

## **SOME FUNDAMENTAL ISSUES REGARDING JUDICIAL APPEALS OF PRE-JUDICIAL ACTS BY PUBLIC PARTICIPANTS IN CRIMINAL PROCEEDINGS**

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**Abstract.** This scientific article is dedicated to the judicial appeal of pre-trial procedural acts performed by public participants in criminal proceedings. It examines the subjects entitled to appeal, the written and oral procedures for examining appeals, as well as the evidentiary process related to facts under appeal in judicial proceedings.

The Criminal Procedure Code establishes a system of guarantees designed to protect the rights and legitimate interests of individuals within the framework of criminal proceedings. Appealing the actions and decisions of public participants during pre-trial proceedings is one of the key guarantees that enables judicial review of the legality of procedural acts carried out by public participants.

The new Criminal Procedure Code provides detailed regulation of the scope of judicial appeals concerning pre-trial procedural acts, the parties entitled to appeal, the powers of the court, and the participants involved in the proceedings. A review of judicial practice reveals numerous cases involving appeals against the actions and decisions of public participants in pre-trial proceedings. This underscores the significance of challenging pre-trial procedural acts and highlights the necessity of ensuring their effective application in practice.

**Keywords:** *criminal proceedings, pre-trial proceedings, procedural act, appeal, participants, grounds for appeal, initiation of criminal proceedings, appellant.*

### **Introduction**

Chapter 2 of the Constitution of the Republic of Armenia is devoted to the protection of the fundamental rights and freedoms of individuals and citizens,

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many of which are reflected in the Criminal Procedure Code of the Republic of Armenia (2021). In the fight against crime, it is often necessary to restrict the rights and freedoms of private individuals involved in criminal proceedings, as it is impossible to safeguard public interests without the use of coercive measures. This necessity arises from the fact that individuals accused of committing a crime typically seek to avoid criminal liability and punishment. Nevertheless, one of the essential objectives of criminal proceedings is to ensure the protection of individual rights, so that the rights and freedoms of private participants in the process are not restricted without just cause.

## **Research Part**

The Criminal Procedure Code provides various mechanisms for protecting the rights and legitimate interests of individuals during pre-trial proceedings, among which judicial guarantees hold particular significance. These guarantees have become increasingly diverse in their nature and scope. Judicial oversight in pre-trial proceedings ensures the enforcement of fundamental rights, including personal liberty and inviolability, privacy, property rights, and the right to judicial protection.

The ability to appeal the actions and decisions of public participants in pre-trial proceedings is a critical safeguard. It allows for judicial scrutiny of the legality of procedural acts carried out by public officials involved in criminal proceedings. This institution is rooted in Part 1 of Article 61 of the Constitution of the Republic of Armenia, which states: “Everyone shall have the right to effective judicial protection of his or her rights and freedoms.”

Accordingly, the actions of public participants—such as the prosecutor, investigator, head of the investigative body, or the investigative authority—that restrict an individual’s fundamental rights and freedoms during pre-trial proceedings may be subject to judicial review. The court, as an independent and impartial body, plays a key role in upholding the rights and legitimate interests of individuals within the criminal justice system. Judicial practice demonstrates that this institution of judicial control significantly influences the conduct of public participants and reinforces the legality of their procedural actions.

The new Criminal Procedure Code provides a detailed regulation of the scope of judicial appeals concerning pre-trial procedural acts, including the subjects entitled to appeal, the powers of the court, and the participants involved in the proceedings. Judicial practice indicates that there are numerous cases involving the appeal of actions and decisions made by public participants during pre-trial proceedings.

This fact underscores the significance of the procedure for challenging procedural acts at the pre-trial stage.

For the effective exercise of the right to appeal, it is essential to clearly define the range of individuals entitled to file such appeals. This issue has been thoroughly addressed in the current Code, thereby eliminating the ambiguity that existed under the previous legislation. Specifically, Article 300 of the Code states: “Complaints against pre-trial acts provided for in Article 299 of this Code may be filed by a private participant in the proceedings, as well as by any other person, if they substantiate that the act has had a disproportionate impact on their legitimate interests.”

A noteworthy development in the new regulation is that the right to appeal is not limited to private participants in the proceedings. It also extends to individuals who are not formally recognized as participants but whose rights have been affected by a procedural act carried out by a public participant. This provision is consistent with the constitutional right to judicial protection.

