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PRACTICAL PROBLEMS IN THE INITIATION OF PUBLIC CRIMINAL PROSECUTION

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Abstract. The initiation of public criminal prosecution is a decisive procedural act that both attributes an alleged offence to a particular person and activates the guarantees associated with accused status. This article examines three interrelated practical and conceptual problems arising under the 2021 Criminal Procedure Code of the Republic of Armenia: the factual and evidentiary basis for initiating prosecution, the consequences of revoking decisions not to initiate or to terminate prosecution, and the investigator's involvement in the initiation process. Drawing on doctrinal interpretation, the historical development of Armenian criminal procedure, relevant judicial decisions and selected comparative approaches, the article argues that lowering the threshold for initiating prosecution does not authorise decisions based on unsupported or merely speculative suspicion. Initiation requires an evidence-based hypothesis, capable of being formulated as a charge, that a particular person committed an offence, without requiring proof of guilt. The article further demonstrates that revoking a decision not to initiate prosecution should not automatically entail its initiation; the statutory grounds and ordinary procedure must be independently assessed. Conversely, revocation of a decision terminating existing prosecution should restore that prosecution without a further initiation decision. Finally, the article identifies the exclusion of the investigator from substantive decision-making as a structural weakness and proposes that the investigator adopt the decision to initiate prosecution, subject to the supervising prosecutor's approval. These conclusions aim to strengthen procedural coherence while securing an appropriate balance between effective public prosecution and the rights of the individual.

Keywords - *public criminal prosecution; initiation of criminal prosecution; evidentiary threshold; renewal of criminal prosecution; investigator's procedural role; prosecutorial approval; Armenian criminal procedure.*

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1. Introduction

Criminal prosecution constitutes one of the central institutions of criminal procedure. By signifying the identification, within criminal proceedings, of the person who has committed an offence, criminal prosecution is of fundamental importance for safeguarding both public and private interests. On the one hand, the initiation of criminal prosecution represents the formalisation of the preliminary outcome of activities aimed at establishing the circumstances of an offence, namely, the official attribution of the offence to a specific person. On the other hand, it entails conferring upon that person the procedural status of an accused, thereby giving rise to the principal procedural legal relationships involving that person.

Situated at the intersection of public and private interests, the issues surrounding the initiation of criminal prosecution are extensive, and their scholarly analysis is of particular importance for developing solutions that ensure a balanced protection of those interests. In light of the conceptual changes affecting the institution of criminal prosecution and their far-reaching interpretations, the interpretation of the grounds for initiating criminal prosecution and the procedures for resuming criminal prosecution remain topical. Debate also continues regarding the role and involvement of the investigator in the initiation of criminal prosecution.

2. The Grounds for Initiating Criminal Prosecution

The question of what result of evidentiary activity should serve as the basis for deciding to initiate criminal prosecution against a person continues to be a matter of scholarly debate. At the same time, the consequences of the failure to clearly define the grounds for initiating criminal prosecution have included, and continue to include, in some cases, the premature conferral of accused status upon a person and unjustified interference with his or her rights, while in other cases, delays in initiating criminal prosecution, situations in which a person is subjected to de facto criminal prosecution, and failures to provide that person with a full range of means for defending against the charge.

The study demonstrates that the wording of the grounds for charging a person with an offence has varied across criminal procedural codes adopted during different periods. For example, the Soviet Criminal Procedure Codes of 1922 provided that an investigator was to issue a reasoned decision on bringing a person in as an accused where there were sufficient data providing *grounds for charging that person with having committed an offence.* Article 135 of the Criminal Procedure Code of the Republic of Armenia of 1961 provided that: "*Where there is*

sufficient evidence providing grounds for charging a person with having committed an offence, the investigator shall issue a reasoned decision on holding that person liable as an accused."

Although, under the aforementioned regulations, sufficient evidence constituted the basis for bringing a charge against a person, such evidence was not intended to create a conviction that the person had committed an offence, but was merely sufficient to present to that person the charge, namely, the hypothesis that he or she had committed an offence, and to notify the person of the existence of a suspicion of having committed an offence. Nevertheless, the interpretation of the grounds for bringing a charge against a person generally came down to the position that *bringing a charge required a body of sufficient evidence establishing the fact that the offence had been committed by that person.* This was primarily attributable to the fact that bringing a charge was not the only form of initiating criminal prosecution, and that conferring suspect status upon a person, as the initial form thereof, on the basis of a lower degree of suspicion of having committed an offence, implied that a charge should be brought only where a more reliable conclusion could be reached in that regard. In addition, Soviet criminal procedure was characterised by an established understanding that a decision to bring a person in as an accused could be adopted, and that the person could be charged with having committed an offence, only on the basis of compelling grounds.

This approach was also attributable to the fact that bringing a charge against a person was not regarded as merely a preliminary procedural act, and it was considered that a person who was charged with having committed an offence was guilty.

Thus, I. Ya. Foinitsky noted that, in order to adopt a decision to bring a person in as an accused, it was necessary to "be convinced that the person involved in the investigation is reasonably suspected of having committed an offence[1]." Other authors likewise stated that, in order to bring a person in as an accused, the competent authority had to be absolutely convinced that the person had committed an offence[2].

Contrary to these approaches, some authors regarded probable knowledge that the offence had been committed by the person concerned as the basis for bringing a charge against that person. In particular, P. A. Lupinskaya noted that "the existence of data sufficient to bring a person in as an accused, which entitles the investigator

[1] See **Foinitsky, I. Ya.** Course of Criminal Procedure. Vol. I. 4th ed. St. Petersburg: Printing House of the "Obshchestvennaya Polza" Partnership, 1912, p. 75.

