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MODERN CONCEPT OF OFFICIALITY (PUBLICITY) OF CRIMINAL PROCEEDINGS AND DEVELOPMENT TENDENCIES

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Abstract. The article is dedicated to the principle of officiality of criminal procedure. It presents the modern concept of officiality, discusses the expression of this idea in the Criminal Procedure Code of the Republic of Armenia, and highlights the tendencies of its development in the context of practical realities.

As a result of the conducted research, the Author states that the modern concept of officiality in criminal procedure is the relative unity of public and private interests. It implies that the criminal proceedings are conducted with the purpose of uncovering the offence and imposing legal consequences for it, and during this process, human rights and freedoms must be guaranteed proportionately. The principle of officiality requires that, on the one hand, the norms governing the procedure of investigation and the powers of criminal prosecution bodies do not unnecessarily endanger human rights, while on the other hand, the guarantees of human rights and freedoms do not excessively limit the procedural possibilities for investigating and uncovering offences.

According to the Author, the concept of officiality in the criminal justice system of the Republic of Armenia is expressed in line with its new concept and reflects the influence of universal tendencies in the correlation of public and private interests. The Author argues that the criminal procedure legislation of the Republic of Armenia, while strengthening the officiality of criminal proceedings in determining the status of a court, at the same time, for the purpose of alleviating the burden on criminal procedure, has increased the degree of dispositivity by expanding the opportunities of private participants in the proceedings to pre-determine the outcomes of public matters. Criminal procedural legislation and practice clearly bear the tendencies of general development in the relationship between public and private interests, strengthening private interests at the expense of limiting the possibilities for public action.

Keywords: *officiality; dispositivity; ex officio examination; reasonableness; principle; basis; public interest; private interest.*

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1. Introduction:

One of the most commendable innovations in the new Criminal Procedure Code of the Republic of Armenia (hereinafter referred to as the Code) is the incorporation of the principle of officiality (publicity). However, it is important to emphasize that the innovation is not the officiality of criminal procedural activities, but rather the direct mention of this in the Code, the delineation of the public and private aspects in criminal proceedings, and the establishment of criteria for their relationship. Criminal proceedings have a public-legal foundation and content, regardless of whether this is explicitly mentioned anywhere or not.

The issue of officiality of criminal proceedings is not new in theory. Numerous studies have been dedicated to the formation of this concept, its historical development, and its relationship with other values of criminal procedure, which, however, mostly have a pronounced theoretical focus and reveal the philosophical and axiological aspects of officiality. Meanwhile, officiality also has significant practical importance, at least insofar as it serves, among other things, as a guarantee for the proper balance of public and private interests in criminal procedure. Nevertheless, the practical aspects of officiality of criminal proceedings have not been properly studied, and it has not been examined whether the legislative solutions to specific issues of procedural activity ensure the proper balance of public and private interests, and whether the principle of officiality can be considered practically implemented.

This study aims to present the current concept of officiality and, within the context of practical realities, highlight its development tendencies.

2. The origin and development of the concept of officiality of criminal proceedings:

The concept of officiality of criminal proceedings does not have deep historical roots. In the early and middle stages of the development of legal systems, up until the second half of the second millennium, the private-claim approach to offences was adopted, which assumed that each offence is an assault solely against a specific individual and harms only that person. The theory of the public danger of offence emerged as a result of the prolonged development of law in the 16th and 17th centuries, later serving as the foundation for the distinction and separation of criminal law from civil law. It was during this time that the idea began to form and develop that, although the vast majority of offences directly harm not society as a whole, but specific interests with a particular placement and incomparably narrower scope within public interests, and sometimes even personal interests,

nevertheless, regardless of the direct consequences of any specific offence, its proper investigation, uncovering, and thereby ensuring the general legal order and public safety, is a public matter and is inherent to the content of the legal function of the modern state. Thus, the theory of the public danger of offence became the basis for the emergence of the concept of officiality of proceedings regarding it, which in turn conditioned the distinction between criminal procedure and civil procedure.