Undoubtedly, a complaint should not be rejected merely on the basis that the complainant has not been granted participant status in the criminal proceedings according to formal legal procedures. As O. V. Khimicheva rightly notes, individuals who do not hold a specific procedural status are often involved in criminal legal relations. These may include persons subjected to searches, seizures, or confiscation of property—individuals who cannot be deprived of the right to appeal when their rights are infringed upon<sup>1</sup>.

Furthermore, a person who has submitted a crime report and whose application has been dismissed by a public participant in the proceedings also holds the right to appeal in court.

It is true that judicial guarantee proceedings apply to the pre-trial stage of criminal proceedings; however, it is important to emphasize that the court issues a separate decision to initiate such proceedings to challenge a pre-trial act. In other words, judicial guarantee proceedings are not a continuation of the pre-trial process but are independent legal proceedings. While they are undoubtedly closely connected to pre-trial criminal proceedings, they are not an integral part of them. This distinction is precisely why a separate judicial decision is required to commence such proceedings.

This approach has a clear legal basis. In particular, Article 7, Part 1, Clause 3 of the Criminal Procedure Code specifies that the bodies conducting criminal

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<sup>1</sup> **Khimicheva, O. V., Sharov, D. V.** On the Implementation of the Freedom to Appeal in Criminal Proceedings // *Proceedings of the Academy of Management of the Ministry of Internal Affairs of Russia*. 2019. No. 1 (49), p. 102.

proceedings include the court—from the moment it receives the indictment from the prosecutor until the conclusion of the criminal case—as well as in matters concerning judicial guarantees.

According to Article 302, Part 1 of the Code, proceedings to challenge a pre-trial act may be conducted either in oral or written form. In practice, however, courts of first instance primarily conduct these proceedings in written form. This tendency has significantly diminished the effectiveness of judicial protection of individual rights and freedoms. Even when a private participant explicitly requests an oral hearing in their complaint, the court often proceeds with a written review without providing any justification.

We argue that such an approach deprives the complainant of the opportunity to present their case in person, to question the public participant, and to draw the court's attention to relevant materials in the case file. This practice substantially restricts the effective exercise of the right to judicial protection.

It is also important to note that, under judicial guarantee proceedings, oral hearings are to be conducted based on the principles of party equality and adversarial procedure. This framework ensures that both public and private participants in the proceedings have equal opportunities to present their arguments and objections. Moreover, the Code stipulates that the review of such complaints should follow the general procedure applicable to judicial hearings.

Since the purpose of appealing a procedural act by a public participant is to assess its legality, the scope of the court's authority in such cases is limited. Specifically, the court is not permitted to evaluate matters that are to be resolved later during the trial on the merits of the case. Within judicial guarantee proceedings, the court may, upon determining the illegality of a procedural act, oblige the public participant to restore the violated rights of the affected individual. Thus, the evidentiary process involved in the examination of such a complaint is distinct from the evidentiary process used in the trial on the merits of a criminal case.

The Code provides that, in the context of examining a complaint, the court may request case materials from the relevant public participant in order to make a lawful and well-reasoned decision. Reviewing these materials implies the court engages in evidentiary activities: it evaluates the materials and makes a ruling based on its findings. For example, if a victim appeals a supervising prosecutor's decision not to initiate criminal prosecution, the court must examine the factual circumstances that led to that decision. In doing so, it assesses whether the appeal is substantiated or unfounded.

During the examination of the appeal, all materials submitted to the court are reviewed, and participants in the proceedings are given the opportunity to confirm or challenge the circumstances forming the basis of the appeal. The court evaluates these materials in order to render a lawful and well-founded decision. This examination may include not only materials already present in the case file, but also any newly submitted evidence.

Given the specific nature of appeals against pre-trial procedural acts, it is necessary to predefine the key issues that form the subject of judicial examination. Before considering the appeal, the court must clarify the following:

- a) Whether the procedural act is subject to judicial appeal in accordance with Article 299 of the Code;
- b) Whether the procedural act of the public participant has restricted or violated the fundamental rights and freedoms of the private participant;
- c) Whether the procedural act may infringe upon the individual's right to a fair trial;
- d) Whether the issues raised in the appeal are matters that fall within the scope of judicial examination at the trial stage.