[2] See **Polyansky, N. N**. Issues of the Theory of Soviet Criminal Procedure. Moscow: Moscow University Press, 1956, p. 186; **Zhogin, N. V., Fatkullin, F. N.** Preliminary Investigation in Soviet Criminal Procedure. Moscow: Yuridicheskaya Literatura, 1965, pp. 191–192.

to adopt such an important procedural decision, does not mean that the truth in the case has been established in all respects. [3]" M. S. Strogovich stated that "...at the moment when a person is brought in as an accused, the guilt of that person cannot be considered proven, and the investigator is required to be convinced that the evidence already collected is sufficient to place that person in the position of an accused of committing an offence, but not in the position of a guilty person[4]." Supporters of this approach noted that "the degree to which the circumstances constituting the substance of the charge brought against a person have been established reflects probable knowledge, which is 'characterised by a gradual increase in its reliability, whereby an increase in the amount of information received (provided that the requirements of the criminal procedural law concerning the rules of evidence are complied with) leads to the acquisition of a new quality. [5]"

Despite these attempts to lower the high threshold of sufficient evidence required for initiating criminal prosecution, as well as the arguments advanced in support thereof that bringing a person in as an accused also serves to safeguard his or her rights, particularly the right to be informed of the charge and the right to defend against it, legal practice did not abandon the widespread practice of conducting the investigation without formally bringing the person in as an accused and notifying him or her of the charge only immediately before referring the case to the court. Assertions that a person should be accorded accused status only on the basis of a sufficient body of admissible, relevant, and reliable evidence continued to be advanced in legal scholarship as well.[6]

The 1998 Criminal Procedure Code of the Republic of Armenia, in turn, did little to alleviate the problem and, rather, further exacerbated it by expressly providing in Article 202 part 1 that "the basis for bringing a person in as an accused is the body of sufficient evidence indicating that the person committed the offence." By referring not merely to evidence sufficient to present to a person the hypothesis that he or she had committed an offence, but specifically to sufficient evidence indicating that the offence had been committed by that person, the former criminal procedural legislation left virtually no scope for distinguishing between the bodies of evidence sufficient, respectively, to bring a charge against a person, to conclude the pre-trial investigation with an indictment, and to convict the person. Consequently, even during the period of validity of the former criminal

[3] See **Lupinskaya, P. A**. Proof in Soviet Criminal Procedure. Moscow, 1966, p. 55.
[4] See **Strogovich, M. S**. The Accused's Right to Defence and the Presumption of Innocence. Moscow: Nauka Publishing House, 1984, p. 33.
[5] See **Karieeva, L. M.** Bringing to Criminal Liability: Legality and Justification. Moscow, 1971, p. 15.
[6] See **Kudin, F. M., Kostenko, R. V.** Sufficiency of Evidence in Criminal Proceedings: A Monograph. Krasnodar: KG AU, 2000, pp. 85–86.

procedural legislation, the body of sufficient evidence indicating that an offence had been committed continued to be assessed at the discretion of the competent authorities, resulting in cases of both premature and delayed initiation of criminal prosecution.

Article 189 part 1 of the Criminal Procedure Code of the Republic of Armenia, adopted in 2021 (hereinafter also referred to as the "Code"), provides that "public criminal prosecution against a person shall be initiated by a decision of the supervising prosecutor on the basis of facts indicating that the person committed an offence." As is evident from the quoted provision, in defining the basis for initiating criminal prosecution, the legislature abandoned the reference to evidence or a sufficient body of evidence, instead considering the basis for conferring accused status on a person to be not evidence indicating that the person committed an offence, but facts indicating the commission of an offence by that person. Such wording of the grounds for initiating criminal prosecution has given rise to further debate on the matter.

Thus, professional sources note that, for the initiation of criminal prosecution, "it is not necessary to establish that the person committed the alleged offence and is guilty thereof (as was the case under the 'sufficient body of evidence' standard); nor is it necessary for the suspicion that the person committed the offence to be compelling (the threshold of reasonable suspicion). Rather, it is only necessary for an individualised suspicion of the commission of an offence to arise, that is, for the commission of the alleged offence by the person concerned, based on forensic experience, to constitute one of the reasonably possible (reasonably non-excludable) suspicions, which, however, does not preclude the possibility of other suspicions."

Such a threshold of suspicion constitutes one of the reasonably possible alternatives, which must have a certain factual basis, exceed so-called intuitive perceptions, and clearly individualise the person suspected of having committed the alleged offence. However, it does not, in any way, require or presuppose proof of all (or any) elements of the offence or a compelling demonstration (high probability) that the person committed the offence. Such suspicion may arise, for example, where, in an oral report of an offence, a specific person is identified as the perpetrator, accompanied by clearly identifying information concerning that person (his or her first and last name and other necessary identifying information). [7]

[7] See **A. Ghazaryan**, "The Threshold of 'Suspicion' Required for the 'Entry' of an Accused into Criminal Proceedings (The Force of Inertia or the Disregard of the Legislative 'Revolution' in Law-Enforcement Practice)," Constitutional Court Bulletin, No. 4(112), 2023, pp. 11–38.

While acknowledging the view that the current Criminal Procedure Code, by abolishing the procedural status of the suspect and linking criminal prosecution exclusively to the conferral of accused status upon a person, has lowered the evidentiary threshold required for initiating criminal prosecution,[8] we consider its extreme interpretations unwarranted and problematic in practice.

