

## IMPOSSIBILITY OF PARTICIPATION IN PROCEEDINGS: SOME PRACTICAL KEY ISSUES

TATEVIK SUJYAN<sup>1</sup>  
*Yerevan State University*

**Abstract.** In the article, the procedural regulations concerning recusal, self-recusal, and exemption from participation in proceedings, as provided in the currently effective Criminal Procedure Code of the Republic of Armenia, which entered into force on 1 July 2022, as well as the practical problems existing in practice in relation thereto, have become the subject of scientific and practical analysis. In particular, the procedural procedures for terminating participation in proceedings, the subject composition, and the distinguishing features of the grounds have become the subject of detailed analysis. The relevant case law of the European Court of Human Rights and the judicial practice formed by the Court of Cassation of the Republic of Armenia in relation to certain practical issues are presented. The grounds for declaring recusal of a judge and the various interpretations existing in practice in relation thereto have become the subject of separate discussion. Special reference is made to the procedure for resolving the issue of recusal (self-recusal) or exemption from participation in proceedings. In this regard, various approaches already formed in practice in relation to certain regulations, as well as their possible solutions, are presented. In particular, with regard to this latter issue, the question of the subject authorized to decide on exemption from participation in proceedings, when it concerns judicial guarantees proceedings carried out at the pre-trial stage, has become the subject of detailed discussion and analysis.

**Keywords** - *recusal, self-recusal, exemption from participation in proceedings, independent, impartial, subjective approach, objective approach.*

### Introduction

The legislative consolidation of circumstances excluding participation in proceedings, and in particular the provision of the institution of judicial recusal (self-recusal), stems from the requirement of the so-called presumption of

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<sup>1</sup> Associate Professor of the YSU Department of Criminal Procedure and Criminalistics, YSU, Candidate of Legal Sciences, [taevsujvan@ysu.am](mailto:taevsujvan@ysu.am), <https://orcid.org/0000-0002-1103-2740>

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independence<sup>2</sup>. The provision of this institution is one of the important mechanisms for ensuring legality in criminal proceedings and for the protection of the lawful interests of the individual<sup>3</sup>.

The Criminal Procedure Code of the Republic of Armenia (Chapter 8) regulates in detail the procedural relations related to the impossibility of participation in criminal proceedings, in particular the circumstances excluding participation in proceedings and the procedural order for resolving the issue of impossibility of participation.

#### **A) Procedural mechanisms for terminating participation and subject composition**

The Criminal Procedure Code of the Republic of Armenia provides for two methods for terminating the participation of relevant persons in criminal proceedings: recusal or self-recusal, and exemption from participation in proceedings.

The differentiation of these methods is based both on the subject composition and on the circumstances excluding participation in proceedings.

In the presence of the relevant grounds provided by criminal procedural law, participation in proceedings by way of recusal or self-recusal may be terminated with respect to:

1. the judge,
2. public participants in the proceedings (the prosecutor, the investigator, the head of the investigative body, the head of the inquiry body, the inquiry officer),
3. auxiliary participants in the proceedings, namely the witness to procedural acts, the expert, the interpreter, or the court session secretary.

Exemption from participation in proceedings may apply to:

1. private participants in the proceedings, namely the defense counsel, the authorized representative (of the victim or the civil defendant), and the legal representative,
2. auxiliary participants in the proceedings, namely the attorney of the witness.

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<sup>2</sup> OKPALUBA, Matthew Chuks and MALOKA, Tumo Charles. The fundamental principles of recusal of a judge at common law: recent developments. *Obiter* [online]. 2022, vol.43, n.2 [cited 2025-06-09], pp.88-112, available at the following link [https://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1682-58532022000200005](https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1682-58532022000200005)

<sup>3</sup> Course of the Criminal Process / Under red. Of doctor of law, prof. L.V. Golovko. 2-nd ed., ex. - M. Statute, 2017, page 375/Курс уголовного процесса / Под ред. д.ю.н., проф. Л.В. Головки. 2-е изд., испр. – М.: Статут, 2017, т. 375:

As regards exemption from participation for a valid reason, such a motion may be submitted only by the attorney, the legal representative, the court session secretary, the witness to procedural acts, or the interpreter.

