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SELECTED ISSUES CONCERNING THE CONDITIONS FOR THE LAWFULNESS OF APPLYING A PREVENTIVE MEASURE

Armen Hovhannisyan*

Abstract. The article is devoted to the examination of selected fundamental issues concerning the conditions for the lawfulness of applying a preventive measure, with particular attention to certain problems related to the assessment of reasonable suspicion and the substantiation of the purposes of preventive measures. The paper argues that reasonable suspicion must be understood as a minimum, yet lawful and objective evidentiary threshold, which cannot be overcome through an obvious circumvention of the law, including by reference to materials whose use for proving the relevant charge is manifestly precluded. In this regard, the article also addresses the relevant positions developed by the Court of Cassation, considering them problematic and debatable from a scholarly perspective.

The next important thesis of the article concerns the assessment of the purposes of preventive measures. The author demonstrates that the purposes of a preventive measure cannot be assessed in an abstract or mechanical manner. They must be substantiated by individualized facts and examined separately, since each risk has an independent legal content. It is emphasized that facts relied upon to substantiate one risk cannot automatically serve to confirm the existence of another risk.

Addressing limitation periods, the paper advances the position that, as a rule, the expiry of the limitation period for bringing a person to criminal liability excludes an independent ground for applying detention, except in cases where the accused objects to the termination of prosecution and violates the conditions of an alternative preventive measure applied in respect of him. At the same time, it is argued that the approaching expiry of the limitation period, although it does not in itself preclude the application of a preventive measure, constitutes a significant counterbalancing factor in assessing the degree of risks and may lead to the need to choose a more lenient preventive measure, in light of the requirements of the principle of proportionality.

* **Armen Hovhannisyan** - Judge of the Anti-Corruption Appeal Court, Associate professor at the YSU Chair of Criminal Procedure and Criminalistics, PhD in Law, armen.hovhannisyan@ysu.am, ORCID: 0000-0003-3655-9255

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Issues concerning the conditions for the lawful application of preventive measures, including the assessment of reasonable suspicion, are a constant subject of discussion in doctrinal sources[1]. This is because their relevance does not diminish: the issues concerned are characterized by continuous development, while conflicting and non-uniform interpretations and approaches persist in legal practice. This divergence in legal practice became particularly pronounced following Decision No. ՀԿԴ/0331/06/25 of the Court of Cassation of 23 June 2026, which sought to construe the restriction on use laid down in Article 97(10) of the CPC, at the stage of assessing reasonable suspicion, within a substantially narrower scope than follows from the systemic and safeguard function of that provision.

This article focuses, in particular, on the following four principal issues:

- reliance on and assessment of evidence that may not be used to substantiate a specific charge as a basis for reasonable suspicion;
- the independent and separate assessment of the purposes of preventive measures;
- the assessment of the purposes of preventive measures where the limitation period for bringing a person to criminal liability has expired;
- the assessment of the purposes of preventive measures where the limitation period for bringing a person to criminal liability has not yet expired but is approaching expiry.

I. Assessment of Reasonable Suspicion.

According to established case-law[2], the following criteria should guide a court's assessment of reasonable suspicion in pre-trial proceedings:

[1] See, inter alia, Davit Avetisyan, "Reasonable Suspicion as a Condition for the Lawful Application of Preventive Measures under the Draft New Criminal Procedure Code of the Republic of Armenia," State and Law, No. 2 (64), 2014, YSU, Yerevan, pp. 35–44; Hrayr Ghukasyan, "Grounds and Procedural Rules for the Application of Detention under the Criminal Procedure Code of the Republic of Armenia," Collection of Scientific Papers Dedicated to the 70th Anniversary of the YSU Faculty of Law, Yerevan, pp. 214–217; Davit Melkonyan, "Specific Features of the Application of Preventive Measures under the Draft New Criminal Procedure Code," State and Law, No. 1 (59).

[2] See, inter alia, insofar as relevant, paragraph 15 of Decision No. ԵԱՆԴ/0017/06/16 of the Court of Cassation of 22 June 2017 concerning E. Yeghiazaryan; paragraph 5.6 of Decision No. ՍԴՈ-1453 of the Constitutional Court of 16 April 2019; paragraph 15.2 of Decision No. ԱՎԴ2/0019/06/21 of the Court of Cassation of 17 May 2024 concerning E. Hovhannisyan.

