

EXAMINATION AND RESOLUTION OF THE ISSUE OF ADMISSIBILITY OF EVIDENCE IN PRELIMINARY HEARINGS AS A GUARANTEE OF THE PRINCIPLE OF ADVERSARIAL PROCEEDING

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Introduction.

The theory of law encompasses fundamental principles that serve as the bedrock of legal systems, guiding the regulation of legal relations within the framework of the law. These principles play a pivotal role in shaping legal proceedings and express established patterns within a legal society. In the Republic of Armenia, the Criminal Procedure Code recognizes the significance of the principles of equality and adversarial nature as guiding pillars, delineating the nature of criminal proceedings from pre-trial stages to judicial examinations.

The principle of adversarial proceedings, central to the Criminal Procedure Code, is a subject of diverse interpretations among legal scholars.¹ While some view it as an absolute cornerstone principle that should pervade all stages of criminal procedure, others perceive it as an integral component within the broader criminal justice system of a state. This divergence in perspectives highlights the nuanced nature of adversarial proceedings, emphasizing its undeniable importance while acknowledging its interdependence with other criminal justice institutions.²

It is crucial to recognize that, despite legal advancements, adopting the model of adversarial proceedings as a universally applicable and effective framework for all states remains a matter of debate. Criminal relations inherently involve a contentious relationship with public authority, and the suitability of adversarial proceedings may vary depending on the legal and cultural context.

A significant milestone in the evolution of criminal procedure in the Republic of Armenia is the introduction of the "Criminal Procedure Code," effective as of July 1, 2022. Among the pivotal changes brought about by this legislation, the stage of preliminary hearings stands out as a cornerstone modification. The theoretical literature has long deliberated on the importance and necessity of this regulatory provision, emphasizing its potential impact on the efficiency and fairness of criminal proceedings.³

¹ **Alpa, G.**, General Principles of Law. Annual Survey of International and Comparative Law, 1, 1994p. pages 1-38. Elena Anghel, "General Principles of Law," Lex ET Scientia International Journal 23, number 2, 2016., pages 120-130.

² **Kurokhtin Yu. A.** Constitutional and Legal Regulation and Implementation of the Adversarial Principle in the Judicial Process of the Russian Federation, Abstract, dissertation.-Moscow, 2007., Geroev A. D. The Participation of the Defense Lawyer in Evidence Gathering during Preliminary Investigation. Abstract. Candidate of Legal Sciences dissertation.- Moscow., 2004, page 16.

³ Head of the author group and editor G.S. Ghazinyan, Criminal Procedure of the Republic of Armenia, special part, textbook for universities, YSU press, Yerevan, 2015, page 284:

As legal systems continue to evolve, the role of fundamental principles, particularly the adversarial nature of proceedings, remains central to shaping criminal justice. The nuanced understanding of adversarial proceedings, considering its integration with other criminal justice structures, reflects the dynamic nature of legal systems. The recent amendments to the Criminal Procedure Code in the Republic of Armenia mark a crucial step in aligning the legal framework with contemporary theoretical discussions and practical considerations.

This research endeavors to shed light on the crucial issue of guaranteeing the principle of adversarial proceedings within the practical realm of implementing a new criminal justice system. Specifically, it explores the role of the defense in preliminary hearings, emphasizing the need to ensure equality between the parties and uphold the principle of adversarial proceedings. The primary objective of this scientific article is to examine the safeguarding of the right to adversarial proceedings through active participation in the evidentiary process.

The Principle of Equality and Adversarial Proceedings in Criminal Justice.

The principle of adversarial proceedings serves as a foundational model for criminal proceedings, designed to empower participants to engage in active dispute, freely express their positions, and ensure equality before the law. This model facilitates participants' abilities to interpret facts, laws, and events related to the case, contributing to the pursuit of truth while balancing private and public interests.¹

Central to the principle of adversarial proceedings is the notion of an equal starting point for all participants, irrespective of whether they represent public or private interests. Here, the role of the court becomes pivotal, acting as a neutral party that exclusively represents the interest of the law. Active court involvement is essential for the implementation and protection of the principle of adversarial proceedings during the judicial examination process.

Furthermore, the duty of the court to guarantee the equality and competition of the parties is not bound by any limitation based on the phase of the proceeding. The principle of adversarial proceedings is equally applicable to both pre-trial and trial stages, ensuring a consistent and fair legal process. Without such continuity, the claim that the principle of competition is applicable only to specific stages, such as main hearings within court proceedings, would lack authenticity.