The basis for the impossibility of participation in proceedings, in the presence of circumstances provided by law, is the conviction of the relevant person regarding the impossibility of the normal course of proceedings due to their participation. At the same time, regardless of whether a motion is submitted, criminal procedural law obliges the relevant persons who possess information about circumstances excluding their participation in criminal proceedings to report such circumstances to the interested participants in the proceedings and to the authority conducting the proceedings (Article 64, part 2). It follows from the above regulation that the existence of certain circumstances, with the exception of specific cases provided by law (for example, the grounds provided in Article 71, part 2 of the Constitutional Law “Judicial Code of the Republic of Armenia”), does not unconditionally exclude a person’s participation in proceedings.

As regards the grounds for recusal (self-recusal), criminal procedural law refers, as circumstances excluding a judge’s participation in proceedings, to the grounds provided in Article 71, part 2 of the Constitutional Law “Judicial Code of the Republic of Armenia”, but does not limit itself thereto, additionally providing three more grounds, one of which in essence repeats the ground provided by the Judicial Code, according to which, as a private person, the judge witnessed the facts examined in the course of the proceedings, while another is of a general nature and reproduces the requirement that a judge may not participate in proceedings if other circumstances exist that may give rise to reasonable doubt regarding the judge’s impartiality in relation to the given proceedings.

The institution of self-recusal is intended to guarantee the adoption of objective and impartial decisions in the sphere of justice, both in regulating procedural (procedural-law) and substantive legal relations, and is intended to guarantee the independence of the judiciary, the effectiveness of justice, and impartiality<sup>4</sup>.

Before turning to the specific grounds, it is necessary to note that according to the case law formed by the European Court of Human Rights (hereinafter also the European Court), within the meaning of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter also the Convention), a court must be impartial. For the purpose of examining impartiality, the European Court distinguishes the subjective approach (criterion), which aims to

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<sup>4</sup> The decision of the RA Constitutional Court of September 28, 2010, No. 918, paragraph 5/22 Սահմանադրական դատարանի՝ 2010 թվականի սեպտեմբերի 28-ի թիվ ՄԴՈ-918 որոշման 5-րդ կետը:

determine the judge's interest in the decision adopted in a specific case, and the objective approach (criterion), which is intended to determine whether the judge has ensured the necessary guarantees to exclude any reasonable doubt in this regard<sup>5</sup>. The application of the second criterion requires determining whether, regardless of the conduct of the person administering justice, there are facts that may cast doubt on the judge's impartiality<sup>6</sup>.

The specific circumstances excluding a judge's participation in criminal proceedings have been identified according to the logic that such circumstances may give rise, in the mind of an impartial observer, to reasonable doubt regarding the judge's impartiality in the given proceedings.

Thus, according to Article 66 of the Criminal Procedure Code of the Republic of Armenia, a judge may not participate in proceedings if the following grounds established in Article 71, part 2 of the Constitutional Law "Judicial Code of the Republic of Armenia" are present:

1. the judge has a biased attitude toward a person acting as a party, that person's representative, attorney, or other participants in the proceedings.

In relation to the above ground, the Court of Cassation of the Republic of Armenia, in the case concerning Hrachya Nersisyan and Edgar Amiryanyan, emphasized that by providing for the institution of recusal, the legislator has *закреплѣ* the procedural guarantee that enables the removal from conducting criminal proceedings or from participation in criminal proceedings of a participant in the proceedings who is directly or indirectly interested in the outcome of the criminal case. This constitutes a guarantee of the person's right to a fair trial, the right to an effective remedy for the protection of their rights, as well as the rule of law<sup>7</sup>. Developing this position, in the case concerning Karen Hovhannisyan, the Court of Cassation stated that resolving the recusal declared to the authority

<sup>5</sup> The decision of October 1, 1982 of the European Court in the case of *Piersack v. Belgium*, app. No. 8692/79, paragraph 30, decision of December 16, 2003 of the European Court in the case of in the case of *Grievies v. the United Kingdom [GC]*, app. No. 57067/00, paragraph 69/Եվրոպական դատարանի՝ *Piersack v. Belgium* գործով 1982 թվականի հոկտեմբերի 1-ի վճիռը, զանգատ թիվ 8692/79, 30-րդ կետը, *Grievies v. the United Kingdom [GC]* գործով 2003 թվականի դեկտեմբերի 16-ի վճիռը, զանգատ թիվ 57067/00, 69-րդ կետը:

<sup>6</sup> The decision of October 28, 1998 of the European Court in the case of *Castillo Algar v. Spain*, app. No. 28194/95, paragraph 45, the decision of June 6, 2000 of the European Court in the case of *Morel v. France*, app. No. 34130/96, paragraph 42/Եվրոպական դատարանի՝ *Castillo Algar v. Spain* գործով 1998 թվականի հոկտեմբերի 28-ի վճիռը, զանգատ թիվ 28194/95, 45-րդ կետը, *Morel v. France*, 2000 թվականի հունիսի 6-ի վճիռը, զանգատ թիվ 34130/96, 42-րդ կետը:

<sup>7</sup> The decision of the RA Cassation Court in the case of *Hrachya Nersisyan and Edgar Amiryanyan*, November 15, 2017, No. TD2/0005/01/16, paragraph 14/Վճռաբեկ դատարանի՝ *Հրաչյա Ներսիսյանի և Էդգար Ամիրյանի* գործով 2017 թվականի նոյեմբերի 15-ի թիվ ՏՂԶ/0005/01/16 որոշման 14-րդ կետը:

conducting the proceedings and confirming the presence or absence of circumstances excluding participation in proceedings is a prerequisite for the performance of investigative or other procedural actions and the adoption of procedural decisions by the competent subject in the specific proceedings, and consequently for ensuring their legality. Addressing biased attitude as a circumstance excluding participation in proceedings, the Court of Cassation noted that the subject initiating the motion must substantiate the existence of the given ground by reference to specific facts capable of giving rise, in the mind of an impartial observer, to reasonable doubt regarding the impartiality of the investigator, and that the subject resolving the recusal or assessing the admissibility of evidence challenged on the ground that it was obtained by a person subject to recusal must provide a reasoned confirmation or refutation of the existence of the given ground. Taking this position into account, in the specific case the Court of Cassation concluded that disagreement of a participant in the proceedings with the decisions adopted by the authority conducting the proceedings, or mere reference to the circumstance that those decisions do not correspond to the interests of a specific participant, is not in itself sufficient to form a reasonable assumption regarding the lack of impartiality of the relevant subject<sup>8</sup>.

**2) The judge has participated in the examination of the given case in another court.**

The identification of this ground also derives from the above-mentioned objective criterion concerning the impartiality of the judge.

In this regard, the Court of Cassation, in case No. ԵԴ/0013/06/19, made the subject of examination the question of whether the examination, by the same judge within the same proceedings, of a motion to apply detention as a preventive measure excludes the examination by that same judge of an appeal submitted to the Court of Appeal against a decision rendered, within the same proceedings, by another judge as a result of examining a motion to extend the term of detention. As a result, the Court of Cassation found that the ground under discussion excludes the examination of a case by the same judge in a higher judicial instance if it concerns the examination of an appeal or cassation complaint filed against a judicial act rendered by that specific judge within the framework of judicial guarantees of the pre-trial proceedings or as a result of the examination of the case on the merits in the same case.

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<sup>8</sup> The decision of the RA Cassation Court in the case of *Karen Hovhannisyan*, May 27, 2022, No. EKD/0281/01/16/Վճռաբեկ դատարանի՝ *Կարեն Հովհաննիսյանի* գործով 2022 թվականի մայիսի 27-ի թիվ ԵԿԴ/0281/01/16 որոշումը:

Consequently, the examination by a specific judge of different motions within the framework of judicial guarantees of the pre-trial proceedings in the same case does not exclude that judge's examination, in a higher judicial instance, albeit within the same criminal proceedings, of a complaint filed against a judicial act rendered by another judge in relation to another motion. In particular, following the same logic, the Court of Cassation found that the examination of the initial motion to apply detention as a preventive measure in criminal proceedings does not hinder the examination, by the same judge, of subsequently submitted motions to extend the term of detention.

Developing the above-stated legal position, in the case concerning Levon Sargsyan and Suren Ghazaryan, the Court of Cassation stated that this ground unequivocally excludes the examination, by the same judge, of complaints filed against judicial acts rendered by that judge personally. However, in each specific case where the circumstance of a judge's participation in the same case at a lower judicial instance is raised as a ground for self-recusal, it must be assessed in the context of the degree of the judge's participation and the procedural actions carried out by that judge in the lower judicial instance.