- in the absence of reasonable suspicion, any restriction of a person's right to liberty is unlawful in itself;

- reasonable suspicion does not require the existence of sufficient facts proving the accused's guilt in the act committed to the standard of proof beyond reasonable doubt; nevertheless, the “suspicion” must be reasonable and must be based on specific factual information obtained in accordance with the procedure prescribed by law (indicating the person's connection to the act committed and the correspondence of the incident or event to the offence which the person is accused of having prima facie committed), and the court's conclusions as to the existence or absence of such suspicion must be substantiated and reasoned;

- when extending a period of detention, it must be shown that the suspicion that the person committed an offence has persisted and continues to remain “reasonable”. The duration of the deprivation of liberty may be an important factor in determining the requisite degree of suspicion;

- the lawfulness of the charge is a mandatory precondition for establishing the existence of reasonable suspicion that an offence has been committed;

- when assessing the existence of reasonable suspicion, the court's task is not to determine whether the legal classification given to the act imputed to the person is correct or incorrect, but whether the act prima facie contains the elements of an offence provided for in the Special Part of the Criminal Code of the Republic of Armenia and whether the factual description of the act prima facie corresponds to those elements. In other words, establishing the existence of reasonable suspicion does not entail confirming the legal classification given to the act imputed to the person or conclusively establishing the existence of a specific offence;

- when considering a motion for detention, the court is not entitled to examine issues falling outside the scope of the tasks before it at that stage. Accordingly, when verifying the existence of reasonable suspicion, the court may not prejudge the issue of guilt, make a legal assessment of the person's guilt or innocence, or directly establish the presence or absence of the elements of an offence in the person's conduct. At the same time, without making legal assessments on the foregoing issues, the court may reject a motion seeking the application, extension or reconsideration of detention as a preventive measure where it establishes the prima facie existence and possible applicability of a circumstance precluding criminal prosecution. Moreover, the indication that such a circumstance prima facie exists must result not from the kind of comprehensive and in-depth analysis of the materials, including evidence, required when examining and deciding the case on the merits, but from relatively obvious facts arising from the materials submitted (for example, where the act of which the person is accused was not a criminal

offence at the time it was committed; where criminal prosecution has been initiated against a person who had not reached the age of criminal responsibility; where the limitation periods have expired; where an amnesty act has been adopted; and so forth);

- in assessing reasonable suspicion, decisive significance may attach to situations in which the legal classification given to the act is manifestly inconsistent with its factual description (or with the materials attached to the motion that support the facts attributed to the person), while the factual aspect of the act prima facie indicates the commission of an alleged offence of lesser gravity than the legal classification assigned to it (for example, where the person is charged with theft on a large scale, although that classification is manifestly inconsistent with the factual description of the act, while the latter prima facie indicates the elements of simple theft).

Thus, the established case-law on the assessment of reasonable suspicion[3] shows, inter alia, that assessing reasonable suspicion does not require the kind of comprehensive and in-depth analysis of the materials submitted, including evidence, that is required when examining and deciding the case on the merits. At the same time, however, deciding whether reasonable suspicion exists requires answering whether there is information, facts or evidence substantiating the suspicion that directly indicates the person's connection to the alleged offence attributed to him or her, and whether the incident of which the person is accused prima facie corresponds to the elements of an offence prescribed by the Criminal Code.

Reliance on and assessment of evidence that may not be used to substantiate a specific charge as a basis for reasonable suspicion.

Within the foregoing analysis concerning the assessment of reasonable suspicion, it is necessary to consider an issue arising in legal practice: whether extra-procedural documents provided for by Article 96(3) of the Criminal Procedure Code of the Republic of Armenia (hereinafter also the Current Code or the CPC) may be relied upon as a basis for substantiating reasonable suspicion of the prima facie commission of an act of minor or medium gravity imputed to the