The understandings of the content of officiality of criminal proceedings and the requirements arising from it have varied. The approaches of the Soviet era, clearly subject to the objective imperatives of the time, such as the state regime, the type of criminal procedure, its issues, principles, the scope of human rights and freedoms, and their guarantee system, as well as the characteristics of the criminal procedural regime for limiting rights, directly opposed public and private interests, overestimating the public in their ratio. During the Soviet years, the concept of officiality was understood as the absolute orientation of criminal proceedings solely towards the complete, objective, and comprehensive investigation of crimes and the securing of the public interest in the discovery of objective truth, thereby also reflecting the investigative, accusatory, and even intelligence-gathering orientation of the entire criminal procedural activity.

For example, V. K. Sluchevsky, in his definition of the principle under discussion, strongly emphasized the public interest, stating that "the essence of this principle lies in the public nature of criminal proceedings, under which the criminal court develops its procedural activity not in accordance with private, but with public interests, which demand the unwavering application of criminal punishment against the person who has committed the offence[1]".

While authors from the Soviet era explained officiality through the opposition of public and private grounds, insisting on the disregard of the private interest in this opposition, contemporary understandings focus on a different core of the principle. According to these approaches, the principle of officiality requires the initiation of proceedings by the relevant body during the pre-trial phase, regardless of the victim's complaint, and in the judicial phase of the proceedings, it implies that the court is not constrained or limited by the opinions of the parties[2].

Based on such an emphasis in the interpretations, the principle of officiality is also referred to as the principle of *officiality* or *the ex officio examination* principle.

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[1] **Sluchevsky V. K.** Textbook of Russian Criminal Procedure. Court Organization – Court Proceedings. St. Petersburg, 1910. p. 50.

[2] **Lichtenstein, András**, The Principles of Legality and Officiality in Criminal Procedure, In: Central & Eastern European Legal Studies; 2018, Issue 2, 290– 293.

It was natural and logical not only the origin of the idea of officiality of criminal procedure, but also the formation of its modern concept. The smooth development of law results not only in the necessity for a criminal proceedings to be conducted for each case of offence, with a thorough, objective, and comprehensive investigation of the circumstances and the establishment of criminal-legal consequences for the perpetrator, but also in the recognition of private interests in criminal procedure, the specific relationship between public and private interests, and the balancing of these interests in one way or another. It should be noted that, back in the interpretations of the Soviet era, the protection of private interests gradually began to be discussed in the context of the principle of officiality. For example, I.M. Galperin noted that "the investigation of criminal cases, the criminal prosecution of those who have committed offences, and the judicial examination of cases are carried out based on state interests by the prosecution, investigative bodies, and the court, which are obliged to take measures on their own initiative to uncover the offence, reveal the objective truth, expose the perpetrator, and protect the rights and legal interests of the individuals involved in the case, regardless of the will or discretion of the victim or other interested parties in the case[3]".

Especially after the collapse of the USSR, the development vector of criminal justice systems in post-Soviet states was directed towards the expansion and strengthening of human rights and freedoms, which was achieved through the adoption of international legal standards for their protection. These standards, based on the protection of human rights and freedoms in criminal procedure, which sometimes address historically rooted problematic situations and are focused on their neutralization, have developed the concept of officiality in a way that emphasizes private interests in the relationship between public and private interests, with the aim of ensuring a new level of protection for human rights and freedoms. In recent scientific research, the officiality of proceedings is clearly seen as a guarantee of the protection of private interests, as the protection of private interests not only does not contradict the protection of public interests but rather stems from the public interest[4].

It is important to note that there is no unified approach regarding the procedural value of the concept of officiality in the theory of criminal procedure, and we believe that its profound content and various layers do not allow for the expectation of the opposite. Perhaps the most widespread understanding is that of officiality as

[3] **Galperin, I.M.** On the Principle of Publicity (Officiality) in Soviet Criminal Procedure // Newsletter of higher educational institutions. Jurisprudence, Moscow, 1960. No. 2, p. 207.

[4] **Dilbandyan, S.A.** The Relationship Between Public and Private Grounds in Criminal Procedure // Banber - Bulletin of Yerevan University, "Jurisprudence". 130.3, Yerevan, 2010, pp. 5-29.

a principle of criminal procedure, which has been facilitated and continues to be facilitated by the fact that direct references to this concept in codes or their drafts have always been made through formulating it as a principle of criminal procedure. The interpretations of the greatest procedural scholars of the Soviet era were based on this approach[5]. Officiality as a principle of criminal procedure is also viewed by S.G. Ghazinyan, S.A. Dilbandyan[6], L.V. Golovko[7], and M.T. Ashirbekova[8], regardless of whether it is explicitly stipulated as a principle in the code at that particular moment.

