relative exceptions refer to the violation of some dispositive norms and can be invoked only by the interested party within the term provided by law.

Depending on the legal regime, procedural exceptions can be divided into absolute exceptions (public order) and relative exceptions (private order). Absolute exceptions can be invoked at any time during the trial, and the relative exceptions are to be raised only within the time limits established by the legislation in force under the sanction of revocation. From the analysis of the legislation in force we established that both absolute procedural exceptions are regulated (exception of lack of procedural capacity, exception of lack of procedural quality, exception of res judicata, exception of lis pendens, exception of incompetence, exception of unconstitutionality, exception of nullity of the procedural act), as well as relative procedural exceptions (exception of lateness, exception of forfeiture, exception of obsolescence).

[46] Vasile A., op. cit., p. 15

In Chapter 3 - Counterclaim and alternative / atypical means of defense of the defendant, the research focused on studying the place and role of counterclaim in the system of means of defense of the defendant, determining the particularities of progress, examination and effects of counterclaim. Also, the alternative / atypical means of defense of the defendant were subjected to the analysis; in particular, we identified the characteristic features of the defense through the judicial transaction and the attraction in the process of the accessory intervener from the defendant.

The counterclaim is a means of defending the defendant against the request for a summons, which represents certain specific features compared to other means of defense. By material objections, the defendant is content to rebut the plaintiff's allegations, and by the counterclaim, which has the legal nature of a true lawsuits, the defendant can, as a rule, claim everything he could request in a writ of summons, judgment, formulated in the main way. [47]The doctrine consistently regarded the counterclaim as a means of exercising a right by the defendant against the plaintiff.[48]

In the Republic of Moldova, the counterclaim may be filed by the defendant until the beginning of the judicial debates, according to art. 172 para. (1) of the CPC, ie in the phase of preparing the case for judicial debates. Filing a counterclaim is a right of the defendant that can be exercised, as a rule, until the beginning of the judicial debates. Or, its submission without justifying any ground from art. 173 of the CPC, but also after the beginning of the judicial debates, will determine a single solution - its separation by not concluding an appeal. In this way, the defendant is not violated of any right, as these two types of counterclaims (which seek to compensate for the initial claim or which are connected and their simultaneous trial leads to the speedy and fair settlement of disputes) can be tried separately without any risks.[49]

The counterclaim has a complex legal nature. First of all, the counterclaim is a civil action, ie it is "the legal means by which a person asks the court, either the recognition of his right or the realization of this right, by ceasing the obstacles placed in his realization by another person or by appropriate compensation". Therefore, by means of the counterclaim, the defendant seeks to defend the subjective civil right infringed or challenged by the plaintiff. This character also results from the provisions of art. 172 para. (2) of the CPC, which states that "the initiation of the counterclaim is done according to the general rules for initiating the action". Also, the nature of

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[47] Boroi Gabriel, Stancu Mirela. Civil procedural law. Bucharest: Hamangiu, 2015, p. 354
[48] Les I. The new Code of Civil Procedure: commentary on articles. Bucharest: C.H. Beck, 2015, pp. 399
[49] Poalelungi M., Belei E., Sârcu D. [et al.]. Judge's Manual for Civil Cases. Chisinau: [S.n.] (F.E.-P. "TipograCentrală"), 2013, p. 130

civil action of the counterclaim is indirectly recognized in art. 84 of the CPC: "every request for a lawsuit (initial and counterclaim) is imposed with state tax". We support the opinion expressed in the legal doctrine that "the counterclaim is a genuine civil action, but filed by the defendant in the lawsuit filed at the request of the plaintiff and against the latter." So, the counterclaim, like any civil action, comprises three interdependent elements: object, basis and parts. In order to bring a counterclaim, the defendant must comply with the premises for exercising the right of action and the conditions for exercising the right of action.