[3] In addition to the above-mentioned precedents, see also the judgments of the European Court in Kandzhov v. Bulgaria, 6 November 2008; K.-F. v. Germany, 27 November 1997; Murray v. the United Kingdom, 28 October 1994; Gusinskiy v. Russia, 19 May 2004; Fox, Campbell and Hartley v. the United Kingdom, 30 August 1990; Decision No. ՀԿԴ/0201/06/24 of the Court of Cassation of 17 April 2025; Decision No. ՏԴ2/0009/06/11 of the Court of Cassation of 22 December 2011 concerning Harutyun Khachatryan; Decision No. ԵԿԴ/0678/06/10 of the Court of Cassation of 24 February 2011 concerning Vahram Gevorgyan; Decision No. ԼԴ/0197/06/08 of the Court of Cassation of 26 December 2008 concerning Tigran Vahradyan; and other judicial acts.

accused, and whether, within the framework of judicial safeguards in pre-trial proceedings, the court is competent to address and assess that issue.

In this connection, it should first be noted that, as follows from the legal rule enshrined in Article 96(3) of the Criminal Procedure Code of the Republic of Armenia, video recordings, audiovisual recordings, audio recordings and other objective documents obtained with judicial authorization as a result of operational-search activities conducted outside the framework of criminal proceedings may be recognized as extra-procedural documents and attached to the case materials only where the relevant measure was carried out for the purpose of preventing or suppressing the alleged offence, or identifying the person who allegedly committed the offence at the time of its commission or immediately thereafter. At the same time, it follows directly from the legal regulations laid down in Article 97 of the same Code that, although such documents are considered admissible evidence, they may not be used to substantiate a charge of an offence of minor or medium gravity.

It follows directly from the above-mentioned rule, in particular Article 97(10) of the Criminal Procedure Code of the Republic of Armenia, that it is undisputed that such extra-procedural documents may not be used to substantiate a charge of an offence of minor or medium gravity. At the same time, it should be noted that the concepts of "charge" and "reasonable suspicion" are directly interconnected: reasonable suspicion is a constituent element of the charge and, although the limits of its assessment differ from those applicable to the assessment of the charge, the fact that a particular item of evidence manifestly and indisputably cannot be used to substantiate the charge necessarily means that it cannot serve as a basis for reasonable suspicion either. In other words, given that the issue in question requires no substantive or in-depth analysis and involves merely identifying the applicable statutory rule—that is, by its nature, the answer is highly evident—we consider that where the authority conducting the proceedings relies on such evidence, among other material, to substantiate reasonable suspicion, the court is competent, within the framework of judicial safeguards in pre-trial proceedings, to address and assess that matter. In our view, therefore, assessment of this issue at that stage of the proceedings falls within the court's competence[4].

The foregoing is further supported by the following considerations:

As already noted, although the existence of reasonable suspicion is not equivalent to proof of the charge, the case-law of the European Court of Human Rights (hereinafter also the European Court) unequivocally requires that it be based

[4] In this regard, see, for example, also the decision of the Anti-Corruption Court of Appeal of 28 August 2025 in proceedings No. ՀԿԴ/0184/06/25.

on facts or information capable of satisfying an objective observer that the person concerned may have committed the offence alleged[5]. In this sense, reasonable suspicion presupposes not abstract assumptions or unverified information, but a minimum factual basis that is nevertheless objectively assessable. It follows that reasonable suspicion cannot be constructed on materials which, from the standpoint of the applicable legal framework, are manifestly devoid of evidentiary value—more specifically, materials that are manifestly incapable of being used in relation to the charge in question. The opposite approach would conflict with the requirement that reasonable suspicion be objective, because material that is manifestly devoid of legal value cannot be regarded as a fact or information capable of persuading an objective observer. This logic is also supported by the principle that the lawfulness of deprivation of liberty requires at least some qualitative assessment of the materials submitted, even if that assessment is limited. Accordingly, reasonable suspicion must be understood as a minimum, yet lawful and objective evidentiary threshold that cannot be crossed by manifestly circumventing the law, including through reliance on materials whose use to prove the relevant charge is manifestly excluded.