First, although it is acceptable that the initiation of criminal prosecution against a person does not require all elements of the offence to be proven, this cannot mean that the basis for initiating criminal prosecution is lower than even the evidentiary standard of "reasonable suspicion." It is important to note that the basis for detention, as a coercive measure that may be applied even prior to the initiation of criminal proceedings, is a *reasonable suspicion* of having committed an offence that has arisen directly. This, in itself, does not permit the basis for the subsequent formal initiation of criminal prosecution against the person to be regarded as falling below that standard.

The interpretation of the grounds for initiating criminal prosecution and conferring upon a person the procedural status of an accused cannot disregard the fact that the consequences of such procedural status are not limited to acquiring the means to become aware of the charge and to defend against it. Even if we leave aside the risks to the exercise of the right, deriving from the principle of the presumption of innocence, to be regarded as innocent until a court judgment is rendered—risks that exist in our society and are manifested in the immediate and irreversible perception of an accused person as guilty—we cannot ignore that the procedural status of an accused may, and does, entail other significant procedural and extra-procedural consequences for the person, such as suspension from the exercise of official duties, an adverse integrity assessment, restrictions on career advancement, and so forth.

It is clear from the statutory formulation of the grounds for criminal prosecution that it refers to facts which indicate, that is, form a certain degree of conviction that the person committed an offence. The formation of even such a preliminary conviction presupposes sufficient evidence giving rise to it. Put more simply, treating facts as indicative of something presupposes that a certain degree of conviction has been formed in this regard, which goes beyond the mere existence of multiple possible hypotheses.

[8] See Practical Guide to the Conceptual Solutions, Innovative Approaches, and Interpretation of the Main Institutions of the New Criminal Procedure Code of the Republic of Armenia, Council of Europe, July 2022. p. 110.: https://rm.coe.int/new-criminal-procedure-code-guideline-/1680a72908 (last accessed: September 10, 2026)

In this context, it is likewise inappropriate to contrast the concepts of "facts indicating that an offence has been committed" and "a body of sufficient evidence indicating that an offence has been committed" in such a way as to suggest that the existence of facts without evidence is possible. The point is that the facts indicating that an offence was committed by a particular person, as facts set out in the decision to initiate criminal prosecution against that person and attributed to that person, cannot exist independently of evidence and proof. This is evidenced by the provisions of criminal procedural law stipulating that, in criminal proceedings, the event and the circumstances thereof are subject to proof, and that evidence constitutes data concerning a fact, which means that, in criminal proceedings, facts cannot exist without evidence.

It is noteworthy that the idea that, in order to initiate criminal prosecution, the competent official must, on the basis of certain evidence, be satisfied that the person who, by virtue of that official's decision, is accorded the procedural status of an accused has apparently committed an offence is expressed not only in Soviet or Russian scholarly literature, which reflects or is closely related to our legal traditions, but also in American and European legal scholarship. Thus, although the Italian Code of Criminal Procedure does not establish any evidentiary standard for initiating criminal prosecution, legal scholarship interpreting Article 335 thereof notes that "the prosecutor must enter the suspect's details in the relevant register of the public prosecutor's office and thereby recognise that person as a suspect when he or she considers that the person has committed an offence.[9]" Under American law as well states that the basis for initiating criminal prosecution is probable knowledge founded on certain facts.[10] Moreover, Article 313 of the Polish Code of Criminal Procedure regards a *"sufficiently substantiated suspicion" (dostatecznie uzasadnione podejrzenie)* that an offence was committed by a specific person as the basis for conferring accused status upon that person. Legal scholarship further expresses the view that such suspicion "must be objectively based on verified facts."[11]**:**

Considering that, pursuant to Article 6, Part 1, Clause 41 of the Criminal Procedure Code of the Republic of Armenia, the initiation of criminal prosecution constitutes the adoption by the prosecutor of a decision describing the person's

[9] See **Kremens, Karolina**. (2021). Powers of the Prosecutor in Criminal Investigation: A Comparative Perspective. New York: Routledge. p. 236.

[10] See **Kremens, Karolina**. (2021). Powers of the Prosecutor in Criminal Investigation: A Comparative Perspective. New York: Routledge. pp. 247-248.

[11] See **Kosonoga J** (2016) Przedstawienie zarzutów. In: Ryszard Stefański (ed) System Prawa Karnego Procesowego. Postępowanie przygotowawcze. Volume X. Wolters Kluwer, Warsaw, p. 745.

alleged criminal act and containing its legal assessment, that is, the formulation of the charge against that person, the basis for initiating criminal prosecution cannot therefore be interpreted outside the context of the concept of "charge" and the requirements applicable to the formulation of the charge. Thus, pursuant to Article 6, Part 1, Clause 42 of the Criminal Procedure Code of the Republic of Armenia, "a charge is a hypothesis that a specific person has allegedly committed an offence, which has a factual and legal basis." Part 4 of Article 189 of the Code provides that the decision on initiating criminal prosecution shall indicate, inter alia, "the factual basis of the charge—the nature of the act attributed to the person, the place, time, manner of its commission, and other circumstances, insofar as they have been established by the available evidence, as well as the legal assessment of the act."