A differing approach is held by L.A. Mezhenina, who, while acknowledging officiality embodies all the characteristics of a criminal procedural principle, argues that "it is a broader phenomenon, the basis of Criminal Procedural Law, which conditions the logical structure of this branch and serves as the foundation for the principles of criminal procedure and the system of this branch of law[9]". Some authors, again clearly based on the perception of officiality as a fundamental concept, consider it as "the vector determining the direction of the existence and development of criminal procedure[10]", "a typological characteristic of criminal procedure[11]", "a method of legal regulation[12]", and "a regularity of criminal procedure[13]".

Although the debate on the procedural value of officiality is interesting, in our opinion, it is not appropriate. It is quite evident from all the presented approaches that they are based on the perception of officiality as a fundamental concept, and the differences in the definitions given to it are simply due to the fact that each author examines this concept from their own perspective. Moreover, the different perceptions and characteristics of the concept of officiality not only do not exclude each other, but on the contrary, they are interconnected and interdependent.

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[5] **Elkind, P.S.** The Essence of Soviet Criminal Procedure Law. Leningrad, 1963. **Dobrovolskaya, T.N.** Principles of Soviet Criminal Procedure: Issues of Theory and Practice. Moscow, 1971.

[6] **Ghazinyan, G., Dilbandyan, S.** The Place and Role of the Principle of Officiality in the System of Criminal Procedure Principles // State and Law, Yerevan, 2013, No. 1(59), pp. 4-18.

[7] Course of Criminal Procedure. Edited by **L.V. Golovko**. Moscow, 2016, p. 280.

[8] **Ashirbekova M.T., Kudina F.M.** The Principle of Officiality in Russian Pre-Trial Proceedings in Criminal Cases (Content and Forms of Implementation). Volgograd, 2007. p. 23.

[9] **Mezhenina L.A.** Officiality of the Russian Criminal Process: Abstract of the Dissertation … Candidate of Legal Sciences. – Yekaterinburg, 2002. – p. 15.

[10] **Gorlova S.V.** Criminal Prosecution as a Manifestation of Officiality in Criminal Procedure: Abstract of the Dissertation … Candidate of Legal Sciences. Chelyabinsk, 2006. pp. 10–11.

[11] **Smirnov A.V.** Models of Criminal Procedure. St. Petersburg, 2000. p. 12.

[12] **Davletov A.A., Barabash A.S.** The Place and Role of Officiality in Criminal Procedure // Russian Legal Journal. 2011. No. 4, p. 128.

[13] **Sviridov M.K.** Officiality as a Regularity of Criminal Procedure. Legal Issues of Strengthening Russian Statehood / Collection of Articles. Tomsk, 2014. Part 63, pp. 3-7.

Thus, officiality, as a universal principle underlying the criminal procedural activity, all stages of criminal procedure, institutions, and the interpretation and application of criminal procedural norms, is a principle of criminal procedure. This fact not only does not exclude, but also affirms that a crucial component of the principle of officiality, the balanced protection of public and private interests in criminal procedure, is a regularity in criminal procedural activity. Restricting an individual's rights and freedoms exclusively for the sake of a sufficiently countervailing public interest and exclusively in a proportionate manner should be a regularity in criminal procedure. At the same time, the principle of officiality, considering the ratio of public and private interests in criminal procedure as their balance, is thus an idea that characterizes the type of criminal procedure, reflecting its democratic or authoritarian essence, the observation of the development process of which allows for the revelation of the direction of the development vector of the criminal justice system.

And finally, officiality, with all its perceptions, is the methodological foundation for the legal regulation of specific issues in criminal procedure. The concept of officiality, with all its components, conditioning the nature of the regulation of specific criminal procedural relations through the requirements of ex officio examination and the balance of public and private interests in criminal procedure, acts as a method of legal regulation.

