

# PRELIMINARY HEARINGS IN THE CRIMINAL PROCEDURE OF THE REPUBLIC OF ARMENIA: IMPORTANCE, CHALLENGES, AND PROSPECTS FOR REFORM

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**Abstract.** Criminal justice is a multifaceted system designed to safeguard individual rights, uphold procedural standards, and ensure the fair administration of justice. In Armenia, the introduction of preliminary hearings represents a pivotal advancement in the evolution of criminal procedure. These legislative changes aim to streamline judicial processes, reduce delays, and address procedural inefficiencies, ensuring cases are handled more efficiently while maintaining fairness and transparency.

Preliminary hearings serve as a critical mechanism for evaluating evidence, addressing procedural issues, and determining the admissibility of cases before trial. This procedural innovation not only enhances case management but also fosters trust in the judiciary by reinforcing the principles of justice and accountability. By aligning its legal practices with international standards, Armenia demonstrates a commitment to modernizing its judicial system and promoting equitable outcomes.

This reform reflects a broader effort to strengthen Armenia's legal framework, promoting judicial integrity and public confidence in the criminal justice system. The introduction of preliminary hearings marks a significant step forward in ensuring that justice is not only done but seen to be done, underscoring Armenia's dedication to procedural integrity and a fair, transparent legal process.

**Key words** - *Criminal justice; procedural standards; preliminary hearings; procedural integrity; enhanced efficiency of criminal justice; criminal-procedural legal framework; principle of adversarial proceeding.*

## 1. INTRODUCTION

In an ever-evolving world of legal systems, the efficiency of criminal proceedings relies on their ability to adapt to societal needs while upholding the fundamental principles of justice. In Armenia, to achieve fairer and more efficient criminal proceedings, the idea of introducing preliminary hearings into the legal system was recently proposed.

Understanding and implementing preliminary hearings in Armenian criminal proceedings marks a new phase in the development of the legal system. Currently, with limited literature in Armenian on this issue and no prior experience, various trends and approaches to this concept are beginning to form.

This article is dedicated to discussing preliminary hearings in Armenian criminal procedure, identifying the challenges faced by the parties involved in the trial process, and examining the true essence of this procedural stage.

One of the pressing issues in criminal proceedings throughout different historical periods has been the insufficient preparation of criminal cases for trial in the first instance. This inefficiency in the preparation process can lead to procedural delays during trials and may result in the overturning of court decisions.<sup>1</sup> Such unfavorable outcomes infringe upon one of the fundamental rights, the right to a trial without undue delays.<sup>2</sup>

Examining the history of criminal procedure in Armenia provides key insights into the reasons and essence behind the introduction of preliminary hearings. With the establishment of the Third Republic in 1991, Armenia faced the need to build and strengthen its legal system. The transition from the USSR legacy to the formation of an independent state was accompanied by changes across all areas, including criminal justice.

The initial stages of development of Armenia's criminal procedure were characterized by incomplete structuring and, at times, arbitrary application of procedural norms. In response to these challenges, the Legislative sought to introduce innovations that would enhance criminal trial procedures. It was during this period that interest in preliminary hearings as an instrument for preparing criminal proceedings at an early stage began to take shape.

Scholars have highlighted the necessity of introducing preliminary hearings in criminal procedure.<sup>3</sup> These studies pointed out that such a stage allows for earlier and more efficient case processing, preventing unnecessary delays.<sup>4</sup>

The new order of judicial procedures and the expanded powers of the court in conducting preliminary hearings in criminal cases required a more thorough legislative approach to all aspects of this procedure, particularly from the standpoint of the constitutional right to judicial protection and the principles of international law. Practical experience has revealed issues deserving close analysis and discussion, emphasizing the relevance and practical significance of the chosen topic.

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<sup>1</sup> Султанов, А.Р. Европейские стандарты, уроки истории и правоприменительной практики. / А.Р. Султанов - М.: Статут, 2012. page 93.