In the specific case, the Court of Cassation, examining the judge's previous participation in the examination of the case in another court as a court session secretary, stated that this circumstance cannot indicate the necessity for the judge to declare self-recusal. The court conditioned this conclusion on the role of the court session secretary in criminal proceedings, as well as on the scope and nature of the procedural functions performed by that person. Under such circumstances, mere familiarization with the case materials in itself cannot lead to the reasonableness of doubts subsequently arising as to the judge's impartiality and cannot indicate the existence of grounds for self-recusal if that person later participates in the examination of the case as a judge.

Moreover, the conduct of preliminary hearings by a judge does not in itself constitute a circumstance excluding that judge's subsequent participation in the given proceedings<sup>9</sup>. By the same logic, a judge of the Court of Cassation's participation in proceedings does not exclude that judge's subsequent participation in the same proceedings before the Court of Cassation.

At the same time, criminal procedural law clearly establishes that a judge who has participated in the trial at the court of first instance or the court of appeal may not subsequently participate in the given proceedings.

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<sup>9</sup> The decision of the RA Cassation Court in the case of *Levon Sargsyan and Suren Ghazaryan*, May 17, 2024, No. ED/0064/01/21/Վճռաբեկ դատարանի՝ *Լևոն Սարգսյանի և Սուրեն Դադարյանի* գործով 2024 թվականի մայիսի 17-ի թիվ ԵԴ/0064/01/21 որոշումը:

**3) A close relative of the judge has been, is, or will reasonably be a participant in the case.**

In relation to the above-mentioned ground, criminal procedural law refers to the Judicial Code of the Republic of Armenia, and in this regard the question arises as to whether, for the purposes of determining the circle of close relatives, one should be guided by the regulations of the Judicial Code of the Republic of Armenia or by those of the Criminal Procedure Code. At the same time, it should be noted that the Judicial Code of the Republic of Armenia provides for a broader circle.

Since, with respect to this ground, criminal procedural law refers to the Judicial Code of the Republic of Armenia, we consider that, when resolving the issue of recusal (self-recusal), one should be guided by the following circle of persons considered close relatives within the meaning of the Judicial Code of the Republic of Armenia: the judge's spouse; the parent of the judge or of the judge's spouse; the child of the judge or of the judge's spouse; the spouse of the child; a biological or non-biological (half-brother or half-sister) brother or sister; the grandfather, grandmother, grandchild, great-grandchild; the spouse or child of the brother or sister of the judge or of the judge's spouse; the adoptive parent or adopted child of the judge or of the judge's spouse.

**4) The judge knows or reasonably should know that he or she personally, or his or her close relative, has an economic interest<sup>10</sup> related to the substance of the dispute or to one of the parties.**

**5) The judge holds a position in a non-profit organization, and the interests of that organization may be affected in the given case.**

In addition to the above-mentioned grounds, Article 66 of the Criminal Procedure Code of the Republic of Armenia provides for the following circumstances excluding a judge's participation in proceedings:

1. within the framework of the procedures provided by the present Code in pre-trial proceedings, the judge has heard the accused's confession in connection with the charge brought.

The provision of such a ground excluding the judge's participation is closely connected with one of the essential innovations of the currently effective Criminal

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<sup>10</sup> Within the meaning of this Article, the concept "economic interest" shall not include the following:  
 (1) managing stocks of the open joint-stock company in question through an investment fund or a pension fund or another nominee, where the judge is not aware of it;  
 (2) having a deposit in the bank in question, having an insurance policy with the insurance company in question, or being a participant of the credit union or the savings union in question, where the outcome of the case does not pose a significant threat to the solvency of that organisation;  
 (3) owning securities issued by the Republic of Armenia, a community or the Central Bank of the Republic of Armenia.

Procedure Code of the Republic of Armenia, namely, the institution of judicial deposition of the accused's testimony, where there exists a substantiated assumption that the accused may lawfully refrain from giving testimony during the trial.

2. as a private individual, the judge has witnessed the facts that are examined in the course of the proceedings;

3. other circumstances exist that may give rise to reasonable doubt regarding the judge's impartiality in relation to the given proceedings.

According to the assessment of the European Court, under the subjective criterion, the impartiality of the court or the judge operates as a presumption; therefore, until the contrary is proven, the judge is presumed to be subjectively impartial. In contrast, objective impartiality depends on external factors, and in this case the conduct of the judge acquires secondary significance. Elaborating on the objective criterion, the European Court has noted that it primarily concerns hierarchical or other connections between the judge and other participants in the proceedings, or the performance of different functions by the same person within the framework of judicial proceedings. Consequently, in each specific case it must be determined whether the nature of the given relationships and the degree of their closeness indicate that the court is not impartial.