3. Officiality in the Criminal Justice System of the Republic of Armenia.

The concept of officiality in criminal procedure is most clearly and succinctly expressed in Article 2, Part 1 of the Criminal Procedure Code of the Republic of Armenia, according to which: “The purpose of the Code is to define an effective procedure for conducting proceedings concerning alleged offences, based on guaranteeing human rights and freedoms”. The analysis of the provisions of the Code, both as cited and those of Article 15, which defines the principle of officiality, allows us to assert that the legislator has expressed the contemporary concept of the principle of officiality with greater clarity, emphasizing, on one hand, the orientation of criminal proceedings towards the realization of the public interest in the disclosure of offences, and on the other hand, the recognition of private interests in this process and their balanced protection.

Accordingly, the main ideological requirements of the principle of officiality in criminal proceedings are as follows:

a) the conduct of criminal proceedings is a public activity,

b) the balance between public and private interests must be ensured in criminal proceedings.

3.1. The conduct of criminal proceedings is a public activity.

This component of the principle of officiality emphasizes its predominantly external aspect, the one in which the discussed principle is primarily visible and perceptible. This requirement expresses the public aspect of the multifaceted concept of officiality, without the private interests and the demand for balancing them with public interests.

Thus, the principle of officiality in criminal proceedings is primarily a doctrine that prevention of any criminal offence is a public-legal issue, and criminal procedure is aimed at realizing the public interest in the disclosure of offences. Criminal procedural activity is conducted under the public imperative to respond to each offence, uncover its circumstances, and apply the necessary measures of intervention, and the competent authorities are obliged to take all necessary procedural measures in this regard. It was this component of officiality that M.S. Strogovich emphasized, understanding it to mean that "when administering criminal justice, the judge, prosecutor, and investigator cannot refuse to perform the actions necessary for the correct resolution of the case[14]".

This requirement of the principle of officiality directly stems from Article 1 of the Constitution of the Republic of Armenia, which, by declaring that the Republic of Armenia is a rule-of-law state, enshrines the public authority's obligation to ensure the legal order, prevent acts that violate it, and impose legal consequences for such acts. In addition, the Constitution of the Republic of Armenia directly assumes the obligation to guarantee the foundations of the constitutional order and the fundamental rights and freedoms of individuals and citizens, including protecting them from criminal infringements, thus affirming the public-legal nature of this process. Thus, by establishing in Article 3 of the Constitution that the human being is the highest value in the Republic of Armenia, and that the respect and protection of the fundamental rights and freedoms of human beings and citizens are the duties of public authority, the legislator has outlined that protecting human rights from criminal offences is a public interest and an obligation of public authority. Moreover, when defining the possibilities for the limitation of human rights, the Constitution directly states in Article 47, "They may only be restricted by law for the purposes of state security, prevention or detection of crimes, as well as for the protection of other public interests," thereby explicitly affirming that the disclosure of offences is a public interest.

The discussed requirement of the principle of officiality also has international-legal foundations. The Council of Europe's Criminal Law Convention on

[14] **Strogovich M.S.** Course of Soviet Criminal Procedure. Vol. 1. Moscow, 1968. pp. 124-136.

Corruption of January 27, 1999, the UN Convention against Corruption of October 31, 2003, the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment of December 10, 1984, the Council of Europe's Convention on the Prevention of Terrorism of May 16, 2005, the UN Convention on the Suppression of the Financing of Terrorism of December 9, 1999, the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of November 8, 1990, and a number of other international-legal documents ratified by the Republic of Armenia directly define the international-legal obligation to combat specific acts, including their criminalization, prompt and comprehensive investigation, and disclosure, thereby establishing the public interest in this regard.

In addition, European law establishes clear requirements regarding the criminalization of acts that violate the right to life and the prohibition of torture, and sets forth specific criteria for the investigation of such cases. Furthermore, the prohibition of exempting individuals from criminal liability for torture based on the expiration of the statute of limitations has become a jus cogens norm[15] in international law, which is a clear manifestation of ensuring the officiality of proceedings. Moreover, an analysis of the practice of the European Court and the Court of Justice of the European Union shows that it is the courts' ex officio duty to examine each time whether the requirements of fundamental principles of criminal justice, such as the presumption of innocence, the prohibition of double jeopardy (non bis in idem), and the principle of no punishment without law (nullum crimen, nulla poena sine lege), have been upheld[16].

