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PRACTICAL ISSUES IN THE APPLICATION OF THE PROCEDURAL INSTITUTION OF PRELIMINARY COURT HEARINGS

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Abstrakt. The new Criminal Procedure Code of the Republic of Armenia has introduced fundamental changes to the structure of proceedings in the court of first instance. The trial stage has been divided into three mandatory sub-stages: preliminary, main, and supplementary hearings, each having its own distinct procedural tasks. Preliminary hearings are considered a new, independent procedural institution, the purpose of which is to eliminate shortcomings made in the previous stages and to prepare the proceedings for the main hearings.
During the preliminary hearings, the court examines a number of strictly defined issues, including the matter of preventive measures, as well as the scope and admissibility of evidence.
In practice, however, the legal regulations regarding the issues subject to discussion during the preliminary hearings are applied inconsistently, which prevents the realization of the content originally intended in those regulations.
The article highlights the most common violations encountered in legal practice and presents practical recommendations aimed at ensuring the purposeful application of the institution of preliminary hearings.

Key words: *Preliminary hearing, Criminal Procedure Code, Admissibility of evidence, Evidentiary scope, Judicial efficiency, Equality of arms, Adversarial principle, Preventive measures.*

Introduction

The enactment of the new Criminal Procedure Code of the Republic of Armenia marks a profound shift in the structure, logic, and operation of criminal adjudication in the court of first instance. One of the most significant innovations

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introduced by the Code is the tripartite division of the trial stage into three successive and interdependent sub-stages: the preliminary court hearing, the main court hearing, and the supplementary court hearing. Each of these sub-stages serves a distinct procedural function and contributes to the overall efficiency, fairness, and legality of the criminal trial process.

Among these, the preliminary court hearing stands out as a novel procedural institution in Armenian criminal law. It serves a dual purpose: first, to address and correct deficiencies arising during the pre-trial phase, and second, to establish the necessary legal and procedural preconditions for the smooth and effective conduct of the main court hearing. The introduction of this sub-stage is intended to reduce procedural delays, ensure compliance with fundamental rights, and enhance the practical implementation of the adversarial principle—core elements of a modern criminal justice system aligned with international human rights standards.

The matters considered during the preliminary hearing are diverse and often complex. They range from jurisdictional and recusal motions, to the review of preventive measures, to issues related to the scope and admissibility of evidence. The procedural handling of these issues is governed by a strict framework established by the Code, particularly Article 311. Yet, despite clear legislative intent, the practical application of this institution has revealed significant inconsistencies and challenges. Courts frequently misinterpret or disregard procedural requirements, rely on outdated practices inherited from the former legal regime, and apply asymmetrical standards to the prosecution and the defense—particularly in matters concerning evidentiary scope and admissibility.

One particularly contentious area involves the assessment and delimitation of evidence to be examined during the main hearing. Although the Code mandates a reasoned justification for the inclusion of each piece of evidence—based on relevance and necessity—courts often bypass this requirement, especially in relation to prosecution evidence. Similarly, motions to exclude inadmissible evidence, even when based on formal and readily verifiable grounds, are often deferred under the pretext of requiring substantive analysis. Such practices undermine the equality of arms between the parties and dilute the intended procedural safeguards of the preliminary hearing.

This article critically examines the practical implementation of the preliminary court hearing in Armenia, identifying the main procedural and interpretative issues that hinder its effectiveness. It assesses the gap between legislative design and judicial practice, and argues for a more consistent, purpose-oriented application of this sub-stage. By doing so, the article aims to contribute to the broader discourse on procedural reform and judicial efficiency in transitional legal systems, while

offering concrete recommendations for aligning courtroom practices with both domestic law and international fair trial standards.

Discussion

The new Criminal Procedure Code of the Republic of Armenia (hereinafter "the Code") has fundamentally transformed the proceedings in the court of first instance in terms of content, structure, and terminology governing legal relations. The process of adjudicating charges now consists of three successive mandatory sub-stages: **preliminary court hearings**, **main court hearings**, and **supplementary court hearings**. Each of these sub-stages has distinct content and internal logic designed to ensure proper and efficient implementation of this central phase of criminal proceedings[1].

In each sub-stage, the court, with the participation of the parties, discusses and resolves specific matters clearly defined by the Code. Transition to the next sub-stage excludes the possibility of reverting to the previous one. For instance, while errors made during preliminary hearings may be rectified in the main hearings, procedural rules do not provide for correcting errors from the main hearings in the supplementary hearing.

The **preliminary court hearing** — rightly considered an independent procedural institution—is a novelty in Armenian criminal procedure. It encompasses preparatory procedural actions with two key objectives:

1. **To eliminate deficiencies** of pre-trial proceedings;
2. **To establish the necessary preconditions** for smooth and effective conduct of the main court hearing.[2]

The matters discussed in this sub-stage inevitably pertain to any criminal proceeding or may do so under certain circumstances. Some issues aim to ensure the **lawfulness of the court proceedings** (e.g., motions for recusal or jurisdiction), others to establish **conditions for effective adjudication** (e.g., motions to terminate prosecution or exclude inadmissible evidence), and still others aim to **safeguard the rights and lawful interests of participants** (e.g., issues regarding preventive measures or civil claims).