Secondly, the counterclaim is incidental in nature, given that it is initiated in a process already pending. For this reason, the counterclaim is brought in the court hearing the original action, even if that court does not have jurisdiction to rule on that application in general. In addition, due to its incidental nature, the defendant must comply with certain additional requirements when filing a counterclaim: a) the counterclaim may be filed only until the commencement of legal proceedings; b) the counterclaim is received for examination only if it either seeks to compensate for the initial claim, or its admission excludes, in whole or in part, the admission of the initial action, or is related to the initial action.

Thirdly, we consider that the counterclaim is a means of defense of the defendant in the civil process, although this character is not unanimously recognized by the specialized doctrine. According to one view[50], it is not correct to regard the counterclaim as a means of defense against the original action, because, as a rule, the counterclaim does not challenge the validity of the plaintiff's claims, but seeks to oblige the plaintiff to the defendant or to recognize certain rights of the defendant. From this point of view, the counterclaim is limited to the material claim of the defendant; it represents the defendant's request for recognition and defense of the subjective civil right. Against this argument it was stated that "we must not confuse the claim, which is submitted to the plaintiff, because the defendant in the counterclaim asks the court to receive the counterclaim, to be examined simultaneously with the original action."[51]

Of all the means of defense of the defendant, the counterclaim is the most complex way of defense. Civil cases in which counterclaims have been brought become more complicated, which also affects the length of the trial, but at the same time contributes to the quality of justice and the examination of the case in all respects. In order to better administer justice and ensure the effective right of defense of the defendant, the civil procedural legislation recognizes the defendant's right to bring a counterclaim. According to art. 172 para. (1) of the CPC, "the defendant has the right to

[50] Yudelson K.S. Soviet civil procedure. Moscow: State. publishing house jurid. literature, 1956, p. 221
[51] Belei E., et al. Civil procedural law. The general part ..., p. 266

bring a counterclaim against the plaintiff in order to be tried together with the initial action". And the initiation of the counterclaim is made according to the general rules for initiating the action, establishes art. 172 para. (2) of the CPC.

The counterclaim is filed by the defendant, to be examined and resolved with the initial action. After the judge verifies the counterclaim and receives it for examination, he shall send to the defendant-plaintiff a copy of the counterclaim, with all the attached documents, while setting the date by which the defendant-plaintiff may file the reference to the counterclaim and all necessary evidence. The counterclaim will therefore be examined at the same time as the plaintiff's initial action in general. Finally, the court will rule on both the initial action and the counterclaim, in the same court decision. "As a logical consequence of resolving the two requests together, the judge has the obligation to issue a single decision, which will include solutions to all claims."[52]

As previously established, most of the authors in the field establish that the defendant's defenses include substantive defenses (material-legal objections), procedural exceptions and counterclaim. These modalities can be considered as fundamental means of defense, typical means, on the other hand, certain modalities of action of the defendant in the civil process can be examined as derivative means of defense, atypical or alternative. Such a means of defense is the court settlement between the parties.

The transaction is treated as an act of disposition by which the parties terminate the dispute by agreement. In addition to the fact that the transaction is an act of disposition, we consider that the nature of a means of defense of the defendant can be deduced from the nature of the transaction. In general, the transaction is defined as "a contract which, in the science of civil procedural law, is called an act of bilateral disposition of the parties by which they, by making mutual concessions, settle the dispute and extinguishes the civil process".[53] Professor Leș I. states that the judicial transaction represents "a contract made under the auspices of justice by which the parties, on the basis of mutual concessions, agree to end a dispute or to prevent the initiation of a civil process."[54]

The use of the transaction as a means of defense represents, in certain situations, undeniable advantages for the defendant. Thus, the conclusion of the transaction involves a defense with the involvement of the plaintiff, which means that the parties will jointly seek a mutually beneficial solution. Given that the transaction "emanates from the very subjects involved, who are aware of both the problems they face and the most appropriate solutions."[55] It has been considered in the

[52] Leș, I. The new Code of Civil Procedure: commentary on articles. Bucharest: C.H. Beck, 2015, pp. 405
[53] Belei E., et al. Civil procedural law. The general part ..., p. 276
[54] Leș Ioan. Civil procedural law treaty. Vol. I. Bucharest: Universul Juridic, 2014, p. 873
[55] *Ibidem*, p. 276

literature[56] that the transaction is the only way in which the defendant defends himself by cooperating with the plaintiff, and not by opposing him. This defense can be referred to as the defendant's activity for concluding the transaction.