The requirement for ex officio examination of criminal cases is the genetically first component of the principle of officiality, and therefore, it could not have been absent in the provisions of the Criminal Procedure Code of the Republic of Armenia that define this principle. Part 1 of Article 15 of the Code stipulates that "the conduct of proceedings is a public activity", while Part 2 of the same article clarifies that administration of justice, prosecutorial supervision, preliminary investigation and inquiry are public activities. This enumeration is, of course, not exhaustive and does not mean that ensuring judicial guarantees or the protection of public charges in court are not public activities. Both these and many other components of the criminal procedural process have public-legal foundations and

[15] The judgments of the European Court of Human Rights: Abdulsamet Yaman v. Turkey, Application no. 32446/96, § 55, 02.11.2004, and Mocanu and Others v. Romania, Application no. 10865/09, 45886/07, and 32431/08, 17.09.2014, § 70.

[16] Dr. Júlia Dóra Batta: The Principle of Official Proceedings in Practice of the CJEU and the ECtHR. Büntetőjogi Szemle 2021/különszám, 6-11.

content. Moreover, privately conducted criminal procedural activities may, in certain cases, acquire public significance and be carried out on behalf of the state. For example, according to Part 1 of Article 44 of the Code, "in order to represent the legitimate interests of a minor accused who is without care, an employee of the competent guardianship and custody authority is involved as a legal representative".

When defining the principle of officiality, the Criminal Procedure Code of the Republic of Armenia places a natural and necessary emphasis on the protection of public interest, since the initiative-reason for criminal proceedings is the public interest. Thus, Part 4 of Article 15 of the Code stipulates that "when ensuring the officiality of proceedings, the restriction of an individual's rights or freedoms must be proportional to the objective of safeguarding counterbalancing public interests". This formulation clearly shows that criminal procedural activity is naturally aimed at the realization of public interest, and ensuring officiality primarily involves uncovering the offence and solving other related public-legal issues, and the protection of an individual's rights is a condition for their legality, and through this, it becomes an integral component of ensuring officiality.

The public nature of criminal proceedings also implies that they are carried out exclusively by public authorities. It follows from Article 15, Part 2 of the Code that public activity in criminal proceedings is carried out exclusively by public authorities. It is no coincidence that the Criminal Procedure Code of the Republic of Armenia, in the context of the principle of officiality, has set out the requirements for bodies carrying out public functions, namely, that they must be established based on law, and that the court must be independent and impartial.

The principle of officiality in criminal proceedings does not exclude, but on the contrary, envisages the fulfillment of crucial functions in the criminal proceedings by private participants, in order to ensure private interests. However, these functions do not have a driving or controlling nature, and their existence does not make the proceedings private-legal. The officiality of the proceedings does not exclude the participation of private participants in the protection of public interests, moreover, in certain cases, the protection of public interests is the duty of private participants in the proceedings.

The Criminal Procedure Code of the Republic of Armenia has also realized the discussed component of the principle of officiality in the regulation of various directions of criminal procedural activity. It is expressed to some extent in the proper evidence, the presumption of innocence, the reasonable time limit, and other principles, which contain provisions about the burden of proof, the diligence directed towards the investigation, and their time constraints. But its classic

expression is found in the provision of Part 4 of Article 35 of the Criminal Procedure Code of the Republic of Armenia, which states that "the Investigator shall be responsible for the comprehensiveness, due course of preliminary investigation, the performance of investigative actions in a manner and within the time period prescribed by law, as well as for the lawfulness of the restraint measures imposed by him".

The discussed component of the principle of officiality is directly related to its opposition – dispositivity. The emphasis on private interests in criminal procedure and the increased influence of these interests on the course and outcome of the investigation reduce the share of officiality in the criminal proceegings and increase dispositivity. Therefore, when considering this requirement of officiality in theory, most notably in the context of issues associated with initiating criminal proceedings and the possibilities of private participants to manage the beginning and course of the proceedings, it is necessary to discuss the clearly expressed dual nature in the Criminal Procedure Code of the Republic of Armenia, on one hand, in favor of officiality, and on the other hand, in favor of changes to the contrary.

Thus, while maintaining the general obligation of criminal prosecution bodies to initiate criminal proceedings in the event of an offence, the new Criminal Procedure Code of the Republic of Armenia, unlike the previous one, does not consider publications in mass media about apparent offences as a mandatory or unconditional reason for initiating criminal proceedings. As for private criminal prosecution, the legislator, on one hand, has narrowed the scope of offences for which criminal proceedings can only be initiated based on a proper report by the victim of the offence, and on the other hand, has limited the pre-trial proceedings for these offences, considering it possible exclusively to uncover the person who committed the offence.