<sup>2</sup> "Legal Definition of FAIR TRIAL". [www.merriam-webster.com](http://www.merriam-webster.com). Retrieved 2022-01-05. Doswald-Beck, Louise. Fair Trial, Right to, International Protection, *Max Planck Encyclopedia of Public International Law*. Doebbler, Curtis (2006). Introduction to International Human Rights Law. CD Publishing. p. 108. ISBN 978-0-9743570-2-7. Alfredsson, Gudmundur; Eide, Asbjorn (1999). The Universal Declaration of Human Rights: a common standard of achievement. Martinus Nijhoff Publishers. p. 225. ISBN 978-90-411-1168-5. Doebbler, Curtis (2006). Introduction to International Human Rights Law. CD Publishing. p. 107. ISBN 978-0-9743570-2-7. Lemmens, P. (2014). The right to a fair trial and its multiple manifestations. In E. Brems & J. Gerards (Eds.), *Shaping Rights in the ECHR: The Role of the European Court of Human Rights in Determining the Scope of Human Rights* pages 294-314. Cambridge Books Online: Cambridge University Press. D. Vitkauskas, G. Dikov Protecting the Right to a Fair Trial under the European Convention on Human Rights. A Handbook for Legal Practitioners. 2nd Edition, prepared by Dovydas Vitkauskas Strasbourg, Council of Europe, 2017. N. Mole, C. Harby The right to a fair trial. A guide to the implementation of Article 6 of the European Convention on Human Rights Strasbourg, Council of Europe, 2006. R. Goss Criminal Fair Trial Rights: Article 6 of the European Convention on Human Rights Archived 2016-03-06 at the Wayback Machine Portland/Oxford: Hart, 2014

<sup>3</sup> "Trial". *Department of Justice*. Retrieved 17 May 2020. Arenella, Peter (February 1980). "Reforming the Federal Grand Jury and the State Preliminary Hearing to Prevent Conviction without Adjudication". *Michigan Law Review*. **78** (4): pages 463–585. doi:10.2307/1288187. JSTOR 1288187.

<sup>4</sup> Руководитель авторского коллектива и редактор Г.С. Казинян, Уголовный процесс Республики Армения, учебник для вузов, издательство ЕГУ, Yerevan, 2015, page 284.

The development of a general theoretical approach to defining the essence and content of preliminary hearings in the criminal procedure of Armenia also impacts the effectiveness of this area of judicial activity and, consequently, ensures constitutional rights in criminal proceedings and achieves the intended objectives.

The scientific doctrine dedicates significant attention to the optimal procedural form for preparing criminal cases for trial.<sup>1</sup> Numerous procedural scholars throughout history have made substantial contributions to studying the problems and features of the preliminary hearing stage.

Currently, theoretical debates in procedural science continue regarding the nature of court activities within the scope of preliminary hearings. The lack of a unified theoretical foundation in defining the essence of this institution leads to a lack of consensus within the science of criminal procedure regarding its concept, significance, essence, and operating principles.

## 2. HISTORICAL DEVELOPMENT AND PREVIOUS REGULATIONS INSTEAD OF PRELIMINARY HEARINGS IN THE CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ARMENIA

Before the introduction of the new Criminal Procedure Code in Armenia on July 1, 2022, the previous legislation included the concept of preparing a criminal case for trial.<sup>2</sup> This stage acted as a transitional phase between the completion of the investigation and the beginning of the trial. Although this procedural link was within the court's jurisdiction, it was limited in its scope, particularly in terms of the issues that could be addressed at this stage.

The practical side of this phase of trial preparation, defined by previous legislation, often proved constrained. This was not only due to judges being overburdened and unable to fully review the case materials prior to this preparatory stage but also because it covered a narrow range of issues that could be discussed.

It is important to note that, given the limited resources of the Armenian judicial system, especially when handling major or sophisticated criminal cases, the preparatory stage often became a mere formality. Judges did not always have the opportunity to give due attention to every aspect of a criminal case, which, in turn, affected the quality of procedural decisions made during the preparation phase.

Under the previous legislation, once a criminal case was submitted to the court, it was expected that within 15 days, the court would make a formal decision: to forward the case for trial, suspend the process, transfer it to the appropriate judicial authority,

<sup>1</sup> Белкин А. Р. УПК РФ: конструктивная критика и возможные улучшения. Часть XII. Подготовка к судебному заседанию. Общие условия судебного разбирательства. Москва : РТУ (МИРЭА), 2018, page 41 . Рябинина Т. К. Реализация судебной власти на стадии подготовки уголовного дела к судебному заседанию: теория и правоприменение : специальность 12.00.09 «Уголовный процесс» : дис. ... д-ра юрид. наук. Саратов, 2021, page 545. Курс уголовного процесса / А. А. Арутюнян, Л. В. Брусницын, О. Л. Васильев [и др.] ; под ред. Л. В. Головки. 2-е изд., испр. Москва : Статут, 2017, 1280 с. 3. Уголовно-процессуальное право Российской Федерации : учебник / Л. А. Воскобитова, Т. С. Дворянкина, Н. М. Кипнис ; отв. ред. П. А. Лупинская. 2-е изд., перераб. и доп. Москва : Норма, 2009, 1072 с. 6. Червоткин А. С. Промежуточные судебные решения и порядок их пересмотра в российском уголовном процессе : специальность 12.00.09 «Уголовный процесс» : дис. ... канд. юрид. наук. Москва, 2013. 204 с. Трефилов А. А. Уголовный процесс зарубежных стран. Т. 1. Уголовный процесс Швейцарии. Moscow, 2016, page 1012.