The European Court of Human Rights has emphasized that in any case, regardless of whether both criteria or only one of them are applied, the issue of impartiality will depend on the specific facts of the case<sup>11</sup>.

From the perspective of the objective criterion, the European Court has also emphasized the role played by the judge in the examination of the specific case, the scope and nature of the actions carried out by the judge, and has found that mere familiarization by the judge with the materials of the case does not lead to the reasonableness of doubts arising as to that judge's impartiality<sup>12</sup>.

<sup>11</sup> The decision of December 15, 2005 of the European Court in the case of *Kyprianou v. Cyprus*, No. 73797/01, paras. 118 and 121, the decision of January 9, 2018 of the European Court in the case of *Nicholas v. Cyprus*, No. 63246/10, paras. 49 and 53, the decision of January 24, 2019 of the European Court in the case of *Ghulyan v. Armenia*, No. 35443/13, para. 45/Մարդու իրավունքների եվրոպական դատարանի՝ *Kyprianou v. Cyprus* գործով 2005 թվականի դեկտեմբերի 15-ի վճիռը, գանգատ թիվ 73797/01, 118-րդ և 121-րդ կետերը, *Nicholas v. Cyprus* գործով 2018 թվականի հունվարի 9-ի վճիռը, գանգատ թիվ 63246/10, 49-րդ և 53-րդ կետերը, *Ղուլյանն ընդդեմ Հայաստանի* գործով 2019 թվականի հունվարի 24-ի վճիռը, գանգատ թիվ 35443/13, 45-րդ կետը):

<sup>12</sup> The decision of June 6, 2000 of the European Court in the case of *Morel v. France*, No. 34130/96, para. 45, the decision of March 4, 2014 of the European Court in the case of *Fazlı Fazlı Aslaner v. Turkey*, No. 36073/04, para. 31/Մարդու իրավունքների եվրոպական դատարանի՝ *Morel v. France* գործով 2000 թվականի հունիսի 6-ի վճիռը, գանգատ թիվ 34130/96, 45-րդ կետը,



In another case, the European Court of Human Rights stated that, when examining the issue of a court's impartiality, the facts that form the basis for the emergence of doubts concerning impartiality are essential. When the issue under examination is whether there are sufficient grounds for doubts as to the court's impartiality, the position of the party raising such doubts is important but not decisive. What is decisive is whether such doubt can be regarded as objectively justified or not<sup>13</sup>.

According to the assessment of the European Court, the existence of national procedures aimed at ensuring impartiality, in particular rules governing the removal of judges from the examination of cases, is an essential factor. Such rules indicate that national legislators pay special attention to eliminating all substantiated doubts related to the impartiality of a given judge or court and, by eliminating the causes of such doubts, attempt to ensure impartiality. In addition to ensuring the absence of bias as such, these rules are aimed at eliminating any external appearance of bias and thereby contribute to courts inspiring public confidence in a democratic society. The emergence of doubts regarding a judge's impartiality depends on the situation or the nature of the relationship. Whether such doubts are objectively substantiated or not depends primarily on the circumstances of the specific case and on the factors that must be taken into account in this regard<sup>14</sup>.

Proceeding from the interests of justice, criminal procedural law provides that a judge is not obliged to declare self-recusal or to accept a recusal if another judicial body cannot be constituted for the adoption of a judicial act. In other words, even in the presence of circumstances excluding the judge's participation, that judge's further participation in the proceedings is lawful if another judicial body cannot be constituted (for example, where circumstances excluding participation exist with respect to three of the six judges of the Criminal Chamber of the Court of Cassation, while the examination of the accepted complaint must be carried out by a panel composed of at least four judges).