Another important aspect in the context of the officiality of criminal proceedings is that the Criminal Code of the Republic of Armenia has made principled, yet still dual, changes to the alternatives to criminal prosecution. Thus, by eliminating the discretionary possibility of exempting from criminal liability based on a change of circumstances and limiting the options for not initiating or terminating criminal prosecution on the basis of active repentance and reconciliation between the victim and the offender, the legislator, nevertheless, has considered the reconciliation between the victim and a person who has committed a minor or medium-gravity offence for the first time as a mandatory basis for exempting the offender from criminal liability, thereby expanding dispositivity in criminal procedure by granting private participants the possibility to manage the course and outcome of the proceedings. Moreover, this regulation is problematic

from the perspective of the officiality of criminal proceedings not only for that reason but also because the reconciliation with the victim is a mandatory basis for exempting a person from criminal liability even when the primary direct object of the minor or medium-gravity offence is not the personal interests of an individual, but rather public interests, as in cases where the act is directed, for example, against the order of governance.

The level of dispositivity in criminal procedure has also increased due to the new procedures introduced for the purpose of simplifying criminal justice, which allow for changing the course of the proceedings and pre-determining the solutions to issues of public importance or forming negotiations aimed at resolving matters of public significance through a declaration of guilt. For example, the fact that the type and extent of the punishment are determined through negotiations as a result of agreement proceedings is in itself a phenomenon contrary to the principle of officiality.

On the contrary, a new and higher level of officiality implies a new concept of competition in criminal proceedings, with an active and ex officio functioning court. By excluding the public prosecutor's authority to withdraw charges, the new regulations have provided the court with the authority to render a verdict contrary to the prosecutor's position and to modify the charges, including increasing them - thus establishing a very high level of officiality for such sensitive activities as the administration of justice.

3.2. The balance between public and private interests.

The enshrinement of the principle of officiality in criminal proceedings was significant not so much because of the legislative establishment of this fact, but because it included, as a component, the requirement to ensure the balance between public and private interests. The existence of public and private grounds in criminal proceedings requires their balanced combination, which serves as a basis for discussing another principle in theory - the principle of reasonableness[17].

This component of the principle of officiality also has constitutional and international legal foundations. Thus, the Constitution of the Republic of Armenia, in Article 1, defines democracy as a characteristic of the Republic of Armenia as a state, while in Article 2, it establishes that public authority is limited by the fundamental rights and freedoms of human beings and citizens, obligating the

[17] **Ryabtseva E. V.** The Relationship Between the Principles of Reasonableness, Officiality, and Dispositivity in Criminal Procedure / Society and Law, 2011, No. 5 (37), p. 220.

protection of public interests, including the fight against crime, to be carried out with the guarantee of human rights and freedoms.

The Constitution of the Republic of Armenia, the United Nations Universal Declaration of Human Rights of December 10, 1948, the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe of November 4, 1950, and the United Nations International Covenant on Civil and Political Rights of March 23, 1976, by proclaiming the fundamental rights and freedoms of individuals, serve as the basis for recognizing private interests in public criminal justice activities.

But the Constitution and international treaties not only proclaim human rights and fundamental freedoms, but also define the possibilities for their limitation for the purpose of protecting the public interest, and most importantly, they directly enshrine the idea of balancing public and private interests. Thus, Article 78 of the Constitution stipulates that "the means chosen for restricting basic rights and freedoms must be suitable and necessary for achievement of the objective prescribed by the Constitution. The means chosen for restriction must be commensurate with the significance of the basic right or freedom being restricted".

The European Court of Human Rights, in turn, has distinguished the criteria for assessing the conformity of interference with fundamental human rights and freedoms with the Convention, namely: a) the interference is prescribed by law, b) it pursues a legitimate aim, and c) it is necessary in a democratic society. The ruling in the case of Dudgeon v. the United Kingdom states that "to determine whether the interference under Article 8 is necessary in a "democratic society", the court balances the interests of the member state and the rights of the applicant." (…) The adjective "necessary" in this context (...) implies the existence of "an extreme social need" in order to justify the interference being considered. (...) For an interference with a right protected by the Convention to be deemed "necessary in a democratic society", whose two key characteristics are tolerance and broad-mindedness, it must, in particular, be proportional to the legitimate aim being pursued[18]".