As regards Decision No. ՀԿԴ/0331/06/25 of the Court of Cassation of 23 June 2026, and, inter alia, the following positions expressed therein: *"(...) The Court of Cassation also considers it necessary to note that the criminal-procedural regulation concerning the restriction, depending on the category of the offence, on the use for substantiating a charge of video recordings, audiovisual recordings, audio recordings and other objective documents obtained with judicial authorization as a result of operational-search activities, recognized as extra-procedural documents and attached to the case materials, cannot in itself be interpreted as an absolute prohibition on their use, within proceedings concerning the judicial safeguards for the application of a preventive measure, at the level of assessing reasonable suspicion as to the accused's possible involvement in the offence imputed to him or her.*

In this regard, the Court of Cassation concurs with the conclusion of the Court of First Instance concerning the applicability of the regulation provided for in Article 97(10) of the Criminal Procedure Code of the Republic of Armenia, according to which, in the context of examining the existence of reasonable suspicion that the accused committed the alleged offence imputed to him or her, the documents of evidentiary significance attached to the motion are not to be assessed

[5] See, for example, the judgments of the European Court in Fox, Campbell and Hartley v. the United Kingdom, 30 August 1990, para. 32; Murray v. the United Kingdom, 28 October 1994, para. 55; O'Hara v. the United Kingdom, 16 January 2002, para. 34.

under the regulations of Article 97(10) of the Criminal Procedure Code in the same manner as the issue of admissibility of evidence governed by the same Article, which is a matter for subsequent stages of the proceedings (...)"[6]; we consider it necessary to make the following observations:

First, the distinction between reasonable suspicion and proof of the charge cannot support a conclusion that material which may not be used to substantiate a charge may nevertheless be freely used to establish reasonable suspicion in respect of the same charge. Reasonable suspicion is certainly not the standard for proving guilt, but, as noted above, it is the mandatory minimum basis for the procedural existence of the charge and for restricting a person's liberty. It is not an autonomous and legally neutral category detached from the charge. If, by operation of law, a specific item of factual material may not be used to substantiate a charge of an offence of minor or medium gravity, placing that material at the foundation of the preliminary, minimum, yet legally mandatory substantiation of the same charge—reasonable suspicion—creates an obvious normative contradiction. In other words, it cannot be regarded as acceptable for evidence to be unusable to prove a charge but usable to restrict a person's liberty on the basis of that same charge.

We reiterate that, in the situation under consideration, the court's application of Article 97(10) of the CPC does not entail the kind of in-depth assessment of evidence that is characteristic of the examination of a case on the merits. In such a situation, the court does not determine the person's guilt or innocence, does not assess the sufficiency of the evidence by the standard applicable to a judgment, and does not prejudge the outcome of the proceedings. The court merely resolves an obvious legal question: whether, in the face of an express statutory prohibition, the material relied upon in the motion may at all be used to substantiate reasonable suspicion in relation to the charge in question. The answer to this question follows not from a complex factual or legal analysis, but from the direct application of the statutory rule. We therefore consider that reserving this issue for later stages of the proceedings does not preserve the stage-based structure of criminal proceedings; rather, it hollows out pre-trial judicial review.

Moreover, we consider that excluding the application of Article 97(10) of the CPC at the reasonable-suspicion stage may produce a dangerous practical consequence: the criminal prosecution authority may rely, for the purpose of applying a liberty-restricting preventive measure, on materials that later will

[6] The Court of Cassation expressed similar positions in its Decision No. ՀԿԴ/0332/06/25 of 27 August 2026.

manifestly be incapable of being used to substantiate the same charge. In that event, the statutory safeguard loses its preventive function and becomes a delayed and belated form of protection. Yet the very essence of judicial review of a preventive measure is that the court should prevent, at that moment, an unfounded or unlawful restriction of liberty. If the defence can effectively raise such an argument only at a later stage, the mechanism for protecting its rights at the stage of applying the preventive measure becomes merely formal. Moreover, the prohibition on use would then fail to operate precisely where its safeguard function is most evident—at the moment a person's liberty is restricted. Such an interpretation is difficult to reconcile with the requirements of legal certainty and foreseeability of the law, since it should be foreseeable to the person that material which the law excludes from use in substantiating a particular charge cannot also be used to create a basis for depriving that person of liberty or substantially restricting it.

By way of analogy, it should be noted that if, when considering a preventive measure, the court is presented with materials from which a circumstance precluding criminal prosecution is manifestly apparent, the court cannot mechanically defer consideration of that issue to the stage at which the case is examined on the merits. In such situations, the court does not determine guilt; it performs a minimum review of the lawfulness of the restriction of liberty.