The Court of Cassation of the Republic of Armenia has expressed legal positions concerning the formulation of a charge, stating that:

-"The importance attached to the formulation of the charge is due to the fact that its inclusion in the relevant procedural documents (the decision to bring a person in as an accused and the indictment) enables the person subject to criminal prosecution to exercise his or her right to defence effectively.[12]"

- In the formulation of the charge, in addition to the information concerning the perpetrator, the place, time, and manner of commission of the offence, the facts underlying the criminal-law classification of the act must be set out in detail and with precision, including a comprehensive description of the occurrence of the offence and the circumstances related thereto. From the perspective of the exercise of the fundamental right to a fair trial, it is unacceptable for a competent official, when formulating the charge in the relevant procedural documents, to confine the charge merely to a general description of the act prohibited by criminal law. Likewise, it is unacceptable, to bring the same charge against the co-perpetrators without specifying the particular acts of each of them and the nature and degree of each person's participation in the offence, when an offence has been committed by a group of persons[13]»:

It is obvious that, even on the basis of the foregoing, it is impossible to establish precisely in which circumstances facts may be regarded as indicating that an offence was committed by a person, or when evidence may be considered sufficient to formally attribute those facts to the person as a charge, since this is always an integral part of the individual process of proof. Moreover, as with any

[12] See paragraph 19 of the Decision of the Court of Cassation of the Republic of Armenia of 5 November 2010 in the case of **Arkadi Patvakani Papyan**, Case No. ՏԴ/0115/01/09.

[13] See paras. 19, 21 and 27 of the Decision of the Court of Cassation of the Republic of Armenia of 24 August 2012 in the case of **Grigor Chagharyan** and Others, Case No. ԵՇԴ/0002/01/11.

issue concerning the balanced exercise of public and private interests, the problem in this case lies not so much in the legal regulation as in the proper application of the law. It is, naturally, impossible to establish a categorical and non-discretionary basis for initiating criminal prosecution. In practice, preventing premature or delayed criminal prosecution, and the resulting infringement of a person's legitimate interests, depends on the legal consciousness of each law enforcement practitioner and on a proportionate approach to public and private interests. It is noteworthy that numerous legal scholars have raised concerns regarding the discretionary assessment of the grounds for initiating criminal prosecution and have argued that "conferring accused status upon a person is the duty of the competent authority from the moment when there are reasoned grounds for believing that the person has committed an offence. [14]"

However, a comprehensive analysis of the statutory formulation of the grounds for initiating criminal prosecution, the components of the charge set out upon its initiation, and the requirements applicable to the decision to initiate criminal prosecution permits the conclusion that the supervising prosecutor is obliged to initiate criminal prosecution where there is a hypothesis, based on the evidence or body of evidence obtained in the proceedings, that a person has committed a specific offence prescribed by the Criminal Code of the Republic of Armenia. On the one hand, the initiation of criminal prosecution does not require the fact that the offence was committed by the person be regarded as established, confirmed, proven, not subject to verification, or exceptionally reliable; on the other hand, an unexplained assumption that the person committed an offence, or a probable suspicion based on forensic experience that constitutes merely one among several possible suspicions, is insufficient to confer accused status upon that person. The authors advocating the contrary approach outlined above do not explain, in the context of the requirements concerning the structure and formulation of the charge, how the facts of the act attributed to the person are to be formulated in the decision to initiate criminal prosecution when there is no evidence whatsoever concerning those facts, or how the act attributed to the person is to be set out in the charge, for example, where, based on forensic experience, there are equally individualised suspicions that one of several persons committed the offence without co-perpetrators. Can criminal prosecution be initiated against more than one person for having committed the same offence individually? The answer is obvious.

[14] See **Brodzisz** (2018) Komentarz do art. 303 k.p.k. In: Jerzy Skorupka (ed) Kodeks postępowania karnego. Komentarz. CH Beck, Warsaw. P. 754.

Therefore, insofar as a charge constitutes a hypothesis that a person has committed an offence and has a factual and legal basis, and insofar as the decision to initiate criminal prosecution, which sets out the charge, specifies the nature of the act attributed to the person, the place, time, manner of its commission, and other circumstances to the extent that they have been established by the available evidence, it follows that **the initiation of criminal prosecution against a person requires a preliminary hypothesis, based on evidence and capable of being formulated, that the person committed an offence.**

3. Renewal of Criminal Prosecution as a Ground for Its Initiation.

Although debates concerning the grounds for initiating criminal prosecution against a person have focused on the sufficiency of evidence or facts required for such initiation, the Criminal Procedure Code of the Republic of Armenia also provides for an equally problematic formal ground and a mandatory situation for adopting such a decision in the course of renewing criminal prosecution.

The renewal of criminal prosecution constitutes the restoration of criminal prosecution that had been excluded and takes place where the decision excluding criminal prosecution is unlawful because it was adopted in violation of the law or because new factual or legal circumstances have emerged. Although the renewal of criminal prosecution always takes place through the revocation of the decision excluding criminal prosecution, the legislature has expressly defined “renewal of criminal prosecution” as referring only to some of the circumstances in which such a decision is revoked.

Thus, the Code provides for the procedure and consequences of revoking decisions not to initiate criminal prosecution and decisions terminating criminal prosecution within the framework of the procedure for challenging such decisions, whereas Article 198, entitled “Renewal of Criminal Prosecution Not Initiated or Terminated,” regulates the procedure and circumstances for revoking only those decisions excluding criminal prosecution that have entered into legal force. This gives the impression that the legislature considers the “renewal of criminal prosecution” to mean the revocation only of decisions excluding criminal prosecution that have entered into legal force, that is, the restoration of criminal prosecution only where the decision excluding it has entered into legal force.