Apart from the conciliation transaction, it was considered in the Russian legal literature that attracting the accessory intervener in the process from the defendant would be a way of defending the defendant in the civil process. In that regard, some authors[57] claim that the involvement of the intervener in the examination of the case is indisputably in the interests of the defendant. The defense of the defendant by the introduction of the accessory intervener is analyzed by Russian doctrine based on the fact that the Russian authors analyze the possibility of concomitant examination, in the same process of the plaintiff's action against the defendant and the recourse action, which may be submitted by the defendant to the accessory intervener. The dispute consists in the fact that, on the one hand, the legislation in force does not expressly regulate this possibility, and, on the other hand, in theory, this fact is supported by some doctrinaires.[58] In accordance with national law, such a situation is impossible, the court will not be able to examine both the original action and the recourse action against the intervener.

At the same time, we must recognize that the attraction of the accessory intervener from the defendant in the trial can, with certain reservations, be considered as a way of defending the defendant. On the one hand, the accessory intervener has a certain interest in resolving the civil case, because the indirect court decision will also have effects for him. On the other hand, according to art. 68 CCP, the ancillary intervener has the procedural rights and obligations of the party to which it joins, except for the disposition rights of the parties. In this regard, the intervener will have the opportunity to exercise certain means of defense in the place and interest of the defendant. For example, he will be able to raise procedural exceptions in order to stop the plaintiff's legal proceedings.

Therefore, the attraction of the accessory intervener in the process indirectly leads to the defense of the defendant by the fact that if the defendant, by admitting the plaintiff's claims, obtains the right of recourse against the intervener, he will not be obliged to prove again the facts and legal relations established by court decision, solved the original cause.

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[56] Trashkova N.M. Defense of the defendant in civil proceedings: dis. to apply for an account. degree of Cand. jurid. sciences. Moscow, 2009, p. 166

[57] Ryndzyunsky G. Technique of civil procedure. With regard to the Civil Procedure Code of the R.S.F.S.R. Moscow, 1929, p. 52.

[58] Maklaev D.V. The impact of judicial acts on the rights and obligations of third parties who do not make independent claims in the arbitration process. În: Russian Justice, nr. 9/2008, p. 21

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The research carried out confirmed the topicality and importance of the topic to be addressed. The examinations carried out led to the full achievement of the intended purpose and objectives.

The solved scientific problem consists in determining the specific means of defense of the defendant in the civil process, which led to highlighting the particularities of use (use) of these methods of defense, to ensure uniform application of civil procedural law by courts.

The study allows us to formulate a series of theoretical-scientific conclusions and to come up with certain legislative recommendations aimed at streamlining the resolution of civil disputes:

1. The examination of the material-legal objections and procedural exceptions as ways of defending the defendant, allows us to state that the material-legal objections are the main and most commonly used means of defense of the defendant in civil proceedings. The material-legal objection is the only way for the defendant to challenge the merits of the right brought before the court, namely to prove that the plaintiff's claim is unfounded and must be rejected. By material-legal objection the defendant may deny the factual and / or legal circumstances invoked by the plaintiff.

In this regard, we divided the material objections into: objections in fact and objections in law. I found that by objections in fact the defendant invokes or denies certain factual situations, such as in the action on debt collection, the defendant states that he does not owe anything, whether he has paid the debt. And by objections in law, the defendant invokes a rule of substantive law which will have the effect of total or partial rejection of the plaintiff's claims. From a practical point of view, the defendant uses both categories of material-legal objections at the same time, indicating the circumstances of the case with reference to the provisions of the law. Objections in fact and in law, as a rule, coexist simultaneously, thus ensuring the effective defense of the defendant.