The effective implementation of the principle of adversarial proceedings requires active participation from all parties, with the court playing a crucial role in maintaining an equal starting point and ensuring competition throughout the legal process. This research aims to contribute to the ongoing discourse on the practical application of these principles within the evolving landscape of criminal justice systems.

This study underscores the pervasive issue of inequality between parties during the evidence-gathering phase, emphasizing that the implementation of the principle of adversarial proceedings is often conditional. It contends that this inequality needs mitigation, especially during the judicial examination stage. However, a practical challenge arises when pre-trial proceedings are conducted with significant restrictions

¹ Hr. Ghukasyan, "The ideology of adversarial proceeding in the draft of the Criminal Procedure Code of Armenia", *State and Law*, number 1(59), 2013, page 20, A. Parlett Lloyd, *Treatise on the Law of Building and Buildings*, Boston, Houghton, Mifflin., 2, 1894, pages 259-267, S. Pohrebniak, "Principles of Law, Doctrinal Issues," *Law of Ukraine, Legal Journal*, number 9, Kiev, 2013, pages 217-228, Vito Velluzzi, "Principles of Law and Normative Hierarchies," *Diritto & Questioni Pubbliche, Rivista di Filosofia del Diritto e Cultura Giuridica* 17, number 2, 2017, pages 568-581:

on the principle of competition, as the subsequent judicial investigation may struggle to restore the violated equality.

The realization of the principle of equality and adversary becomes crucial throughout the entire period of judicial examination due to the profound influence of pre-trial proceedings on the subsequent stages of the case. Recognizing that the pre-trial phase can significantly impact the fairness of the overall process, the courts bear the responsibility to rectify any imbalance created during this earlier stage.

The duty of the courts to guarantee the principle of equality and adversary extends throughout the entire judicial examination, given the absence of full competition during the pre-trial investigation in the criminal justice system of the Republic of Armenia. This commitment becomes particularly important as it strives to counteract any imbalances introduced in the pre-trial phase, ensuring a fair and impartial adjudication process.

One practical avenue for realizing the principle of adversarial proceedings is the active participation of the defense in the evidentiary process. While this participation differs between the stages of preliminary investigation and the judicial stage, this research focuses specifically on the judicial examination, with a specific emphasis on pre-trial hearings.

Evidentiary rights, as a subset of the broader rights of the accused, play a critical role in ensuring a fair and just legal process. Central to this is the principle that the defense must be afforded equal opportunities to present its position and narrative in criminal proceedings. This entails that the defense's presentation is evaluated under the same conditions and using the same approach as that of the prosecution.

While the accused is not obligated to prove their innocence, the comprehensive implementation of the principle of adversarial proceedings necessitates an active dispute regarding the weight of evidence. In this context, it is imperative to ensure that the defense does not assume a passive role but has both legislative and practical opportunities to present its perspective effectively, countering charges with the same vigor as the prosecution.

Peculiarities of the implementation of the principle of adversarial proceedings in the stage of preliminary hearings.

The significance of preliminary hearings, as underscored by both domestic and international scholars, is heightened by recent legislative changes mandating their inclusion in all criminal cases. These hearings, forming a preparatory process, serve as a crucial juncture in the criminal procedure, setting the stage for the subsequent proceedings.¹

According to the new regulations, preliminary hearings are mandatory in frames of all criminal cases. It can be concluded that preliminary hearings constitute a preparatory process.

¹ American Bar Association, "The Importance of Preliminary Hearings", 2015, reference https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2015/spring/the-importance-of-preliminary-hearings/, National Association of Criminal Defense Lawyers, "The Importance of Preliminary Hearings", 2018, reference <https://www.nacdl.org/Article/The-Importance-of-Preliminary-Hearings>, Daniel W. Shuman, "The Preliminary Hearing: A Critical Stage in the Criminal Justice Process", the Journal of Criminal Law and Criminology, Vol. 105, No. 2, 2015, pages 269-296, Mark Van Hoecke and Vincenzo Ferrari, "The Right to a Preliminary Hearing: A Comparative Law and Economics Perspective", the European Journal of Law and Economics, Vol. 46, No. 2, 2018, pages. 193-220., Yale Kamisar, "The Adversary System and the Importance of the Preliminary Hearing", the Michigan Law Review, Vol. 74, No. 4, 1976, pages 519-569:

The dynamics of implementing the principle of adversarial proceedings are particularly noteworthy during the stage of preliminary hearings. These hearings, being a mandatory component of criminal cases, provide an early opportunity for both the prosecution and defense to present their case. It is at this stage that the groundwork is laid for the adversarial process, shaping the trajectory of the legal proceedings.