On the other hand, however, Part 2 of Article 25 of the Code provides that the existence of a decision not to initiate criminal prosecution or a decision terminating criminal prosecution that has entered into legal force precludes the renewal of criminal prosecution. It may therefore be inferred that, where a decision excluding

criminal prosecution has not entered into legal force, the renewal of criminal prosecution is not precluded. Moreover, the provision of Part 11 of Article 196 of the Code, according to which "where a court upholds a complaint against a decision not to initiate criminal prosecution or to terminate criminal prosecution, the competent prosecutor shall initiate criminal prosecution or renew it," likewise indicates that the renewal of criminal prosecution also takes place where a decision excluding criminal prosecution that has not yet entered into legal force is revoked.

Reiterating that the renewal of criminal prosecution constitutes the restoration of criminal prosecution that had been excluded, it should also be noted that, from a purely terminological perspective, there is no difference as to whether its restoration takes place following the revocation of a decision that has already entered into legal force or one that has not yet entered into force. Therefore, the renewal of criminal prosecution constitutes the restoration of previously excluded criminal prosecution, irrespective of the procedure by which such restoration takes place.

A systematic analysis of the Criminal Procedure Code of the Republic of Armenia demonstrates that the legislature considers it possible to renew not only terminated criminal prosecution but also criminal prosecution that has not been initiated. This conclusion follows directly from the title of Article 198 of the Code, "Renewal of Criminal Prosecution Not Initiated or Terminated," as well as from the provision of Part 2 of Article 25 stating that *"a decision not to initiate criminal prosecution that has entered into legal force precludes the renewal of criminal prosecution."* It follows, therefore, that in order to renew criminal prosecution, the decision not to initiate it must first be revoked and, accordingly, criminal prosecution is renewed following such revocation.

On the other hand, pursuant to Part 11 of Article 196 of the Code, "where a court upholds a complaint against a decision of a superior prosecutor confirming the lawfulness of the decision not to initiate criminal prosecution or to terminate criminal prosecution, the *competent prosecutor shall initiate criminal prosecution or renew it."* Alternatively, pursuant to Part 4 of Article 198 of the Code, "where decisions *not to initiate criminal prosecution or to terminate criminal prosecution* are revoked, criminal *prosecution shall be initiated or renewed.*" It also follows from the above provisions that the term "renew" applies only to cases involving the revocation of a decision to terminate criminal prosecution; that is, only terminated criminal prosecution may be renewed, whereas the consequence of revoking a decision not to initiate criminal prosecution is the initiation of criminal prosecution. It should be noted that, from a purely terminological perspective, the term

"renew"[15] is indeed understood as referring to the restoration or reactivation of something that previously existed; therefore, criminal prosecution that has not previously existed cannot be renewed.

However, the issue under consideration is not merely terminological and gives rise to practical problems, since, in substantive terms, the legislature has in fact adopted the approach of "renewing criminal prosecution that has not been initiated."

Thus, it is clear from the above-quoted provisions of Part 11 of Article 196 and Part 4 of Article 198 of the Code that they regard the initiation of criminal prosecution as the consequence of revoking a decision not to initiate criminal prosecution. Put more simply, revocation of a decision not to initiate criminal prosecution against a person makes the initiation of criminal prosecution against that person mandatory in every case, which is nothing other than the "renewal" of criminal prosecution that had not previously been initiated.

However, the concept of renewing criminal prosecution that has not been initiated, and the resulting obligation to automatically initiate criminal prosecution upon revocation of a decision not to initiate criminal prosecution, are incompatible with the fundamental rules governing the grounds for initiating criminal prosecution discussed above. The point is that, although the basis for initiating criminal prosecution consists of facts indicating that the person committed an offence, where a decision not to initiate criminal prosecution is revoked, criminal prosecution is initiated solely by virtue of that legal circumstance itself. Apart from the fact that initiating criminal prosecution against a person solely by virtue of a particular legal circumstance is conceptually incompatible with the very notion of criminal prosecution. It is also unclear how criminal prosecution can be initiated at all merely as a result of the revocation of a procedural decision, without consideration of the facts indicating that an offence has been committed.

Moreover, this would mean that, by virtue of the revocation of a decision not to initiate criminal prosecution, criminal prosecution may be initiated against a person even where the decision revoking it contains no finding as to the existence of facts indicating that the person committed an offence and was adopted, for example, solely on the ground that there remain unresolved circumstances relevant to determining whether criminal prosecution should be initiated.

The above-described mechanism for renewing criminal prosecution that has not been initiated bypasses not only the grounds for initiating criminal prosecution but

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[15] "To reform, correct, rebuild, restore to use." See **Eduard Aghayan**, Explanatory Dictionary of Modern Armenian, Hayastan Publishing House, Yerevan, 1976, p. 1085; **Stepan Malkhasyants**, Explanatory Dictionary of the Armenian Language, Yerevan: State Publishing House of the Armenian SSR, 1944, p. 1628.

also the procedure for such initiation. As a result, contrary to the provisions of Parts 2 and 6 of Article 189 of the Criminal Procedure Code of the Republic of Armenia, the decision to initiate criminal prosecution is adopted neither upon the investigator's motion nor, on the basis of the materials of the proceedings, on the initiative of the supervising prosecutor. Under the procedure described above, criminal prosecution is initiated against a person solely by virtue of the revocation of the decision not to initiate criminal prosecution against that person, on the basis of that decision itself.