Material objections can be classified according to their object into:

a) material objections which deny the plaintiff's considerations;

b) material objections by which the defendant invokes his own factual and legal circumstances.

2. The formulation of material-legal objections usually takes place by reference. The reference is presented by the defendant during the preparation phase of the case for judicial debates. Apparently, the submission of the reference is mandatory, in case it is not submitted within the term established by the court, the defendant is deprived of the right to present further evidence. However, we have established that the submission of the reference is a right of the

defendant, who has the possibility to submit or not the reference in the civil process. If the defendant does not submit the reference within the set deadline, this will have two effects. First of all, the defendant will lose the possibility to present the reference after the deadline set by the judge for performing this procedural act. Secondly, a more serious consequence for the defendant, he will not be able to present evidence in the trial to prove his claims, and the case brought before the court will be examined only on the basis of the evidence presented by the plaintiff.

Given that the non-submission of the reference deprives the defendant of the right to present evidence, we conclude that the material-legal objections by which the defendant invokes his own factual and legal circumstances can be raised only through the reference. And the material-legal objections which deny the plaintiff's considerations may be invoked at any time during the examination of the case at first instance, without them taking a form strictly established by law.

3. Procedural exceptions are the means of defense by which the defendant alleges lack of the plaintiff's right to an action in the procedural sense or to errors in its exercise, in order to stop the trial or temporarily prevent the examination of the case. I noticed that regarding this means of defense, both the legislation in force and the domestic doctrine use two terms for the same institution: procedural-legal objections and procedural exceptions. From our point of view, it is necessary to standardize the use of legal terminology, we consider inappropriate to use the term "procedural objections" and support the idea of using the phrase "procedural objections", which will eliminate confusion between material and legal objections and procedural objections.

4. Depending on the legal regime, procedural exceptions can be divided into absolute exceptions (public order) and relative exceptions (private order). Absolute exceptions can be invoked at any time during the trial, and the relative exceptions are to be raised only within the time limits established by the legislation in force under the sanction of revocation. From the analysis of the legislation in force, we established that the following procedural exceptions are regulated: the exception of lack of procedural capacity, exception of lack of procedural quality, exception of lateness, exception of res judicata, exception of lis pendens, exception of incompetence (which can be divided into: exception of general incompetence, the exception of jurisdictional incompetence, the exception of non-fulfillment of the preliminary procedure, the arbitration exception), the exception of unconstitutionality, the exception of the nullity of the procedural act, the exception of revocation and the exception of obsolescence.

5. Summarizing the examination of procedural exceptions, we elaborated the following proposals of *lege ferenda* for the optimization of the institution of procedural exceptions:

a) modification of art. 121 para. (4) CPC, which must have the following content: “If the conditions specified in par. (2), the court refuses to lift the exception of unconstitutionality by a

decision. The decision to refuse to raise the objection of unconstitutionality may be appealed. The examination of the appeal does not affect the continuity of the court hearing, but until the pronouncement of the decision of the hierarchically superior court, the pleadings are postponed".

b) art. 469 para. (1) lit. c) from the CPC to be exposed in the following wording: "request for the approval of the forced execution of the foreign court decision, the term from which the execution of the decision is requested; or requesting the recognition of a foreign court decision in order to invoke the authority of res judicata".

c) the introduction in the Code of Civil Procedure of art. 123 with the marginal name "Exception of illegality", which will have the following content:

"(1) In case of uncertainty regarding the legality of a normative administrative act, which is not subject to constitutional review, to be applied to the settlement of a case, the court, ex officio or at the request of a participant in the trial, shall notify the contentious court administrative.