In conclusion, the evidentiary rights of the accused, integral to the principle of adversarial proceedings, are pivotal in maintaining the integrity of the legal process. The accused's active role in disputing the weight of evidence and the emphasis on equal opportunities in presenting their perspective contribute to a balanced and fair criminal procedure. The incorporation of mandatory preliminary hearings further underscores the evolving nature of legal systems, providing a crucial preparatory phase for the subsequent adversarial proceedings.

The examination of issues that may be brought to the forefront during preliminary hearings reveals that this stage primarily serves as a forum for discussing matters of a legal nature. It is evident that preliminary hearings play a pivotal role in identifying and addressing legal defects within the proceedings, defects that may remain uncorrected through subsequent stages. Consequently, a range of statutory issues becomes the focus for discussion and resolution before the examination of evidence takes center stage during the main hearings.

The inherent purpose of preliminary hearings lies in their capacity to unearth legal defects that could potentially compromise the integrity of the entire judicial process. By addressing these defects at an early stage, the legal system aims to prevent the perpetuation of errors that may otherwise become insurmountable as the proceedings progress. In essence, the preliminary hearings act as a crucial checkpoint for the legal soundness of the case. In other words, although the factual data discussed from the substantive point of view may establish a circumstance of essential importance for the prosecution, its procedural wording, improper observance of the formal side should lead to the removal of that evidence from the evidentiary mass.

The approach adopted in judicial practice holds immense significance in translating the theoretical underpinnings of adversarial proceedings into practical outcomes during preliminary hearings. Ensuring the principle of adversarial proceedings at this stage necessitates a scenario where evidence, even if pivotal or decisive, may be excluded from consideration. This exclusion could result from procedural irregularities, such as the non-observance of rules related to its procedural fixation. Thus, while the factual significance of evidence may be crucial for the prosecution, any lapse in adhering to procedural formality could warrant the removal of that evidence from the evidentiary record.

The role of preliminary hearings in criminal procedure extends beyond mere procedural formality. These hearings serve as a proactive measure to identify and rectify legal defects, preventing their potential impact on the subsequent stages of the proceedings. The practical implementation of adversarial proceedings during preliminary hearings underscores the importance of meticulous adherence to procedural rules, ensuring the integrity and fairness of the legal process. The nuanced considerations at this stage set the tone for a robust and equitable judicial examination in the pursuit of justice.

From this perspective, the court's participation and position, enabling the practical application of the new structures provided by the Code, is of great importance. The court is responsible state organ that ensures the right of the parties to participate in the court session. Furthermore, the participation of the trial participants in the court session cannot be of an exclusively formal nature and assume their presence.

According to our interpretation, participation in the court session is a reality when the litigating party has a legally fixed set of tools and a practical opportunity to use these tools.

The conceptual success of the preliminary hearings stage hinges on its implementation transcending mere formalities. Notably, the effectiveness of this stage lies in its ability to discern and address the inadmissibility of evidence, ensuring that proceedings are not burdened with unnecessary examinations during the main hearings. The crucial point here is that the realization of equality and the principle of adversarial proceedings during preliminary hearings is contingent upon the court's active role in discerning and acting upon clear instances of evidence inadmissibility.

The significance of preliminary hearings lies in their potential to streamline the judicial process. When the court, during the preliminary hearings, unequivocally recognizes the inadmissibility of certain evidence, it is counterproductive to revisit and examine the same evidence during the main hearings. Such an approach not only compromises efficiency but also undermines the principles of equality and adversarial proceedings. To ensure the practical efficacy of the defense's participation in preliminary hearings, it becomes imperative to avoid redundant procedures that lack substantive impact on the case.

Participation in court sessions must transcend formalities and extend to providing litigating parties with substantial opportunities to engage in the proceedings. The interpretation of meaningful participation involves endowing litigating parties with a set of legally sanctioned tools and ensuring practical access to and utilization of these tools. This interpretation aligns with the essence of the adversarial proceedings principle, where the equality of litigants is upheld not only in theory but in the tangible and active participation of all parties involved.

A critical facet of realizing the principle of equality and adversarial proceedings in the preliminary stages involves ensuring the active participation of the defense party in the evidentiary process. Active participation signifies more than mere presence; it entails the opportunity to articulate one's position in the criminal proceedings. Crucially, the implementation of the adversarial proceeding principle during preliminary hearings hinges on the court's evaluation of the defense's motions and positions concerning the evidentiary mass.