The same point can be illustrated by an obvious legal defect in the obtaining of evidence. If material obtained as a result of a search of a dwelling is presented as a basis for reasonable suspicion, but it is manifest from the motion itself or the materials attached to it that the search was conducted, for example, without the required judicial authorization, the court cannot content itself with stating that the issue of admissibility is entirely a matter for later stages of the proceedings.

These comparisons show that the issue is not the final assessment of evidence, but the minimum legal fitness of the material relied upon as a basis for restricting liberty. Just as a court cannot disregard an obvious circumstance precluding criminal prosecution merely because the case has not yet been examined on the merits, it likewise cannot disregard an express statutory restriction on the use of evidentiary material by treating it as an issue for later stages. Otherwise, the same legal defect that may later preclude use of the material to substantiate the charge would, at the pre-trial stage, permit a restriction of the person's liberty, which, as noted above, is incompatible with the safeguard logic of judicial review.

Accordingly, having regard to the foregoing considerations, we consider the above-mentioned positions developed by the Court of Cassation to be problematic and open to scholarly debate.

As regards a possible argument in relation to the issue under consideration—namely, that the offences of receiving a bribe, giving a bribe and aiding the receipt of a bribe are so closely interconnected that, when assessing reasonable suspicion, the results of operational-search measures cannot be regarded as admissible in respect of the bribe recipient while being regarded as inadmissible in respect of the bribe giver or the person who aided the latter; and that, consequently, the provisions of Articles 96 and 97 of the Criminal Procedure Code of the Republic of Armenia should be interpreted in the context of the serious offence provided for in Article 435 of the Criminal Code of the Republic of Armenia, an approach said also to be supported by Article 242(3) of the Criminal Procedure Code, under which covert investigative actions may be conducted in proceedings concerning alleged serious or particularly serious offences, as well as alleged offences of receiving or giving a bribe—it should be stated that judicial interpretation of a legal rule is a necessary means of the normal development of law, but it has constitutional limits. The court's task is to reveal the content of the rule by considering its text, purpose, systemic connections and constitutional values, not to establish a new rule in place of the legislature. From the standpoint of the constitutional order, this follows from the principle that justice is administered only in accordance with the Constitution and the laws, and that a court may not, through interpretation, go beyond the framework of regulation predetermined by law. In other words, interpretation of a statutory rule is permissible insofar as it reveals the rule's meaning, removes uncertainty or ensures constitutionally compliant application; it becomes impermissible once the court, departing from the text of the law and the will of the legislature, establishes, for example, a new procedure. Once that line is crossed, interpretation loses its law-applying character and becomes disguised law-making. In this context, we consider that interpreting the provisions of Articles 96 and 97 of the Criminal Procedure Code in the manner described above—especially where this results in a deterioration of the person's legal position—would, in the present case, cross the permissible boundary of judicial interpretation and transform such interpretation into disguised law-making.

II. Purposes of Preventive Measures and Their Assessment.

The purposes of preventive measures, which take the form of preventing the accused from absconding or committing an offence, or ensuring compliance with the obligations imposed on the accused by the Criminal Procedure Code of the Republic of Armenia or by a court decision[7]*, are predictive in nature. In other*

[7] For the obligations imposed on an accused by law, see Article 43(2) of the Criminal Procedure Code of the Republic of Armenia.

words, as the Court of Cassation has also noted, the legislature uses the term "may"[8]*, thereby emphasizing that, when deciding whether to select a preventive measure, the "manifestations of improper conduct by the accused" listed in Article 116 of the Criminal Procedure Code need not already have occurred; rather, there must be a risk or probability that, if no preventive measure is applied, they will occur. This does not, however, mean that where the above-mentioned acts have already been committed by the accused no preventive measure should be applied on the ground that it would be too late. On the contrary, in such cases the application of a preventive measure will be more than sufficiently substantiated and reasoned. In other words, the law should not allow an accused person first to engage in improper conduct and only thereafter consider whether a preventive measure should be applied, because, depending on which of the acts listed in Article 116(2) of the Criminal Procedure Code the accused has committed while remaining at liberty, the application of a preventive measure, including detention, may in some cases indeed be belated.*

Thus, as also follows from the case-law developed by the Court of Cassation, the purposes of preventive measures are predictive and probabilistic in nature because they concern future events. Such predictions must be substantiated by specific materials obtained in the criminal proceedings, which ultimately determine whether the application of a preventive measure, including detention, is justified. This also serves as a safeguard against any presumption in favor of detention and is a condition for ensuring that its application satisfies the requirement of adequate justification. It is precisely for this reason that, when choosing the type of preventive measure, all positive and negative factors relating to the accused's possible conduct must be weighed and balanced[9], and only thereafter may a final conclusion be reached as to the type of preventive measure to be applied[10].