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**Fazlı Fazlı Aslaner v. Turkey** գործով 2014 թվականի մարտի 4-ի վճիռը, գանգատ թիվ 36073/04, 31-րդ կետը:

<sup>13</sup> The decision of May 20, 1998 of the European Court in the case of **Gautrin and others v. France**, No. 38/1997/822/1025-1028, para. 58/Մարդու իրավունքների եվրոպական դատարանի՝ **Gautrin and others v. France** գործով 1998 թվականի մայիսի 20-ի վճիռը, գանգատ թիվ 38/1997/822/1025-1028, 58-րդ կետը:

<sup>14</sup> The decision of the European Court in the above-mentioned case of **Ghulyan v. Armenia**, paras. 47 and 51/ Մարդու իրավունքների եվրոպական դատարանի՝ *Ղուլյանն ընդդեմ Հայաստանի* գործով վերը հիշատակված վճիռը, 47-րդ և 51-րդ կետերը:

As regards the circumstances excluding the participation of public participants in proceedings, two of the grounds excluding a judge's participation are applicable to them, namely:

1. as a private individual, the person has witnessed the facts examined in the course of the proceedings;
2. other circumstances exist that may give rise to reasonable doubt regarding that person's impartiality in relation to the given proceedings.

The above-mentioned grounds are also applicable to the witness to procedural acts, the expert, the interpreter, and the court session secretary.

For public participants, a circumstance excluding participation in proceedings is the existence of kinship or other relations of personal dependence with the judge conducting the proceedings. This ground is, to a certain extent, identical to the circumstance excluding a judge's participation where the judge's close relative has been, is, or will reasonably be a participant in the case. Moreover, since this ground may exclude the simultaneous participation of more than one person in the proceedings due to kinship or other relations of personal dependence, criminal procedural law establishes that the person who acquired the status of a participant in the proceedings later than the others shall be exempted from participation, with the exception of the legal representative (Article 65, parts 10–11).

Criminal procedural law clearly establishes that prior participation in the given proceedings as an investigator, head of the investigative body, inquiry officer, or head of the inquiry body does not constitute a circumstance excluding the subsequent participation of such persons as public participants in the same proceedings.

As regards the circumstances excluding the participation of an attorney in proceedings, the defense counsel, the authorized representative of the victim or the civil defendant, or the attorney of a witness may not participate in proceedings if:

1. the person has participated in the given proceedings as a judge, public participant, private participant, or auxiliary participant, with the exception of cases of acting as an attorney of a witness;
2. the person is in kinship or other relations of personal dependence with an official who has participated or, at the time of the attorney's involvement, participates in the proceedings;
3. the person provides or has provided legal assistance in connection with the given proceedings to a person whose interests conflict with those of the principal;

4. the person is in kinship or other relations of personal dependence with a person involved in the given proceedings whose interests conflict with those of the principal;
5. the person may not be an attorney by law or by judicial act.

Within the same proceedings, an attorney may represent only one person (have only one principal), except where such a prohibition may reasonably endanger the interests of justice and two or more accused persons have voluntarily, knowingly, and in writing waived the possibility of being represented by separate defense counsels, or in cases of representing more than one victim or witness.

The first two of the above-mentioned circumstances excluding the participation of an attorney are also applicable to the legal representative, with the exception of a parent or adoptive parent. At the same time, for a legal representative (with the exception of a parent or adoptive parent), a circumstance excluding participation is not only kinship or other relations of personal dependence with a judge or a public participant in the proceedings, but also with a private participant. As independent circumstances excluding the participation of a legal representative, including a parent or adoptive parent, criminal procedural law provides for the following circumstances:

1. by their conduct, the person clearly harms the interests of the represented person; by their conduct, they have hindered the exercise of the rights of the represented person or have led to their violation;
2. the person may not be a legal representative by law or by judicial act;
3. there exist facts indicating the commission of an alleged crime against the interests of the represented person.

With regard to the specific circumstances excluding the participation of the witness to procedural acts as an auxiliary participant in proceedings, criminal procedural law provides for such circumstances where the person:

1. may not be a witness to procedural acts by law;
2. is in relations of personal or official dependence with the authority conducting the proceedings.

In order to exclude the permanent participation of the same person in proceedings, which may render meaningless the purpose of the participation of a witness to procedural acts, criminal procedural law establishes that the prior participation of a witness to procedural acts in an evidentiary action constitutes a circumstance excluding that person's participation in another evidentiary action in the same proceedings. At the same time, proceeding from the necessity of ensuring the normal course of proceedings, the law provides for an exception to this rule

where the given investigative action immediately follows another evidentiary action carried out with the participation of the same witness to procedural acts.

The above-mentioned circumstances excluding the participation of a witness to procedural acts are also applicable to other auxiliary participants in proceedings, namely the expert, the interpreter, and the court session secretary. The latter may also not participate in proceedings where circumstances exist that cast doubt on their competence or impartiality. Unlike the witness to procedural acts, a person's prior participation in the same proceedings as an expert, interpreter, or court session secretary does not in itself constitute a circumstance lawfully excluding their subsequent participation.