<sup>2</sup> Criminal Procedure Code of the Republic of Armenia, 01.09.1998, ՀՕ-248, article 292.

or take similar technical measures.<sup>1</sup> This process was conducted without hearings or the participation of the parties, which naturally reduced the level of openness and transparency in decision-making.

Thus, the previous system for preparing criminal cases for trial in Armenia had its limitations and drawbacks, particularly in the context of efficiency and adherence to procedural fairness. With the introduction of the new Criminal Procedure Code in 2022, an attempt was made to improve this process by expanding the capabilities of judicial preparation and ensuring a more thorough and objective review of criminal cases before transitioning to trial. The absence of preliminary hearings in criminal proceedings restricted the rights of the accused, particularly the right to defense and the principle of adversarial proceedings.<sup>2</sup>

### 3. DEVELOPMENT AND CONCEPT OF PRELIMINARY HEARINGS IN THE REPUBLIC OF ARMENIA

In light of global trends in modernizing criminal justice systems, preliminary hearings have become an integral part of reforms in many countries. The approach to preliminary hearings in Armenia is closely aligned with international standards of justice. The introduction of this stage into Armenia's criminal process opens a new chapter aimed, among other things, at protecting the rights of the accused. This innovative tool serves as a separate stage where key issues, such as the admissibility of evidence, can be discussed, providing the defense with an opportunity to prepare more thoroughly for trial and effectively represent the interests of their client.

This distinct stage of criminal proceedings establishes a framework for critically reviewing the collected evidence and ensuring its more precise and objective use during the trial. This marks a long-awaited enhancement of the safeguards for the rights of the defense, thereby contributing to a fairer and more effective criminal process.

In terms of timeliness, preliminary hearings in Armenian criminal proceedings face several challenges and issues. One of the main difficulties is the lack of established rules and standards governing this procedural stage. This, in turn, creates uncertainty and additional difficulties for the defense, prosecution, and court in applying the new norms.

A fundamental question that requires attention and examination is understanding the true essence of preliminary hearings. What are they, in essence, for the Armenian legal system? What goals do they pursue, and how do they contribute to a fairer and more efficient criminal justice system?

One of the primary aspects that make preliminary hearings a long-awaited tool for protecting human rights is the opportunity for early access to information and evidence. This stage allows the defense to actively participate in case preparation, having access to evidence at the early stages.<sup>3</sup> This proactive approach can be a key factor in creating a more balanced and well-grounded judicial process.

In legal systems lacking clear preliminary hearings, defendants could face challenges in preparing their defense. The absence of structured preliminary hearings could limit their ability to challenge evidence, address legal issues, or raise procedural

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<sup>1</sup> Criminal Procedure Code of the Republic of Armenia, 01.09.1998, <O-248, article 292.

<sup>2</sup> Глазкова, М.Е. Применение европейских стандартов отправления правосудия в российском арбитражном процессе: монография. М.: Институт законодательства и сравнительного правоведения при Правительстве РФ, Ankil, 2012, page 70.

<sup>3</sup> Лупинская П.А. Решения в уголовном судопроизводстве: теория, законодательство, практика., Moscow, 2010, page 60.

objections.<sup>1</sup> This could potentially lead to unfair trials and undermine the overall integrity of the legal system.<sup>2</sup>

Considering that pretrial proceedings are not entirely adversarial, the defense is often left with insufficient opportunities to fully exercise their rights during the trial. It is important to recognize that an adversarial process is not merely a formal opportunity to present one's viewpoint on the case, but primarily it should be substantive.

According to Article 311 of the Criminal Procedure Code of Armenia, preliminary hearings address a number of key issues, encompassing both substantial and technical aspects of a criminal case. The range of these issues represents a broad spectrum of questions reviewed at this stage of the process.<sup>3</sup>

Firstly, preliminary hearings include the consideration of early termination of proceedings, objections, justified recusals, or exemptions from participation in the process. Secondly, preliminary hearings address the issue of referring case materials to the competent court.