In our view, in order to eliminate the identified problems, the institution of the renewal of criminal prosecution requires a fundamental reform. Accordingly, the term "renewal of criminal prosecution" should refer exclusively to the revocation of a decision to terminate criminal prosecution, irrespective of whether that decision has entered into legal force. The revocation of a decision to terminate criminal prosecution should result in the automatic restoration of the terminated criminal prosecution, without repeating the procedure for initiating criminal prosecution, that is, without adopting a new decision to initiate criminal prosecution. In other words, as a result of the revocation of the decision to terminate criminal prosecution, the decision to initiate criminal prosecution against the person should regain legal force.

As for the revocation of a decision not to initiate criminal prosecution, this cannot, in any circumstances, be regarded as the renewal of criminal prosecution. A decision of revoking a decision not to initiate criminal prosecution cannot constitute a ground or basis for restoring criminal prosecution, insofar as no criminal prosecution had previously been initiated and, consequently, there was no prosecution in existence that could be renewed. The revocation of a decision not to initiate criminal prosecution cannot, in itself, constitute a ground for initiating criminal prosecution against a person. In such a case, the question of initiating criminal prosecution should be resolved in accordance with the general procedure prescribed by the Code, upon the investigator's motion or on the initiative of the supervising prosecutor, on the basis of an assessment of the facts indicating that the person committed an offence.

4. The Investigator's Involvement in the Initiation of Criminal Prosecution

The Criminal Procedure Code of the Republic of Armenia, departing from the approach initially envisaged in its Concept[16], according to which "the initiation of

[16] Concept of the New Criminal Procedure Code of the Republic of Armenia. Approved by Protocol Decision No. 9 of the Session of the Government of the Republic of Armenia of 10 March 2011.

criminal prosecution" was to be understood as the approval by the supervising prosecutor of the investigator's decision to bring a person in as an accused, instead established that it constitutes the direct adoption of such a decision by the supervising prosecutor, upon the investigator's motion or on the prosecutor's own initiative (Article 189).

The Practical Guide to the Conceptual Solutions, Innovative Approaches, and Interpretation of the Principal Institutions of the New Criminal Procedure Code of the Republic of Armenia explains this approach by stating that "the initiation of criminal prosecution is an exclusive function of the prosecution, that the prosecutor is an official who implements the State's criminal policy and is accountable for doing so, and that, under these circumstances, it is logical that all decisions concerning criminal prosecution are made exclusively by the prosecutor.[17]" It is noteworthy that the Concept, likewise explaining the proposed regulation by reference to the prosecutor's pivotal rolein the initiation of criminal prosecution[18], did not consider it necessary, for the purpose of ensuring such a role, to exclude the substantive involvement of any other actor besides the prosecutor.

First, it should be noted that the underlying premise of the adopted approach—that the implementation of the State's criminal policy is the exclusive prerogative of the prosecutor—is, at the very least, open to debate, having regard to the substance of the prosecutor's functions and their relationship with other functions within criminal proceedings. It is unclear why the prosecutor, who oversees the legality of pre-trial proceedings, initiates criminal prosecution, prosecutes the case before the court, and appeals judicial decisions, is regarded as implementing the broadly defined criminal policy, whereas the investigator, who performs the investigative function underlying these very functions, is not similarly regarded as an actor implementing that policy. Yet even more difficult to understand is the proposition that, because the prosecutor implements the criminal policy, the prosecutor should therefore initiate criminal prosecution without the substantive involvement of the investigator in that process.

In our view, this approach adopted by the legislature overstates the necessary role of the supervising prosecutor in initiating criminal prosecution, while entirely disregarding the indispensable role of the investigative function performed by the investigator in making such a decision. Rather than assigning a decisive role to the

[17] See Practical Guide to the Conceptual Solutions, Innovative Approaches, and Interpretation of the Main Institutions of the New Criminal Procedure Code of the Republic of Armenia, Council of Europe, July 2022, p. 288. https://rm.coe.int/new-criminal-procedure-code-guideline-/1680a72908 (last accessed: September 10, 2026)

[18] See para. 3.4 of the Concept of the New Criminal Procedure Code of the Republic of Armenia.

supervising prosecutor in the initiation of criminal prosecution, the Code's provisions have effectively excluded the investigator from participating in the adoption of a procedural decision that is of pivotal importance both to the criminal proceedings as a whole and, in particular, to the investigative function performed by the investigator. This regulation overlooks that the facts constituting the grounds for initiating criminal prosecution are established precisely as a result of the evidentiary activities carried out by the investigator, who is the procedural actor responsible for establishing those facts and for directly perceiving them. It clearly fails to take into account that, irrespective of the manner in which the conduct and results of evidentiary activities are recorded and the opportunities available for reviewing them, neither the supervising prosecutor nor any other procedural actor can have a better understanding of the probative value of each item of evidence, or form a more accurate inner conviction on the basis thereof, than the investigator who has had direct contact with the source from which that evidence was obtained and has directly perceived the relevant information. Moreover, the investigator is excluded from any substantive involvement in adopting the decision to initiate criminal prosecution, even though that decision alters the procedural relationships involving the investigator, enables the investigator to perform a number of procedural actions, and gives rise to procedural duties incumbent upon the investigator.

It is by no means accidental, and is precisely attributable to the foregoing considerations, that Parts 2 and 3 of Article 189 of the Criminal Procedure Code of the Republic of Armenia effectively establish the adoption of the decision on the basis of a motion by the investigator as the principal procedure for initiating criminal prosecution. In that motion, the investigator sets out the information established as a result of the pre-trial investigation conducted by the investigator, which must be included in the supervising prosecutor's decision to initiate criminal prosecution. This regulation and the practice developed on its basis confirm that the investigator is the procedural actor who identifies, records, and assesses the facts constituting the grounds for initiating criminal prosecution, and it is therefore entirely natural that the investigator should be the first to respond to those facts.