As regards the procedure for resolving the issue of recusal (self-recusal) or exemption from participation in proceedings, on the basis of a relevant motion or upon a motion of a party, the specified issue is resolved, within the limits of its competence, by the authority conducting the proceedings.

According to Article 7 of the Criminal Procedure Code of the Republic of Armenia:

1. The authorities conducting criminal proceedings are:
  1. the investigator — from the moment of initiating proceedings until submitting the indictment or the decision to terminate criminal proceedings to the supervising prosecutor;
  2. the supervising prosecutor — from the moment of receiving the indictment or the decision to terminate criminal proceedings from the investigator until submitting the indictment to the court, approving the investigator's decision to terminate criminal proceedings, or returning the materials of the proceedings to the pre-trial investigation body;
  3. the court — from the moment of receiving the indictment from the prosecutor until the completion of criminal proceedings, as well as in judicial guarantees proceedings.

Along with the general provision assigning the authority to resolve issues of participation in proceedings to the authority conducting the proceedings, the legislator simultaneously specifies the concrete subject composition for resolving issues of recusal and exemption from participation. Thus:

1. a recusal declared against a judge is resolved by that judge. If a recusal is declared against more than one judge conducting proceedings in a collegial composition or against the entire composition of the court, each judge resolves the issue of their own recusal;
2. a recusal declared against a prosecutor is resolved by the superior prosecutor in pre-trial proceedings, and by the relevant court in judicial proceedings;

3. a recusal declared against an investigator, the head of the investigative body, an inquiry officer, or the head of the inquiry body is resolved by the supervising prosecutor;
4. a recusal declared against a witness to procedural acts is resolved by the person carrying out the evidentiary action, while a recusal declared against the court session secretary is resolved by the court.

In connection with these legislative regulations, it is noteworthy that the legislator has made the competence to resolve a recusal declared against a prosecutor dependent on the stage of the proceedings. Meanwhile, for example, the competence to resolve the issue of exempting a defense counsel from participation in proceedings is assigned to the authority conducting the proceedings, regardless of the procedural stage. In addition, as follows from the provisions of Article 7 of the Criminal Procedure Code of the Republic of Armenia, at the pre-trial stage, in judicial guarantees proceedings, the authority conducting the proceedings is the court. However, at the same time, the competence to resolve a recusal declared against a prosecutor is assigned to the superior prosecutor, who is not, in general, an authority conducting proceedings.

In connection with this regulation, the question arises as to who should resolve the issue of a recusal declared against a prosecutor or the exemption of a defense counsel from participation in proceedings within judicial guarantees proceedings. In this regard, the Court of Cassation has expressed the legal position that “with respect to the authority of the court to resolve the issue of the participation of the accused’s defense counsel during judicial guarantees proceedings, the Court of Cassation notes that the court is competent to resolve only the issue of the defense counsel’s participation in the judicial guarantees proceedings subject to its examination, and the decision adopted by the court on this issue will relate only to the course of the judicial guarantees proceedings, whereas issues of removing the defense counsel from criminal proceedings, involving a new defense counsel, and other issues at the pre-trial stage are subject to resolution exclusively by the investigator. That is, the subject of the court’s examination is only the issue of the defense counsel’s participation in judicial guarantees proceedings, while the issue of the defense counsel’s participation in the general criminal proceedings is resolved exclusively by the investigator. Therefore, the conclusions of the Court of Appeal regarding the lack of competence of the court to resolve the issue of the

defense counsel's participation during judicial guarantees proceedings are unfounded.”<sup>15</sup>

Criminal procedural law also regulates the sequence for resolving recusals declared simultaneously against several persons, providing that, as a matter of priority, the recusal declared against the person who is competent to resolve the recusals of the others shall be resolved first, and in cases where the simultaneous participation of more than one person in the proceedings is excluded due to kinship or other relations of personal dependence, the person who acquired the status of a participant in the proceedings later than the others shall be exempted from participation, with the exception of the legal representative (Article 65, parts 10–11).

### 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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<sup>15</sup> The decision of the RA Cassation Court of August 19, 2024, No. HKD/0031/06/23/Վճռաբեկ դատարանի՝ 2024 թվականի օգոստոսի 19-ի թիվ ՀԿԴ/0031/06/23 որոշումը:

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