At the same time, it should be reiterated that the assessment of the purposes of a preventive measure cannot be based on abstract presumptions. The gravity of the offence attributed to the accused, the public resonance of the case, or the severity of the expected punishment may be regarded only as auxiliary factors; by themselves, they are insufficient to establish a risk of absconding, obstructing the proceedings, or committing an offence. Such risks must be assessed through the

[8] See Article 116(2) of the Criminal Procedure Code of the Republic of Armenia.
[9] This also follows from the requirement laid down in Article 116(3) of the Criminal Procedure Code of the Republic of Armenia.
[10] Insofar as relevant, see, inter alia, paragraph 14.1 of Decision No. ՀԿԴ/0124/01/23 of the Court of Cassation of 19 July 2024 concerning Vladimir Asatryan, and paragraph 12.1 of Decision No. ՀԿԴ/0233/06/23 of the Court of Cassation of 28 June 2024 concerning Vardan Mamikonyan.

combined consideration of the person's conduct, social ties, family situation, employment, prior conduct, criminal record, procedural discipline and the specific facts of the case. In other words, a risk must not merely be abstractly conceivable; it must be individually substantiated by the materials of the proceedings.

Independent and Separate Assessment of the Purposes of Preventive Measures.

A key element in assessing the lawfulness of the application of preventive measures is the requirement that their purposes—that is, the corresponding risks—be substantiated independently and separately. Although in practice those risks may be interrelated to some extent, they nevertheless constitute circumstances with different legal content, each of which has its own standard of substantiation and is subject to an independent assessment. A review of judicial practice shows that there are numerous cases in which courts, for example, effectively establish the existence of a risk that the accused will commit an offence solely on the basis of the same circumstances on which they relied when assessing the likelihood of obstruction of the proceedings[11]. Such an approach, in substance, merges the substantiation of different risks without identifying the separate factual bases necessary for each of them. By contrast, the case-law of the European Court consistently requires that deprivation of liberty be justified by "relevant and sufficient" reasons that are individualized and directed to substantiating the specific risk concerned[12]. It follows from this requirement that the existence of one risk cannot be mechanically inferred from circumstances relied upon to substantiate another risk, without identifying additional relevant factors and factual information and undertaking further analysis. The European Court has repeatedly criticized approaches in which domestic courts confine themselves to general or repetitive formulations without distinguishing and substantiating the specific risks. In particular, in Smirnova v. Russia, the Court held that such a formalistic approach does not satisfy the requirements of Article 5 of the Convention because it fails to ensure a genuine and individualized assessment of the risks[13]. Similar positions have been expressed in other cases, where it has been emphasized that the gravity of the charge or the nature of the case may have only an auxiliary role and cannot,

[11] See, for example, the decision of the Anti-Corruption Court of 10 December 2024 in proceedings No. ՀԿԴ/0002/01/23.

[12] See, for example, the judgment of the European Court in Buzadji v. the Republic of Moldova, 5 July 2016, paras. 100–104.

[13] See, for example, the judgment of the European Court in Smirnova v. Russia, 24 October 2003, paras. 61–64.

either alone or in combination, substitute for the factual substantiation of the specific risks[14].

It follows from the foregoing that the possible logical connection between the purposes of preventive measures does not make the substantiation of those purposes interchangeable. In other words, considering risks together cannot replace separate substantiation of each risk, since mechanically identifying them with one another would in practice eliminate the independent content of each purpose prescribed by law. Each purpose must therefore be assessed not abstractly or mechanically, but on the basis of a combination of specific circumstances arising from the materials of the proceedings and relating to that particular risk. Accordingly, an approach under which circumstances relied upon to substantiate one risk are automatically extended to other risks should be regarded as inconsistent with the requirements of lawfulness. The purposes of preventive measures must therefore be viewed not as abstract categories capable of interchangeable or combined substantiation, but as a system of risks requiring independent substantiation, in which the justification of each element is a mandatory precondition for the lawfulness of the preventive measure.