Although it may appear that initiating criminal prosecution upon the investigator's motion already entails the investigator's necessary involvement in the process, in reality, apart from formally bringing the matter before the prosecutor, the investigator has no substantive role in the initiation of criminal prosecution. The point is that, although, pursuant to Point 22 of Part 1 of Article 41 of the Criminal Procedure Code of the Republic of Armenia, the investigator may file an objection against the supervising prosecutor's decision rejecting the

investigator's motion to initiate criminal prosecution, the investigator's filing of such an objection has, in practice, ceased to serve as a means of expressing the investigator's position, as a result of the rejection of virtually all such objections, largely due to institutional interests. Moreover, by the "directive" of the Prosecutor General of the Republic of Armenia dated 20 December 2022, it was established that an investigator's objections to a supervising prosecutor's decision rejecting a motion to initiate criminal prosecution are not subject to consideration, and no decision may be rendered thereon. This document, which directly contradicts the Criminal Procedure Code, is likewise premised on the view that the initiation of criminal prosecution falls within the prosecutor's exclusive powers. However, the document does not explain how the investigator's filing of such an objection could compromise the exclusivity of the prosecutor's function of initiating criminal prosecution, given that the objection is considered by the prosecutor and the question of whether to initiate criminal prosecution is, in any event, decided by the prosecutor. It is likewise unclear why the submission of a motion to initiate criminal prosecution does not undermine the exclusivity of that prosecutorial power, whereas an objection lodged by the same investigator against the decision on that motion does, despite the fact that, in substance, the latter is likewise merely an initiative to initiate criminal prosecution.

In that case, however, when the prosecutor's exclusive authority to dispose of criminal prosecution is treated as absolute and invoked as a basis for excluding the investigator's substantive involvement in the initiation of criminal prosecution, it is worth considering why it is the investigator who presents the decision to initiate criminal prosecution to the accused and thereby completes the process of initiating criminal prosecution. Or, why is it, nevertheless, that the indictment, which is the sole document setting out comprehensively the charge and the evidence underlying it and constituting the basis for the prosecution's presentation of the case before the court, is prepared not by the same prosecutor who exercises the exclusive functions of initiating criminal prosecution and presenting the prosecution's case before the court, but by the investigator? Moreover, the investigator, who is not entitled to participate in the initiation of criminal prosecution, despite the fact that such initiation results from the pre-trial investigation conducted by the investigator and has a decisive impact on that investigation, prepares the indictment serving as the basis for the examination of the case by the court, even though the investigator does not participate in the judicial proceedings in any manner or perform any function at that stage, while the prosecutor's function of presenting and maintaining the prosecution before the court is, indeed, an indisputably exclusive power. Against the backdrop of the approach adopted by the legislature and taken

to extremes and abused in practice, it is unclear why the investigator participates in preparing for the exercise, in the judicial proceedings, of the supervising prosecutor's exclusive power, even where the investigator disagrees with concluding the pre-trial investigation in that manner and considers that the criminal prosecution should be terminated and the proceedings discontinued. Moreover, in order to preclude a situation in which the investigator would be required to act contrary to his own procedural conviction when deciding whether to initiate criminal prosecution, Point 7 of Article 189 of the Criminal Procedure Code of the Republic of Armenia expressly provides that the prosecutor may not instruct the investigator to submit a motion to initiate criminal prosecution containing specified content or to prepare a draft of such a decision. Why, then, is the prosecutor entitled to instruct the investigator to prepare an indictment of specific content, which unquestionably serves solely as the basis for the prosecutor's function of presenting and maintaining the prosecution before the court and has no bearing whatsoever on the investigative function that has already been completed by the investigator? This cannot be explained by the logic of the prosecutor's absolute and exclusive authority to dispose of the charge.

In reality, however, the organic connection between the investigative function and the mechanism for initiating criminal prosecution requires that the investigator have clear and effective substantive involvement in the process of initiating criminal prosecution, including the authority to make the relevant decision. The prosecutor's decisive role in this pivotal stage of criminal proceedings should be exercised through approval of the decision to initiate criminal prosecution, without which that decision should have no legal effect.

The correctness of this approach is demonstrated not only by the artificial separation, under the current legal framework, between the authority to initiate criminal prosecution and the investigative function that makes such initiation possible, but also by the practical elimination of the procedural significance of the investigator's position in determining whether criminal prosecution should be initiated. This is not merely, or even primarily, a theoretical issue arising from the disruption of the organic connection between procedural functions; rather, it is a cause of practical situations that may, at times, bring the investigation to an impasse. The absence of an effective means of objecting to the prosecutor's position not to initiate criminal prosecution and of having that issue reconsidered by a superior prosecutor may result, and in practice does result, in a situation where, as a consequence of the supervising prosecutor's "unchallengeable" position not to initiate criminal prosecution, the investigator at least loses the

opportunity to carry out evidentiary measures that could have been undertaken had criminal prosecution been initiated against the person.

5. Conclusion

Although the Criminal Procedure Code of the Republic of Armenia has lowered the evidentiary threshold required for initiating criminal prosecution by altering the grounds for such initiation, conferring accused status on a person in the absence of any evidence indicating that the person committed an offence is incompatible with the very concept of criminal prosecution. A combined analysis of the grounds for initiating criminal prosecution, the concept of "charge," and the requirements governing the formulation of a charge demonstrates that initiating criminal prosecution against a person requires a preliminary hypothesis, grounded in evidence and capable of being formulated in procedural terms, that the person committed an offence. At the same time, the continuing practice of, at times, initiating criminal prosecution without any evidence that the person committed an offence and, at other times, delaying such a decision despite the existence of substantial evidence may be overcome by strengthening legal reasoning among law-enforcement authorities grounded in the principle of a balanced protection of public and private interests.