The court's evidentiary activities are directly linked to the scope of these issues. For example, if the defense appeals a decision to initiate criminal prosecution on the grounds of lack of justification, or challenges the appointment of an expert examination on the basis that it is unlawful, the court may refuse to admit such appeals. This is because these issues fall within the domain of the trial on the merits and should be addressed during that phase of the proceedings.

Depending on the nature of the procedural act being appealed, the court's authority and scope in examining the case materials may vary. For example, when a person who has reported a crime appeals the investigator's decision—typically in the form of a letter—refusing to initiate criminal proceedings, the court is required to verify the factual basis suggesting the occurrence of a criminal act.

The Criminal Procedure Code sets a deliberately low threshold for initiating criminal proceedings based on a crime report. According to this principle, *initiating criminal proceedings should be the rule, while refusal should be the exception*. However, investigative practice does not always align with this standard. The principle arises from the legal provision that investigative bodies do not possess the authority to verify the existence of a crime prior to the initiation of criminal proceedings.

Under the previous Criminal Procedure Code (1998), investigators were authorized to carry out preliminary verification actions before deciding whether to open a case. These included collecting explanations, inspecting the scene, and

appointing forensic examinations—actions that allowed the investigator to gather preliminary evidence and make an informed decision. By contrast, the current Code eliminates this pre-investigation stage. Investigators are now limited to the information provided in the report or attached to it. As a result, when both an occasion and a legal basis exist, the investigator is obligated to initiate criminal proceedings without further verification.

This regulatory change leads to a practical challenge: if an investigator refuses to initiate proceedings and that decision is appealed in court, the court faces difficulty in thoroughly evaluating the complaint. This is because the investigative body was not empowered to verify or assess the report's claims, and thus the evidentiary foundation for judicial review is weak or nonexistent.

A somewhat different situation arises when appeals concern decisions such as refusal to initiate criminal prosecution, termination of prosecution, or closure of criminal proceedings. In these cases, the court examines not only whether the responsible body acted within its powers and followed the correct procedural steps, but also evaluates the evidentiary foundation upon which the contested decision was based. The court must assess the specific circumstances that form the subject of the appeal. A thorough review of the case file, as well as any supplementary materials submitted by the appellant, is essential for the court to issue a lawful and well-reasoned decision.

Of particular interest is the approach advocated by N. S. Kurysheva, who argues that when a court examines the legality of a challenged action or decision, it should actively organize the evidentiary process during the hearing. This includes facilitating the parties' presentation of evidence, maintaining an orderly sequence of evidentiary submissions and examinations, and documenting the necessary procedural steps to ensure a comprehensive and fair review<sup>2</sup>.

Today, the issue of using inadmissible evidence in pre-trial proceedings is of significant practical importance—particularly when such evidence forms the basis for restricting a person's constitutional rights and freedoms. In practice, these violations occur both during the execution of operational-investigative measures before the initiation of criminal proceedings and during investigative and covert investigative actions after proceedings have begun.

A review of case law reveals that many petitions submitted by investigators to the court—seeking to restrict a person's freedom or privacy—are predominantly based on such inadmissible evidence. The defense often lacks a meaningful

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<sup>2</sup> Kurysheva, N.S. *Issues of Proceedings on Complaints Against Actions (Inaction) and Decisions of the Inquirer, Investigator, and Prosecutor: Monograph*. Moscow: Yurlitinform, 2009, p. 85.

opportunity to challenge the legality of this evidence, and during the examination of these petitions, the evidence cannot be formally excluded as inadmissible. Consequently, criminal prosecution bodies repeatedly rely on this evidence throughout pre-trial proceedings to curtail constitutional rights.

As a result, the defense is forced to wait until the case is transferred to court, or hope that the preliminary investigation body recognizes the inadmissibility of the evidence and refrains from presenting it at trial. Although numerous examples of this practice exist, it is our firm view that, in the interest of protecting individual rights and legitimate interests, such unlawful practices must be terminated. The bodies conducting proceedings should be strictly prohibited from submitting inadmissible evidence to the court.

## **Conclusion**

The procedure of judicial guarantees is a crucial and foundational institution within criminal proceedings, ensuring the protection of the rights and legitimate interests of private participants. It serves as a check on public participants, preventing the unjustified exercise of procedural actions that infringe upon individual rights and freedoms. Given that the current Criminal Procedure Code was newly adopted, challenges remain in the effective implementation of this institution. These challenges call for thorough scientific research and the development of appropriate legal regulations to further advance and refine the legislation.

### **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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