Assessment of the Purposes of Preventive Measures Where the Limitation Period for Bringing a Person to Criminal Liability Has Expired.

It should be noted that, unlike the Criminal Procedure Code of the Republic of Armenia adopted in 1998, Article 135(2) of which provided, inter alia, that detention could be applied to an accused only where there was reasonable suspicion that he or she had committed an offence for which the maximum term of imprisonment exceeded one year—thus making the existence of reasonable suspicion of an offence punishable by more than one year's imprisonment an additional mandatory condition for selecting detention as a preventive measure—the Criminal Procedure Code of the Republic of Armenia that entered into force on 1 July 2022 adopted a completely different approach to this issue. In place of that rule, Article 118(3) of the Current Code provides that, where the offence attributed to the accused does not carry a penalty involving deprivation of liberty, detention may be applied only if the accused violates the conditions of an alternative preventive measure already applied to him or her. Thus, unlike the Criminal Procedure Code adopted in 1998, the Current Code does not exclude selecting detention as a preventive measure even where the offence attributed to the person does not carry a penalty involving deprivation of liberty; however, it makes such

[14] See, inter alia, the judgments of the European Court in Letellier v. France, 26 June 1991, para. 51, and Ilijkov v. Bulgaria, 26 July 2001, para. 81.

detention possible only where the accused has violated the conditions of an alternative preventive measure already applied to him or her. This approach of the legislature is logical, since otherwise, where the act attributed to a person does not carry a penalty involving deprivation of liberty (or, as provided under the Criminal Procedure Code adopted in 1998, where the maximum term of imprisonment is less than one year), the accused, knowing that the stricter preventive measure of detention can under no circumstances be applied, could engage in any form of unlawful conduct during the criminal proceedings. In our assessment, such a result cannot be regarded as lawful[15].

Alongside the foregoing considerations, it should also be borne in mind that the condition laid down in Article 118(3) of the Current Code concerning the absence of a penalty involving deprivation of liberty is, from a legal standpoint, equivalent to the situation in which the limitation period for bringing a person to criminal liability has expired, since in that event the imposition of punishment on the person is excluded. It follows that expiry of the limitation period is not, in itself, an independent basis for applying detention to a person as a preventive measure, and detention may be applied only where the accused objects to the termination of criminal prosecution on the ground that the limitation period has expired (Article 12(4) of the CPC) and, at the same time, during the continuing criminal proceedings, violates the conditions of the alternative preventive measure applied to him or her.

Assessment of the Purposes of Preventive Measures Where the Limitation Period for Bringing a Person to Criminal Liability Has Not Yet Expired but Is Approaching Expiry.

We also consider it necessary to address the question of what legal significance the fact that the limitation period for bringing a person to criminal liability has not yet expired but is approaching expiry may have, or what counterbalancing factor it may constitute, when assessing the purposes of a preventive measure.

In this regard, it should first be noted that, as already stated above, preventive measures are subject to common conditions of lawfulness, while the purposes (grounds) for applying each of them may vary in intensity, reflecting different degrees of risk. Determining that degree of risk is of key importance when deciding on a preventive measure. In other words, although the fact that only a relatively short period remains before the limitation period for bringing a person to criminal liability expires does not preclude the possibility of selecting detention as a

[15] It should also be noted, having regard to Article 123(5) of the Current Code, that the rule laid down in Article 118(3) also applies when deciding whether to select house arrest as a preventive measure.

preventive measure, it is a weighty factor in assessing the accused's possible conduct: in substance, it indicates a reduction in the degree of risk that the accused will engage in improper conduct. Thus, where such a weighty factor is present, the absence of another comparably weighty countervailing factor may itself provide a basis for declining to select the most severe preventive measure—detention—because the opposite conclusion may be incompatible both with the principle of the public nature of proceedings under Article 15 of the Criminal Procedure Code of the Republic of Armenia and with the principle of proportionality enshrined in Article 78 of the Constitution, in the context of assessing the correspondence between the aim pursued and the means used to achieve it.