(2) When raising the exception of illegality and notifying the administrative contentious court, the court is not entitled to rule on the merits of the notification or on the legality of the normative administrative act, limiting itself exclusively to verifying the meeting of the following conditions:

a) the object of the exception falls into the category of the acts provided in art. 12 of the Administrative Code;

b) the exception is raised by one of the parties or its representative or is raised by the court ex officio;

c) the contested provisions are to be applied to the settlement of the case;

d) there is no previous decision of the administrative contentious court having as object the contested provisions.

(3) The lifting of the exception of illegality is ordered by a decision that is not subject to any appeal and that does not affect the further examination of the case, but until the decision of the administrative contentious court on the exception of illegality becomes final, the pleas are postponed.

(4) If the conditions specified in par. (2), the court refuses to raise the exception of illegality by a decision that can be appealed. The examination of the appeal does not affect the continuity of the court hearing, but until the pronouncement of the decision of the hierarchically superior court, the pleadings are postponed.

(5) The court may raise the exception of illegality only if the request for summons or appeal has been accepted in the manner provided by law or if the appeal against the decision or decision of the court of appeal has been declared admissible according to law.

6. The counterclaim has a complex legal nature. First of all, the counterclaim is a civil action, ie through the counterclaim the defendant seeks to defend the subjective civil right violated or challenged by the plaintiff. Therefore, the counterclaim, like any civil action, comprises three interdependent elements: object, basis and parts. In order to bring a counterclaim, the defendant must comply with the premises for exercising the right of action and the conditions for exercising the right of action.

Secondly, the counterclaim is incidental, given that it is being initiated in a process already under way. For this reason, due to its incidental nature, the defendant must comply with certain additional requirements when filing the counterclaim: a) the counterclaim may be filed only until the beginning of the judicial debates; b) the counterclaim is received for examination only if it either seeks to compensate for the initial claim, or its admission excludes, in whole or in part, the admission of the initial action, or is related to the initial action.

Thirdly, we consider that the counterclaim is a means of defense of the defendant in the civil process, although this character is not unanimously recognized by the specialized doctrine. From our point of view, the counterclaim includes two aspects: the defense of a subjective civil right and the defense against the initial action. We consider that the first aspect has a material character / side, and the second, the defense against the initial action - a procedural character / side. It is true that the defendant may bring the counterclaim separately, in general, in order to obtain the defense of the subjective civil right. In this case, the action will not acquire the quality of a counterclaim, because the main feature of the counterclaim is that it is initiated and examined in a pending process, simultaneously with the initial action of the plaintiff. Therefore, we consider that in all cases the counterclaim is to be seen as a means of defense of the defendant. In addition, I consider that the counterclaim may be brought by the plaintiff against the main intervener.

7. In order to cover some legislative gaps regarding the regulation of the counterclaim, we have formulated the following legislative proposals:

a) completion of art. 172 of the CPC with par. (3), which will have the following content: “The plaintiff cannot file a counterclaim to the counterclaim of the defendant”.

b) art. 2763 alin. (3) the second sentence of the CPC will have the following content: “The defendant may file a counterclaim under the conditions of art. 172 and 173 only if the counterclaim does not violate the legal conditions for exercising the initial low value claim. If the value of the counterclaim exceeds the admissible value for the procedure in the case of low value claims, the judge, by reasoned decision, which can be appealed together with the merits, orders the examination of the case in general order”.

8. Following the research, we established that in addition to the fundamental or classical means of defense of the defendant, some alternative or atypical means of defense can be identified, which apparently do not lead to the defense of the defendant's position in the trial. Such a course of action is the court settlement between the parties. The use of the transaction as a means of defense represents, in certain situations, undeniable advantages for the defendant. Thus, the conclusion of the transaction involves a defense involving the plaintiff, which means that the parties will jointly seek a mutually beneficial solution.

9. The court settlement is a means of defending the defendant that excludes the possibility of using other means of defense in relation to the claim settled by the transaction, because the use of other means of defense implies the absence of mutual concessions and, consequently, of the transaction. Given the specific circumstances of a case, if the defendant considers that there is no possibility of obtaining the rejection of the plaintiff's claims, then the only chance to lessen the negative effects of admitting the action is to conclude the conciliation transaction. It follows from the fact that the transaction involves reciprocal concessions, namely obtaining those concessions from the plaintiff will constitute the defendant's defense.