Furthermore, by providing for the revocation of a decision not to initiate criminal prosecution as a form of renewing criminal prosecution and making it mandatory, in such a case, to confer accused status on the person, the legislature has effectively treated even a non-existent criminal prosecution as capable of being renewed. The criminal procedure law has thus provided for the possibility of initiating criminal prosecution against a person in the absence of facts indicating that the person committed an offence, solely by virtue of the formal circumstance of revoking a decision not to initiate criminal prosecution, which is likewise incompatible with the modern concept of criminal prosecution. Therefore, the revocation of a decision not to initiate criminal prosecution should not constitute a form of renewing criminal prosecution, and in such a case, the question of whether to initiate criminal prosecution should be resolved in accordance with the general procedure prescribed by the Code.

Finally, the procedural framework governing the initiation of criminal prosecution, together with its overly restrictive interpretations, has effectively excluded the investigator conducting the pre-trial investigation from participating in the determination of whether criminal prosecution should be initiated, disregarding the fact that the investigator is the sole procedural actor who

establishes and directly perceives the facts constituting the grounds for initiating criminal prosecution. Therefore, the decision to initiate criminal prosecution should be adopted by the investigator and acquire legal effect upon approval by the prosecutor, thereby ensuring, on the one hand, the investigator's participation in this process, which is pivotal to the pre-trial investigation, and, on the other hand, preserving the exclusivity of the prosecutor's authority to initiate criminal prosecution.

Conflict of Interests

The authors declare that there are no ethical issues or conflicts of interest in this research.

Ethical Standards

The authors confirm that this research did not involve other people as research participants.

References

Academic Literature

1. Aghayan, Eduard. *Explanatory Dictionary of Modern Armenian*. Yerevan: Hayastan Publishing House, 1976.
2. Brodzisz. "Komentarz do art. 303 k.p.k." In *Kodeks postępowania karnego. Komentarz*, edited by Jerzy Skorupka. Warsaw: C. H. Beck, 2018.
3. Foinitsky, I. Ya. *Course of Criminal Procedure*. Vol. I, 4th ed. St. Petersburg: Printing House of the "Obshchestvennaya Polza" Partnership, 1912.
4. Ghazaryan, A. "The Threshold of 'Suspicion' Required for the 'Entry' of an Accused into Criminal Proceedings (The Force of Inertia or the Disregard of the Legislative 'Revolution' in Law-Enforcement Practice)." *Constitutional Court Bulletin*, no. 4(112) (2023): 11–38.
5. Karieeva, L. M. *Bringing to Criminal Liability: Legality and Justification*. Moscow, 1971.
6. Kosonoga, J. "Przedstawienie zarzutów." In *System Prawa Karnego Procesowego: Postępowanie przygotowawcze*, vol. X, edited by Ryszard Stefański. Warsaw: Wolters Kluwer, 2016.
7. Kremens, Karolina. *Powers of the Prosecutor in Criminal Investigation: A Comparative Perspective*. New York: Routledge, 2021.
8. Kudin, F. M., and R. V. Kostenko. *Sufficiency of Evidence in Criminal Proceedings: A Monograph*. Krasnodar: KG AU, 2000.
9. Lupinskaya, P. A. *Proof in Soviet Criminal Procedure*. Moscow, 1966.
10. Malkhasyants, Stepan. *Explanatory Dictionary of the Armenian Language*. Yerevan: State Publishing House of the Armenian SSR, 1944.

11. Polyansky, N. N. *Issues of the Theory of Soviet Criminal Procedure*. Moscow: Moscow University Press, 1956.
12. Strogovich, M. S. *The Accused's Right to Defence and the Presumption of Innocence*. Moscow: Nauka Publishing House, 1984.
13. Zhogin, N. V., and F. N. Fatkullin. *Preliminary Investigation in Soviet Criminal Procedure*. Moscow: Yuridicheskaya Literatura, 1965.

Legislation and Official Documents

14. Council of Europe. *Practical Guide to the Conceptual Solutions, Innovative Approaches, and Interpretation of the Main Institutions of the New Criminal Procedure Code of the Republic of Armenia*. July 2022. https://rm.coe.int/new-criminal-procedure-code-guideline-/1680a72908 (accessed September 10, 2026).
15. Government of the Republic of Armenia. *Concept of the New Criminal Procedure Code of the Republic of Armenia*. Approved by Protocol Decision No. 9 of March 10, 2011.
16. Republic of Armenia. *Criminal Procedure Code* (1961).
17. Republic of Armenia. *Criminal Procedure Code* (1998).
18. Republic of Armenia. *Criminal Procedure Code* (2021).
19. Italy. *Code of Criminal Procedure*, Article 335.
20. Poland. *Code of Criminal Procedure*, Article 313.
21. Prosecutor General of the Republic of Armenia. Directive dated December 20, 2022.

Judicial Decisions

22. Court of Cassation of the Republic of Armenia. Decision of November 5, 2010, *Arkadi Patvakani Papyan*, Case No. ՏԴ/0115/01/09, para. 19.
23. Court of Cassation of the Republic of Armenia. Decision of August 24, 2012, *Grigor Chagharyan and Others*, Case No. ԵՇԴ/0002/01/11, paras. 19, 21, 27.