The criterion of "necessary in a democratic society" is essentially the international legal expression of the principle of public interest, balancing public and private interests. To determine whether the interference with a right was necessary in a democratic society means deciding whether there was a sufficient public interest justifying that interference.

[18] The decision of the European Court of Human Rights: Dudgeon v. The United Kingdom, Application no. 7525/76, 22.10.1981, §§ 51-53.

It is interesting that both Constitutional and European Court jurisprudence include interpretations not only about the balance of public and private interests but also about their unity. Thus, in decision DCC-906, by stating that "through the function of defending the charges, the prosecutor not only acts for the sake of protecting public interests, but also in the interest of individuals affected by the crime"[19], the Constitutional Court affirms that the protection of private interests in criminal proceedings is a matter of public interest. Moreover, in its decision DCC-1234, addressing the issue of disclosing the source of information in a mass media outlet, the Constitutional Court stated that "the legitimate interest in disclosing the source of information may prevail over the public interest in not disclosing it in cases where disclosure of the source is necessary to protect a person's life, prevent a grave offence, or ensure the legal defense of a person accused of a grave offence[20]". In other words, the Constitutional Court directly considers the public interest not only in the detection of grave and particularly grave offences but also the protection of the source of information of a media outlet derived from the right to freedom of speech.

Or, the European Court, in its judgment in *the case of Van der Heijden v. the Netherlands*, literally states that "exemption from the duty to testify is an expression of exemption from an ordinary civil duty arising from the public interest". Therefore, in the case of recognition, it may be subject to conditions and formal requirements with clearly defined categories of beneficiaries. It requires a balance between two competing public interests, specifically the public interest in prosecuting grave offences and the public interest in protecting family life from state interference[21]". With the quoted position, the European Court first emphasizes that the obligation to testify stems from the public interest and thus defines the duty of private individuals to participate in the protection of public interests. By referring to the obligation to respect the right to family life and the disclosure of an offence, and speaking not of private and public interests, but rather of the balance between two public interests, the European Court first emphasizes that respecting human rights in criminal proceedings is an element of the public interest and requires that these interests be balanced.

The priority of this requirement of officiality in Armenian criminal procedure is demonstrated first by the provision of Article 2, part 1 of the Code, which states

[19] The 6th point of the Constitutional Court of Armenia's Decision No. DCC-906, dated September 7, 2010.
[20] The 7th point of the Constitutional Court of Armenia's Decision No. DCC-1234, dated October 20, 2015.
[21] The decision of the European Court of Human Rights: Van der Heijden v. the Netherlands, Application no. 42857/05, dated April 3, 2012, §§ 62 and 67.

that "the purpose of the Code is to establish an effective procedure for the conduct of proceedings concerning alleged offenses, based on guaranteeing human rights and freedoms". This formulation itself clearly emphasizes the balanced conjunction of public and private interests in criminal procedure, namely, that criminal proceedings must be an effective procedure for the investigation of offences, suitable for ensuring the full disclosure of their circumstances (public interest), which does not merely take into account the necessity of protecting an individual's rights and freedoms, but is based on it (private interest).

Article 15 of the Criminal Procedure Code of the Republic of Armenia also specifically emphasizes the balance of public and private interests. Thus, part 1 of the mentioned article stipulates that "during the proceedings and as a result, the balanced protection of public and private interests must be ensured," while part 4 of the same article states that "when ensuring the officiality of the proceedings, any restriction of a person's rights or freedoms must be proportional to the purpose of protecting the counterbalancing public interests". However, it is also important to note that the balance of public and private interests in criminal proceedings has its own distinct name and is articulated through the term "legal interest". Part 2 of Article 15 of the Code stipulates that "administration of justice, prosecutorial supervision, preliminary investigation, inquiry and other public activities shall be performed exclusively in the interests of law, by the competent bodies established based on law". After acknowledging the necessity of balancing public and private interests in criminal proceedings, the term "legal interest" essentially refers to the balance between public and private interests, as it is clear from the criminal procedural norms defining the principle of officiality that only their balance can correspond to the legal interest.