10. The second atypical means of defending the defendant is to attract the accessory intervener from the defendant in the process. Since the ancillary intervener has the procedural rights and obligations of the party to which he joins, he will have the opportunity to exercise certain means of defense in the place and interest of the defendant. For example, he will be able to raise procedural exceptions in order to stop the plaintiff's legal proceedings. In addition, the attraction of the accessory intervener in the process indirectly leads to the defense of the defendant, by the fact that if the defendant by admitting the plaintiff's claims obtains the right of recourse against the intervener, he will not be obliged to prove again the facts and legal relations established by initial court decision.

11. Therefore, the defendant's means of defense are divided into fundamental / classical means (material objections, procedural exceptions and counterclaim) and into alternative / atypical means (reconciliation transaction and attraction of the accessory intervener).

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ADNOTARE

DUMITRAȘCU Dumitru, „Mijloace de apărare a pârâtului în cadrul procesului civil”. Teză de doctor în drept la specialitatea științifică 553.03 - Drept procesual civil. Școala Doctorală Științe Juridice a Universității de Stat din Moldova. Chișinău, 2021.

Structura tezei: Teza conține adnotări (în trei limbi), lista abrevierilor, introducere, trei capitole, concluzii generale și recomandări, lista bibliografiei consultate din 200 surse, cv, 172 de pagini de text de bază. Rezultatele obținute sunt publicate în 24 publicații.

Cuvinte-cheie: proces echitabil, dreptul la apărare, mijloace de apărare, obiecții material-juridice, excepțiile procesuale, acțiunea reconvențională, referința, tranzacția judiciară, atragerea intervenientului accesoriu.

Scopul și obiectivele lucrării: Scopul lucrării constă în identificarea mijloacelor de apărare ale pârâtului, examinarea naturii juridice, condițiilor, efectelor și eficienței acestora. Întru atingerea scopului tezei, propunem realizarea următoarelor obiective: identificarea și examinarea modalităților de acțiune ale pârâtului ce constituie mijloace de apărare; cercetarea viziunilor doctrinare naționale și opiniilor doctrinare din alte țări în privința naturii juridice, caracteristicilor, funcțiilor, felurilor și rolului mijloacelor de apărare ale pârâtului în procesul civil; evidențierea trăsăturilor caracteristice ale obiecțiilor material-juridice invocate de către pârât; stabilirea particularităților și a caracterelor excepțiilor procesuale ca mijloace de apărare ale pârâtului; determinarea naturii juridice, condițiilor de exercitare și a efectelor acțiunii reconvenționale; formularea propunerilor *de lege ferenda* în scopul remedierii lacunelor legislative și perfecționării procesului civil.

Noutatea şi originalitatea ştiinţifică a lucrării: Studiul realizat reprezintă unica lucrare în Republica Moldova ce examinează integral și complet mijloacele de apărare ale pârâtului în cadrul procesului civil. Lucrare de specialitate autohtonă care să se axeze anume pe problematica mijloacelor de apărare ale pârâtului lipsește cu desăvârșire. Noutatea științifică a acestei lucrări constă în efectuarea unui studiu profund și temeinic asupra mijloacelor de apărare ale pârâtului, având la bază legislația procesual civilă, jurisprudența națională și opiniile doctrinare în domeniu.

Problematica științifică soluționată constă în determinarea mijloacelor de apărare specifice pârâtului în cadrul procesului civil, fapt care a condus la evidențierea particularităților utilizării (întrebuințării) acestor modalități de apărare, pentru a asigura aplicarea uniformă a legislației procesual civile de către instanțele judecătorești.