Crucially, when all relevant information required for a legal decision is readily available without necessitating further factual examination, the court's role extends beyond mere hearing—it necessitates providing a final solution. The risk of delaying resolution until the passage of a judicial act poses a threat to the essence of preliminary hearings. Such an approach contradicts the proactive nature of these hearings and, more significantly, jeopardizes the principles of equality and competition of the parties, introducing strict reservations even at the commencement of the judicial examination stage.

The implementation of the principle of adversarial proceedings during preliminary hearings extends beyond providing the defense side with the right or opportunity to present a position. It inherently involves the equitable consideration of data presented by the defense, placing it on an equal footing with the prosecution. Examining the issue of pre-trial hearings within the framework of criminal procedure underscores the importance of this stage as the inception of the trial, wherein the defense, armed with the same volume of proceedings as the prosecution, engages in a practical discussion.

The essence of adversarial proceedings is realized when both the prosecution and defense are granted equal conditions for presenting their respective cases. At the pre-trial proceeding—the trial's initial stage—the defense is afforded the opportunity to

engage in a practical discussion concerning the admissibility of evidence or any obstacles to its examination. Depriving the defense of this practical discussion implies a lack of real opportunity to challenge the prosecution's evidence at subsequent stages of the trial.

It is crucial to recognize that the stage of preliminary hearings serves as a foundation for the main hearings. This is where a predetermined amount of evidence is examined, leading to closing speeches from both parties. If the defense is denied the practical discussion of evidence admissibility or impediments to examination at the preliminary hearings, it effectively undermines the adversarial nature of subsequent proceedings. The success of the main hearings, and consequently the trial as a whole, is intricately linked to the fairness and equality established at the preliminary stage.

Conclusion.

The inclusion of preliminary hearings in the legal framework marks a significant innovation in the Code. Acknowledging the guiding and foundational nature of legal principles, especially the principles of equality and adversarial proceedings, subsequent regulations, including the chapter on preliminary hearings, must intricately provide the necessary legal frameworks to translate these principles into actionable practices.

Preliminary hearings, being the defense's inaugural and primary opportunity to contest the admissibility of evidence through legal arguments, underscores the essential role of the court as a representative of public authority. We firmly advocate for an active role of the court, ensuring that the defense is given a meaningful chance to challenge prosecution evidence. More importantly, the court should promptly engage in a discussion and resolution of the admissibility of evidence during the preliminary hearing stage, without unnecessary delays.

The postponement of discussions regarding the admissibility of evidence, particularly when raised by the defense, renders the participation of the defense in preliminary hearings futile. Such delays not only contradict the primary purpose of incorporating preliminary hearings in the Code but also jeopardize the evidentiary rights of the accused. Immediate resolution, driven by the well-founded and reasoned positions of the defense, is crucial to maintaining the integrity and purpose of this pivotal stage.

This research affirms that the protection of the accused's rights related to the proof process is directly tied to the realization of the principle of competition during preliminary hearings. In essence, the more robust and practical the evidentiary rights of the accused, the more adversarial and balanced the initial stage of the trial becomes. Recognizing this symbiotic relationship underscores the imperative of establishing an environment in which adversarial proceedings are not only a theoretical construct but a tangible reality, ensuring a fair and just legal process.

The full realization of the principle of equality of the parties and adversarial proceedings necessitates a robust framework that ensures the substantive discussion and resolution of defense motions concerning evidence during preliminary hearings. In pursuit of this objective, we propose the following recommendations:

- **Establishing a Duty for Substantive Resolution:**

To fortify the adversarial nature of preliminary hearings, we advocate for the incorporation of a specific duty in Chapter 42 of the Code. This duty would obligate the court to substantively resolve motions raised by the parties regarding the admissibility of evidence. Crucially, this duty should be underscored by an explicit prohibition on postponing the discussion of such questions. This proactive stance is pivotal to prevent undue delays and to guarantee a timely resolution of critical issues raised by the defense.

- **Rejecting Motions Requiring Additional Actions:**

Acknowledging the practical limitations of the preliminary hearings, we suggest that if the substantive resolution of a motion necessitates additional actions, such as the study of factual data, the motion should be subject to rejection. This approach ensures that the scope of reference during preliminary hearings remains manageable. Conversely, when the motion does not require further investigation and is well-founded, the court should be positively obligated to satisfy the petition, thus reinforcing the implementation of the principle of competition.

By incorporating these proposals into the legal framework, the Code can guarantee prompt and effective proceedings during preliminary hearings. The establishment of a duty for substantive resolution, coupled with a prohibition on postponement, ensures that defense motions are accorded the attention they deserve, fostering a fair and adversarial environment. This approach not only aligns with the principles of equality and competition but also safeguards the integrity of the legal process.