The third aspect includes the matter of ending criminal prosecution or concluding the process. This is an important point, ensuring that cases can be resolved while respecting the rights and interests of all parties. Furthermore, preliminary hearings consider the issue of choosing measures of restraint for the defendant.

This stage also covers mediation and the application of special proceedings within the framework of conciliation processes, expedited procedures, or cooperation. A significant part of preliminary hearings is the review of the scope of evidence and its admissibility.

Additional findings from the information provided highlight the variety and importance of issues reviewed during preliminary hearings. Let's examine some additional aspects:

- Article 311 of the Criminal Procedure Code of Armenia defines a range of categories of issues considered during preliminary hearings, from formal and procedural aspects, such as recusals and participation in the process, to substantial issues, like the sufficiency of evidence or termination of prosecution. Thus, the stage of preliminary hearings encompasses a broad spectrum of aspects of a criminal case.

- The process of preliminary hearings aims to ensure fairness and protect the rights of all parties involved in the criminal process. This includes ensuring effective participation and the opportunity for parties to express their views on various procedural matters.

- One of the primary focuses of preliminary hearings is ensuring procedural fairness. This includes transferring the case to the appropriate court, applying measures of restraint, addressing mediation issues, and adhering to procedural norms.

- It is important to note that at this stage, not only substantial issues related to the factual side of the criminal case are considered, but also formal and procedural aspects. This underscores the importance of observing procedural norms to ensure a fair and lawful criminal process.

<sup>1</sup> Научно-практический комментарий к Уголовно-процессуальному кодексу Российской Федерации / О. Н. Ведерникова, С. А. Ворожцов, В. А. Давыдов и др. ; editor. В. М. Лебедев ; Верховный Суд РФ. - Moscow. : Норма : Инфра-М, 2014, page 104.

<sup>2</sup> Мотивированность судебных решений в свете стандартов Европейского Суда по правам человека / А. А. Васяев, Г. И. Курдюков, С. А. Князькин // Российский юридический журнал : науч.-теорет. и информ.-практ. журн. 2014, N 6, page 2.

<sup>3</sup> Criminal Procedure Code of the Republic of Armenia, 01.09.1998, ՀՕ-248, article 311.

- Preliminary hearings serve as a mechanism to maintain balance between the interests of the prosecution and the defense. Addressing issues such as the scope and admissibility of evidence helps create a balanced and fair trial process.
- It is noted that even if a case is concluded at the preliminary stage, it is usually related to procedural issues, highlighting the importance of effective and competent consideration of criminal cases from the very start of the process.

#### 4. CONCLUSION

Preliminary hearings, as a key stage in the criminal process, have gained special significance in the modern legal system. Throughout our discussion, their importance as a tool for ensuring fairness and efficiency in criminal proceedings was highlighted. Significant attention was given to analyzing relevant literature, where preliminary hearings, taking their place in the context of transitioning from the investigation stage to trial, are considered an integral part of the procedural system.

The importance of preliminary hearings encompasses not only the technical aspects of a criminal case but also fundamental questions concerning the essence of the charges and the scope of the presented evidence. Beyond formal procedural issues, preliminary hearings play a key role in ensuring equality between the parties, allowing the defense more detailed engagement with the prosecution.

As previously noted, preliminary hearings act as a kind of transitional link between the pretrial and trial stages. This stage not only ensures the formal approval of charges but also serves as a fundamental moment that sets the further course of judicial proceedings.

One of the key points emphasized in the review of preliminary hearings is their role in ensuring equality. A judicial system based on the principle of adversarial proceedings provides both parties with an equal opportunity to present their arguments and evidence. In this context, the ability of the defense to question the clarity and specifics of the charges becomes an essential part of maintaining this principle within the trial process.

However, despite a deep analysis of individual aspects presented in subsequent studies, this general overview of preliminary hearings within Armenia's criminal justice system will serve as a summary conclusion on the new concept. This review will provide readers with a general understanding of the role and importance of preliminary hearings in the context of criminal proceedings, while future articles will delve into specific aspects, integrating them into modern legal practice in Armenia.