Semnificația teoretică a lucrării: prezenta cercetare acoperă golul inexistenței lucrării de specialitate ce ar analiza mijloacele de apărare ale pârâtului. În cadrul acestui studiu s-a efectuat sistematizarea conceptelor doctrinare și legislative asupra mijloacelor de apărare ale pârâtului; evidențierea caracteristicilor obiecțiilor material-juridice pe care le poate înainta pârâtul, fiind stabilite categoriile și obiectivele obiecțiilor material-juridice; examinarea exhaustivă a excepțiilor procesuale ce pot fi ridicate în procesul civil; redarea multiaspectuală a acțiunii reconvenționale înaintată de către pârât în scopul apărării împotriva acțiunii reclamantului; determinarea oportunității și eficienței folosirii de către pârât a mijloacelor alternative/atipice de apărare.

Valoarea aplicativă a lucrării: Concepțiile elaborate, precum și propunerile *de lege ferenda* formulate pot fi luate în considerare în cadrul eficientizării și optimizării procesului civil la capitolul reglementării mijloacelor de apărare ale pârâtului. Considerăm că rezultatele obținute vor putea oferi opinii, trimiteri, soluții utile judecătorilor, avocaților, participanților la proces, cadrelor didactice, studenților și tuturor interesați de procesul civil.

Implementarea rezultatelor ştiinţifice: Rezultatele cercetării sunt utilizate în procesul didactic și științific de la Universitatea de Stat „Alecu Russo” din Bălți. În plus, principale repere metodologice ale lucrării au fost publicate în reviste de specialitate și au fost expuse în diferite foruri științifice internaționale și naționale.

АННОТАЦИЯ

ДУМИТРАШКУ Думитру, «Средства защиты ответчика в гражданском процессе». Диссертация на соискание учёной степени доктора права, Специальность: 553.03 – Гражданское процессуальное право, Кишинёв, 2022

Структура диссертации: Диссертация содержит аннотации (на трех языках), список сокращений, введение, три главы, общие выводы и рекомендации, список использованной литературы из 200 источников, резюме, 172 страницы основного текста. Результаты опубликованы в 24 научных статьях.

Ключевые слова: право на справедливое судебное разбирательство, право на защиту, средства защиты, материально-правовые возражения, процессуальные возражения, встречный иск, отзыв на иск, мировое соглашение, привлечение третьего лица, не заявляющие самостоятельных требований на предмет спора.

Цель и задачи исследования: Цель диссертации состоит в определении средств защиты ответчика, рассмотрении их правовой природе, условий, последствий и эффективности использования способов защиты ответчика. Для достижения цели диссертации были поставлены следующие задачи: выявление и рассмотрение способов действий ответчика, составляющие средства защиты; исследование мнений отечественных и зарубежных авторов относительно правовой природы, особенностей, функций, видов и роли средств защиты ответчика в гражданском процессе; выделение характерных признаков материально-правовых возражений, которые могут быть выдвинуты ответчиком; установление особенностей и характера процессуальных возражений как средств защиты ответчика; определение правовой природы, условий и последствий предъявления встречного иска; формулирование предложений *lege ferenda* с целью устранения пробелов в законодательстве и улучшения гражданского процесса.

Научная новизна диссертации: Исследование является единственной работой в Республике Молдова, которая полностью исследует средства защиты ответчика в гражданском процессе. В отечественной правовой литературе отсутствует работы, которая была бы посвящена рассмотрению и изучению средств защиты ответчика в гражданском процессе. Научная новизна диссертации заключается в проведении глубокого и всестороннего изучения средств защиты ответчика в гражданском процессе на основе гражданского процессуального законодательства, отечественной судебной практики и мнений ученых процессуалистов.

Решенная научная проблема состоит в определении действий, которые являются средствами защиты ответчика в гражданском процессе, что привело к выделению особенностей использования этих способов защиты, для обеспечения единообразного применение судами норм гражданского процессуального законодательства.