The court addresses these matters in the sequence prescribed by Article 311 of the Code. Initially, the Code provided that only urgent procedural actions could be

[1] See A practical guide to conceptual solutions, innovative approaches and key institutions of the new RA Criminal Procedure Code, Yerevan, 2022. page 456.

[2] See Ghazinyan G., Tatoyan A., Preliminary Court Hearings in Criminal Proceedings. Journal State and Law, N 1(35) 2007, pages 265-273; Dilbandyan S. Collected Scientific Works of the Faculty of Law, Yerevan State University. Yerevan, YSU Press., 2015, pages 160-173.

undertaken before transferring the case to the competent court—e.g., if a defendant's pre-trial detention was about to expire, the court would decide on extending or modifying it before transferring the case.

However, this procedural arrangement was often ignored in practice, possibly due to a lack of awareness. This led to difficulties regarding preventive measures during this phase. As a result, Article 311(2) was amended in 2022 to clarify what had already been implicitly stated in Article 263.

Now, the Code expressly allows for the court to prioritize examination of preventive measures — even before addressing recusal or jurisdictional issues — either upon a party's motion or ex officio.

A question arises: if a previous judge has already ruled on a preventive measure but recused himselfe or the case is reassigned to another judge, must the new judge revisit the matter? The answer is unequivocally yes. This stems from the provisions of Articles 310 and 311, which require the judge, upon receiving a criminal case, to assume jurisdiction and schedule a preliminary hearing within three days, during which all issues listed in Article 311(1) must be considered. Furthermore, Article 18(3) mandates that the court must immediately release any person unlawfully or unjustifiably deprived of liberty. Denying the newly assigned judge the opportunity to reassess a preventive measure would reduce this safeguard to a mere formality.

Another practical issue concerns the order of addressing matters during the preliminary hearing. Occasionally, parties request to prioritize unrelated but relevant matters, such as the use of special protective measures, preservation of physical or documentary evidence, lifting asset freezes, or conducting hearings in the defendant's absence. Courts sometimes reject these motions citing Article 311(1), or they grant them based on procedural efficiency. However, this challenge is largely organizational: if preliminary hearings were held in short, successive sessions, the need to alter the sequence of issues would not arise.

Among the matters discussed at this stage are those crucial for ensuring the effectiveness of the main hearing, particularly the scope of evidence to be establised and issues related to the admissibility of that evidence. These two issues prompted the inclusion of this sub-stage in the first place, with the aim of facilitating orderly proceedings and ensuring the effective implementation of the adversarial principle. Determining the scope of evidence to be examined is a key issue. Parties must identify the evidence they believe should be reviewed during the main hearing. Embracing the principles of equality and adversariality, the Code requires each party to justify why a specific piece of evidence is relevant and necessary. If a party fails to do so convincingly, the court may reject their proposal to examine it.

This process does not require full reproduction or disclosure of the evidence at this stage. The proposing party must simply and clearly establish its connection to a fact in dispute. Merely listing evidence in the indictment's annex does not guarantee its inclusion in the main hearing unless relevance is proven.

This rule resolves two key issues:

1. It eliminates previous unjustified imbalance between parties, where all prosecution evidence was automatically accepted, but defense evidence had to be individually assessed, possibly violating the "equality of arms" principle under Article 6 of the European Convention on Human Rights;

2. It promotes efficiency by limiting the evidentiary mass to only relevant items, relieving the court and parties from analyzing all case materials.

However, in practice, courts often limit this discussion to simply listing the prosecution's evidence, without requiring justification. Higher standards are usually applied to the defense, putting them at a disadvantage.

A widespread practice is for courts to include only existing evidence from the case files, excluding newly submitted items from the evidentiary scope. Some judges justify this by stating that only existing evidence can be included, and all other motions must wait until after the main hearing. This practice contradicts the relevant provisions of the Code and undermines the purpose of this phase.

Another crucial issue at this stage is assessing motions to declare evidence inadmissible. Unlike past practice, the Code now limits the court's discretion in determining the order of examining evidence, making it a matter of clear legal regulation. Still, the evidentiary scope is not final and may change—e.g., if certain items are declared inadmissible, further evidence is added, or examination of some items is limited.

Yet, many courts, relying on old habits and ignoring current procedural rules, unilaterally dictate the order of evidence examination, guided by perceived expediency rather than law.

One major step in improving the main hearing's effectiveness is addressing admissibility during the preliminary hearing. Only evidence already included in the evidentiary scope can be reviewed for admissibility. Importantly, inadmissibility at this stage must be obvious and not require content examination—e.g., evidence collected by unauthorized investigators, actions exceeding judicial warrants, or expert opinions issued by unqualified individuals.

In practice, however, courts often refuse to declare evidence inadmissible at this stage, arguing that it requires content analysis—even in cases where it is clearly unnecessary. Courts even claim that formal aspects of evidence require substantive

examination, which is simply a pretext to delay rulings on admissibility. This reluctance stems from outdated stereotypes shaped by the previous legal regime.

A shift in this approach will only occur when courts recognize that they themselves benefit from proper implementation of this sub-stage. As noted, it is intended to improve both the efficiency and smooth conduct of the main hearing.

Conclusion

The Code has introduced an effective sub-stage that, if implemented by courts in a manner consistent with its purpose and spirit, can significantly enhance the efficiency of court proceedings and strengthen adversarial elements at this phase.

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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