Implementing improvements to the preliminary hearing process in Armenian criminal justice entails considering both procedural and substantive aspects to ensure fairness, efficiency, and the protection of the rights of all parties. The following recommendations are proposed for the purposes outlined above:

1. Strengthen legislative provisions emphasizing the right of the accused to a clear and detailed presentation of the charges during preliminary hearings.
2. Enhance rules that guarantee active and meaningful participation of the defense during preliminary hearings, allowing them to challenge evidence, contest its admissibility, and raise procedural objections.
3. Emphasize the adversarial nature of preliminary hearings, fostering an environment where the prosecution and defense can present their arguments and evidence on equal terms, with the active involvement of the judge as a guarantor of the adversarial process.
4. Given the relatively new nature of the legislative provisions in the Armenian Criminal Procedure Code, attention must be focused on training and preparation.

Ensuring extensive training programs for lawyers involved in preliminary hearings is a fundamental step toward unifying judicial practice and creating commonly accepted approaches to addressing issues raised during the preliminary hearing stage. Since these provisions are only beginning to be implemented, training plays a crucial role in establishing a unified standard for preliminary hearing procedures and preparing lawyers for the successful application of new norms in practice.

## ՆԱԽՆԱԿԱՆ ԴԱՏԱԼՍՈՒՄՆԵՐԸ ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ՔՐԵԱԿԱՆ ԴԱՏԱՎԱՐՈՒԹՅՈՒՆՈՒՄ. ԿԱՐԵՎՈՐՈՒԹՅՈՒՆԸ, ՄԱՐՏԱՀՐԱՎԵՐՆԵՐԸ ԵՎ ԲԱՐԵՓՈԽՈՒՄՆԵՐԻ ՏԵՍԼԱԿԱՆԸ

**Լուսինե Հովհաննիսյան**

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**Համառոտագիր:** Քրեական արդարադատությունը ներառում է ընթացակարգերի բազմակողմանի համակարգ, որն ուղղված է անձանց իրավունքների և հիմնարար ազատությունների երաշխավորմանը, դատավարական կարգավորումների պահպանմանը և արդյունավետ արդարադատության իրականացման ապահովմանը: Նախնական դատական լսումների ներդրումը ՀՀ քրեական դատավարության համակարգում կարևոր փոփոխություն է իրավական դաշտում: Սույն հոդվածում քննարկվող օրենսդրական փոփոխությունները նպատակ ունեն բարձրացնել քրեական գործերի դատական քննության արդյունավետությունը և նպաստել դատավարության թափանցիկության բարձրացմանը: Նախնական դատալսումների ներառումը հնարավորություն է տալիս նվազեցնել գործերի քննության տևականությունը և որոշակիորեն վերացնել ընթացակարգային խոչընդոտները՝ ապահովելով գործերի ավելի արագ ընթացքը: Այս փոփոխությունը արտացոլում է բարեփոխումների և քրեական արդարադատության պրակտիկայի արդիականացման ընդհանուր հանձնառությունը՝ համապատասխանեցնելով այն միջազգային չափանիշներին:

**Բանալի բառեր** - Քրեական արդարադատություն; ընթացակարգային կարգավորումներ; նախնական դատալսումներ; ընթացակարգային ամբողջականություն; քրեական արդարադատության արդյունավետության բարձրացում; քրեադատավարական իրավական կարգավորումներ; մրցակցության սկզբունք:

## ПРЕДВАРИТЕЛЬНЫЕ СЛУШАНИЯ В УГОЛОВНОМ ПРОЦЕССЕ РЕСПУБЛИКИ АРМЕНИЯ: ЗНАЧЕНИЕ, ВЫЗОВЫ И ПЕРСПЕКТИВЫ РЕФОРМИРОВАНИЯ

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**Аннотация.** Уголовное правосудие охватывает многоаспектную систему процедур, направленных на защиту прав личности, соблюдение процессуальных норм и обеспечение справедливости. Введение предварительных слушаний в уголовный процесс Армении знаменует значительное преобразование правовой системы. Эти последние законодательные изменения направлены на упрощение судебных процессов, повышение эффективности управления делами и содействие справедливости и прозрачности судебных разбирательств. Включение предварительных слушаний позволяет армянской правовой системе уменьшить задержки и устранить процессуальные препятствия, обеспечивая более быстрое рассмотрение дел при соблюдении принципов правосудия. Это изменение отражает более широкую приверженность реформам и модернизации практики уголовного правосудия в соответствии с международными стандартами. В целом, механизм предварительных слушаний свидетельствует о стремлении Армении укрепить свою правовую базу и повысить доверие к судебной системе за счет улучшения процессуальной целостности и справедливых результатов.

**Ключевые слова** - Уголовное правосудие; процессуальные стандарты; предварительные слушания; процессуальная целостность; повышение эффективности уголовного правосудия; уголовно-процессуальная правовая база; принцип состязательности.