The balanced protection of public and private interests in criminal procedure, whether ensured or not, can be assessed through a detailed examination of the legal regulations in relation to specific situations of their interaction. Nevertheless, a general study of the Criminal Procedure Code allows for the assertion that the regulations governing procedural and, in particular, evidentiary actions are formulated in line with the universal tendencies of human rights protection, following the logic of ensuring the maximum guarantee of rights and fundamental freedoms, which often fails to adequately account for the counterbalancing public interest at that particular moment. Examples of this include the absolute prohibition on conducting covert investigative actions in proceedings related to medium gravity offences, the limitation of the possibility of seizing an object by search if it is not surrendered over during a court order for seizure, the near-total prohibition on applying presumptions of facts in the process of proving, given their undeniable

significance, and the ban on using prior testimonies of a witness or victim when they exercise their right to remain silent in court, among others.

This component of the officiality is also distinct in that the question of its realization or non-realization is often subject to evaluation through the examination of the practical application of criminal procedural norms. For example, this can be seen in the consideration of decisions regarding the application of restraint measures, where competent authorities determine which type of restraint measure to apply based on the balance of public and private interests. In this regard, opinions, of course, cannot be unequivocal, but it must be noted in general that the interests of the accused are much more of a concern to the theory and practice of criminal procedure than, for example, the interests of the victim, which are perceived as part of the public interest. It is enough to recall how the expedited procedure introduced into the criminal justice system of Armenia to simplify criminal procedure quickly turned into a procedural tool for obtaining and administering lenient sentences, leading to interpretations that were outright violations of the public interest. For example, in practice, it was commonly interpreted that the failure to apply the expedited procedure due to the objection of accomplices-accused would restrict the rights of the other accused, neutralizing their opportunities for a lenient sentence and thereby harming their interests. Consequently, in such cases, criminal proceedings against accomplices should be separated. Such interpretations led to situations where one of the individuals involved in a group crime was sentenced for the same act, while another was acquitted on the grounds of the absence of a criminal offence[22], which, to put it mildly, is incompatible with both justice and the protection of public or private interests within it.

4. Conclusion

The modern concept of officiality is the relative unity of public and private interests in criminal procedure, and their balanced protection. It implies that criminal proceedings are conducted with the purpose of uncovering the offence and imposing legal consequences, and during this process, human rights and freedoms must be guaranteed proportionately. The principle of officiality requires that, on the one hand, the norms governing the procedure of investigation and the powers of criminal prosecution bodies do not unnecessarily endanger human rights, while on

[22] For example, the court cases ԵՇԴ/0125/01/13 regarding Davit Machkalyan and ԵՇԴ/0126/01/13 regarding Vachagan Sukiasyan: http://datalex.am/?app=AppCaseSearch&page=default&tab=criminal (last accessed: 24.06.2024).

the other hand, the guarantees of human rights and freedoms do not excessively limit the procedural possibilities for investigating and uncovering offences.

The modern concept of officiality does not, of course, mean that public and private interests are fully identical in criminal procedure, as the Criminal Procedure Code of the Republic of Armenia clearly defines the adversarial process as the essence of the dispute between public and private interests and distinguishes both these interests and the subjects representing them. The idea of the unity of public and private interests in criminal procedure is manifested in the fact that, as a result of the development of law, the protection of private interests in criminal procedure has become a public issue. This means that protecting private interests from crime is a public process, and in this process, private interests must also be safeguarded.

The concept of officiality in the criminal justice system of the Republic of Armenia is expressed in line with its new concept and reflects the influence of universal tendencies in the correlation of public and private interests. The criminal procedure legislation of the Republic of Armenia, while strengthening officiality of criminal proceedings in determining the status of a court, at the same time, for the purpose of alleviating the burden on criminal procedure, has increased the degree of dispositivity by expanding the opportunities of private participants in the proceedings to pre-determine the outcomes of public matters. Criminal procedural legislation and practice clearly reflect the trends of general development in the relationship between public and private interests, strengthening private interests at the expense of limiting the possibilities for public action.

Conflict of Interests
The author declares no ethical issues or conflicts of interest in this research.
Ethical Standards
The author affirms this research did not involve human subjects.

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