Accordingly, the fact that the limitation period for bringing a person to criminal liability is approaching expiry is not a neutral circumstance when deciding on a preventive measure. It reduces the real prospect of punishment and, consequently, the incentives for the accused to engage in possible improper conduct. In such situations, therefore, the court must subject to stricter scrutiny whether a sufficient public interest still exists to justify the continuation of deprivation of liberty. The opposite approach may result in an interference whose intensity in practice exceeds the substantive criminal-law prospect that remains in the proceedings.

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.

References

List of Literature Used

1. *Avetisyan D.,* “Reasonable Suspicion as a Condition for the Lawful Application of Preventive Measures under the Draft New Criminal Procedure Code of the Republic of Armenia,” State and Law, No. 2 (64), 2014, YSU, Yerevan,
2. *Ghukasyan H.,* “Grounds and Procedural Rules for the Application of Detention under the Criminal Procedure Code of the Republic of Armenia,” Collection of Scientific Papers Dedicated to the 70th Anniversary of the YSU Faculty of Law, Yerevan,
3. *Melkonyan D.,* “Specific Features of the Application of Preventive Measures under the Draft New Criminal Procedure Code,” State and Law, No. 1 (59).

List of Legal Sources Used

1. Constitution of the Republic of Armenia,
2. European Convention for the Protection of Human Rights and Fundamental Freedoms,
3. Criminal Code of the Republic of Armenia,

4. Criminal Procedure Code of the Republic of Armenia,
5. Criminal Procedure Code of the Republic of Armenia adopted in 1998,
6. Judgment of the European Court of Human Rights, Fox, Campbell and Hartley v. the United Kingdom, 30.08.1990,
7. Judgment of the European Court of Human Rights, Letellier v. France, 26.06.1991,
8. Judgment of the European Court of Human Rights, Murray v. the United Kingdom, 28.10.1994,
9. Judgment of the European Court of Human Rights, K.-F. v. Germany, 27.11.1997,
10. Judgment of the European Court of Human Rights, Ilijkov v. Bulgaria, 26.07.2001,
11. Judgment of the European Court of Human Rights, O'Hara v. the United Kingdom, 16.01.2002,
12. Judgment of the European Court of Human Rights, Smirnova v. Russia, 24.10.2003,
13. Judgment of the European Court of Human Rights, Gusinskiy v. Russia, 19.05.2004,
14. Judgment of the European Court of Human Rights, Kandzhov v. Bulgaria, 06.11.2008,
15. Judgment of the European Court of Human Rights, Buzadji v. the Republic of Moldova, 05.07.2016,
16. Decision No. ՍԴՈ-1453 of the Constitutional Court of the Republic of Armenia, 16.04.2019,
17. Decision No. ԵԱՆԴ/0017/06/16 of the Court of Cassation concerning *E. Yeghiazaryan*, 22.06.2017,
18. Decision No. ԱՎԴ2/0019/06/21 of the Court of Cassation concerning *E. Hovhannisyan*, 17.05.2024,
19. Decision No. ՀԿԴ/0201/06/24 of the Court of Cassation, 17.04.2025,
20. Decision No. ՏԴ2/0009/06/11 of the Court of Cassation concerning *Harutyun Khachatryan*, 22.12.2011,
21. Decision No. ԵԿԴ/0678/06/10 of the Court of Cassation concerning *Vahram Gevorgyan*, 24.02.2011,
22. Decision No. ԼԴ/0197/06/08 of the Court of Cassation concerning *Tigran Vahradyan*, 26.12.2008,
23. Decision No. ՀԿԴ/0124/01/23 of the Court of Cassation concerning *Vladimir Asatryan*, 19.07.2024,
24. Decision No. ՀԿԴ/0233/06/23 of the Court of Cassation concerning *Vardan Mamikonyan*, 28.06.2024,
25. Decision No. ՀԿԴ/0331/06/25 of the Anti-Corruption Chamber of the Court of Cassation concerning *Sara Rushanyan*, 23.06.2026,
26. Decision of the Anti-Corruption Court of Appeal in proceedings No. ՀԿԴ/0184/06/25, 28.08.2025,
27. Decision of the Anti-Corruption Court in proceedings No. ՀԿԴ/0002/01/23, 10.12.2024.