Теоретическая значимость: В данной работе проведена систематизация доктринальных и законодательных представлений о средствах защиты ответчика; выделение характеристик материально-правовых возражений, которые может предъявить ответчик; исчерпывающее рассмотрение процессуальных возражений, которые могут быть выдвинуты в гражданском процессе; многостороннее изучение встречного иска, как средства защиты ответчика; определение возможности и эффективности использования ответчиком альтернативных/нетипичных средств защиты в гражданском процессе.

Прикладная ценность работы: Разработанные концепции, а также сформулированные предложения *lege ferenda* могут быть использованы для оптимизации гражданского процесса в части регулирования средств защиты ответчика. Мы убеждены, что полученные результаты предоставят пользу судьям, адвокатам, участникам процесса, преподавателям, студентам и всем интересующимся гражданским процессом.

Внедрение научных результатов: Основные методологические положения исследования были опубликованы в различных научных источниках.

ANNOTATION

DUMITRAȘCU Dumitru, „Defendant's means of defense in civil procedure”.
Ph.D. Thesis, Specialty 553.03 – Civil procedure law, Chisinau, 2022

Thesis structure: The thesis contains annotations (in three languages), list of abbreviations, introduction, three chapters, conclusions and recommendations, bibliography of 200 titles, CV, 172 pages of basic text. The results are published in 24 scientific works.

Keywords: fair trail, the right of defense, meanse of defense, material objections, processual exception, counter-claim, statement of defence, settlement agreement, attracting of accessory intervener.

Purpose and objectives of the paper: The purpose of the paper is to identify the means of defense of the defendant, examining their legal nature, conditions, effects and effectiveness. In order to achieve the purpose of the thesis, we propose the achievement of the following objectives: identification and examination of the modalities of action of the defendant which constitute means of defense; research of national doctrinal views and doctrinal opinions from other countries regarding the legal nature, characteristics, functions, types and role of the defendant's means of defense in civil proceedings; highlighting the characteristic features of the material-legal objections invoked by the defendant; establishing the particularities and the characters of the procedural exceptions as means of defense of the defendant; determining the legal nature, the conditions of exercise and the effects of the counterclaim; the formulation of the proposals of *lege ferenda* in order to remedy the legislative gaps and to improve the civil process.

The novelty and scientific originality of the paper: The study is the only paper in the Republic of Moldova that fully and completely examines the defenses of the defendant in civil proceedings. Indigenous specialized work that focuses specifically on the issue of the defendant's means of defense is completely missing. The scientific novelty of this paper consists in conducting a deep and thorough study of the defendant's means of defense, based on civil procedural law, national jurisprudence and doctrinal opinions in the field.

The solved scientific issue consists in determining the specific means of defense of the defendant in the civil process, which led to highlighting the particularities of use (use) of these methods of defense, to ensure uniform application of civil procedural law by courts.

The theoretical significance of the paper: the present research covers the gap of the non-existence of the specialized paper that would analyze the means of defense of the defendant. In this study was carried out the systematization of doctrinal and legislative concepts on the means of defense of the defendant; highlighting the characteristics of the material-legal objections that the defendant may submit, establishing the categories and objectives of the material-legal objections; exhaustive examination of procedural exceptions that may be raised in civil proceedings; the multi-aspect rendering of the counterclaim filed by the defendant for the purpose of defending against the plaintiff's action; determining the opportunity and efficiency of the defendant's use of alternative / atypical means of defense.

The applicative value of the paper: The elaborated concepts, as well as the formulas of *lege ferenda* formulated can be taken into account in the efficiency and optimization of the civil process regarding the regulation of the defendant's means of defense. We believe that the results obtained will be able to provide opinions, references, and useful solutions to judges, lawyers, participants in the trial, teachers, students and all those interested in the civil process.

Implementation of scientific results: The research results are used in the teaching and scientific process at the Alecu Russo Balti State University. In addition, the main methodological guidelines of the paper have been published in specialized journals and have been presented in various international and national scientific forums.

DUMITRAȘCU, DUMITRU

DEFENDANT'S MEANS OF DEFENSE IN CIVIL PROCEDURE

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