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РАССМОТРЕНИЕ И РЕШЕНИЕ ВОПРОСА О ДОПУСТИМОСТИ ДОКАЗАТЕЛЬСТВ НА ПРЕДВАРИТЕЛЬНЫХ СЛУШАНИЯХ КАК ГАРАНТИЯ ПРИНЦИПА СОСТЯЗАТЕЛЬНОСТИ ПРОЦЕССА

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Данная статья посвящена изучению нового института предварительных слушаний в рамках армянского уголовного процесса, проясняя их современную релевантность, особенно в контексте принятия решений о допустимости доказательств. Как недавнее дополнение к юридической системе, предварительные слушания стали ключевым этапом для уголовных дел, переходящих в стадию судебного рассмотрения, что делает их центральной темой для обсуждения.

Основная цель данной статьи - рассмотреть определенные проблематичные аспекты, связанные с принципом состязательности в контексте предварительных слушаний. Автор исследует вызовы, стоящие перед этим новым юридическим механизмом, осознавая его значимость в различных уголовных делах.

Основной тезис заключается в том, что при обсуждении вопросов допустимости доказательств на предварительных слушаниях необходима четкая и решительная правовая структура. Автор отстаивает упрощенный процесс, который либо считает доказательства допустимыми, либо нет на данном этапе. Подчеркивая важность оперативного решения, статья утверждает, что отсрочка обсуждения вопросов допустимости доказательств является контрпродуктивной и не соответствует принципам эффективных и справедливых состязательных процедур. В сущности, заключение утверждает, что активный регулирующий подход является необходимым для обеспечения оптимальной реализации предварительных слушаний, важного этапа в развивающемся поле армянской уголовной процедуры.

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Լուսինե Հովհաննիսյան

*ԵՊՀ քրեական դատավարության և կրիմինալիստիկայի
ամբիոնի ասպիրանտ, փաստաբան*

Սույն գիտական հոդվածի ուսումնասիրության առարկան է կազմում նախնական դատախոսների փուլը՝ նորույթ ՀՀ քրեական դատավարության համակարգում: Հաշվի առնելով կարգավորման նորույթ հանդիսանալը՝ հեղինակը քննարկման առարկա է դարձրել ապացույցների թույլատրելիության հարցի քննարկումը և

լուծումը նախնական դատախույժների փուլում որպես մրցակցության և կողմերի հավասարության սկզբունքի երաշխիք: Թեմայի արդիականությունը հիմնավորվում է նախնական դատախույժների համապարտադիր բնույթով դատական քննության փուլ անցնող քրեական վարույթների համար, ինչպես նաև խնդրո առարկա նորույթի շուրջ հայրենական ծավալուն գրականության բացակայությամբ:

Հոդվածի նպատակն է հասցեական անդրադարձ կատարել նախնական դատախույժների փուլում առկա որոշ խնդրային հարցերի՝ մրցակցության սկզբունքի գործնական իրացման շրջանակում:

Գիտական հոդվածի կենտրոնական եզրակացությունն այն է, որ ապացույցների թույլատրելիության կապակցությամբ ներկայացված միջնորդությունները ոչ միայն պետք է քննարկման առարկա դառնան նախնական դատախույժների փուլում, այլև ստանան լուծում: Ընդ որում՝ անկախ միջնորդությունը բավարարելու կամ մերժելու հանգամանքից, դատարանը պետք է կայացնի նման որոշում: Նշված եզրահանգումը հեղինակը հիմնավորում է ուսումնասիրության առարկայի շուրջ ձևավորված արտասահմանյան գրականությամբ, ինչպես նաև այն հանգամանքով, որ նախնական դատախույժների ընթացքում ապացույցի թույլատրելիության հարցի շուրջ ներկայացված միջնորդության հետաձգումը, ըստ էության, հավասարվում է միջնորդության մերժման: Հետևաբար՝ իրավական որոշակիության սկզբունքի կենսագործումը ենթադրում է համապատասխան հարցը բովանդակային լուծող որոշման կայացում:

Key words: *preliminary hearings; principle of adversarial proceeding; equality of arms; admissibility of evidence; effective defence; motion; judicial examination.*

Ключевые слова: *предварительные слушания; принцип состязательности процесса; равенство сторон; допустимость доказательств; эффективная защита; ходатайство; судебное разбирательство.*

Բանալի բառեր – *նախնական դատախույժներ, մրցակցության սկզբունք, զենքերի հավասարություն, ապացույցի թույլատրելիություն, արդյունավետ պաշտպանություն, միջնորդություն, դատական քննություն:*