

REPUBLIC OF AZERBAIJAN

On the rights of the manuscript

ABSTRACT



of the dissertation for the degree of Doctor of Philosophy

**THE BASIS FOR THE TERMINATION OF CRIMINAL
PROSECUTION AND CRIMINAL CASE IN PRE-TRIAL
DURING CRIMINAL PROCESS:
THEORY, LEGISLATION, AND PRACTICE**

Speciality: 5612.01 – Criminal Procedure, Criminalistics,
and Forensic Expertise; Operational
and Investigative Activities

Field of science: Law

Applicant: Mahammad Vilyam Hajiyeu

Baku – 2025

The work was performed at the Department of Criminal Process of the Faculty of Law of Baku State University.

Scientific supervisor: Doctor of Law, Professor
Midhad Gafarov Seyidahmad

Official opponents: Doctor of Law, Professor
Fuad Musa Cavadov

Doctor of Philosophy in Law,
Associate Professor
Allahverdi Mirzaga Mahmudov

Doctor of Philosophy in Law,
Associate Professor
Allahverdi Ahmadkhan Teymurov

The Dissertation Council No. ED 2.45 operating under the National Aviation Academy of the High Attestation Commission under the President of the Republic of Azerbaijan

**Chairman of the
Dissertation council:** Doctor of Law, Professor
Aykhan Rustamzade Khankishi

**Scientific secretary of the
Dissertation council:** Doctor of Philosophy in Law
Sahil Huseynov Zahir

**Chairman of the
scientific seminar:** Doctor of Law, Professor
Kamil Salimov Nazim

GENERAL CHARACTERISTICS OF WORK

The actuality and degree of development of the topic. Criminal prosecution is a procedural legal institution that ensures the inevitability of criminal responsibility. Although this institution was refused in the 1961 Criminal Procedure Code (CPC), in 2000, the CPC introduced both a normative concept for this institution and two independent chapters dedicated to it. However, in practice, there are some certain problematic issues regarding the implementation of this institution, and in theory, the interpretation of its individual elements.

As the primary legal tool ensuring the inevitability of criminal responsibility, criminal prosecution not only establishes the grounds for restoring rights violated by a crime but also results in coercive measures (such as detention), restrictions (the application of a preventive measure in the form of detention), or deprivations (such as the imposition of a sentence in the form of deprivation of liberty). Therefore, during criminal prosecution, to maintain a balance between the rights being restored and those being restricted, high professionalism from the subjects carrying out this activity, as well as precise regulation of their actions by law is required.

The relevance of the research topic is primarily determined by the fact that it is focused on analyzing issues related to the termination of a procedural activity, which is accompanied by significant restrictions on the rights of individuals. Moreover, it is important to highlight that some provisions in the criminal procedural legislation adopted after the independence contain flaws, gaps, inconsistencies, and contradictions concerning the grounds and procedures for terminating criminal prosecution and criminal cases. This requires a comprehensive and systematic examination of the topic, analysis of the relevant provisions of the current CPC in the context of the correlation of material and procedural law norms, identification of problems in the legislation, and the development of scientifically justified solutions that could be effective for practice.

This requires a comprehensive and systematic examination of the subject, an analysis of the relevant provisions of the current CPC in the context of the correlation of substantive and procedural law

norms, development of scientifically justified resolutions that could have practical value in the direction of identification and solution of existing problems in the legislation.

The latest amendments and additions to the Criminal Procedure Code (CPC) made by the Law dated December 1, 2017, include the revision of Article 40.2 of the CPC. This means that the most of the opinions and assumptions expressed in national legal literature concerning the explanation and interpretation of Article 40.2, or those referencing this article and using it as an argument, should be re-considered. New approaches should be demonstrated regarding the termination of criminal prosecution in relation to the institute of exemption from criminal responsibility.

These factors emphasize the relevance of research dedicated to analyzing the grounds for the termination of criminal prosecution and cases in pre-trial proceedings, as well as the theoretical and legislative provisions, and the summarizing practical experience.

Since the independence of the Republic of Azerbaijan, the termination of criminal cases and prosecution have not been the subject of an independent monographic study that analyzes the new criminal procedural legislation. The last independent dissertation research on this topic in Azerbaijan was carried out by R.H. Isgandarov, who defended his dissertation titled "Termination of Criminal Cases in Preliminary Investigation"¹ in 1975. Over the years, the broader issues surrounding this institution have been discussed in criminal procedure law textbooks by Prof. M.A. Jafarguliyev² and Prof. F.M. Abbasova³. More recently, M.S. Gafarov⁴ has examined various aspects of the termination of criminal cases and prosecution in his scientific articles, providing a conceptual analysis of these issues.

¹ Iskenderov, R.G. Termination of a criminal case during a preliminary investigation. Abstract of the dissertation ... of the candidate of legal sciences. – Baku, 1975, – 20 p.

² Jafarguliyev, M.A. Criminal proceedings of the Republic of Azerbaijan / M.A. Jafarguliyev, – Baku: Law, – 2008. – 768 p.;

³ Abbasova, F.M. Criminal proceedings / Abbasova, F.M. Textbook. General part. – Baku: Zardabi LTD LLC, – 2015. – 412 p.

⁴ Gafarov M.S. Ensuring the rights of the individual in the criminal proceedings of the Republic of Azerbaijan / M.S. Gafarov. – Baku: Law, – 2006. – 248 p.

Prof. F.Y. Samandarov, Prof. Sh.T. Samadova, prof. H.S. Gurbanov, I.B. Aghayev, K.O. Nazarova, and K.U. Baghirli have touched upon the issues of termination of criminal cases and prosecution in their works dedicated to the General Part of Criminal Law.

Although the institute of termination of criminal cases and prosecution is characteristic of criminal procedural law, several achievements of scholars who have also conducted research in criminal law, indirectly have positive contributions to the theoretical explanation of the institution of termination of criminal proceedings and prosecution, as well as its effective application in practice.

In general, there are not many scientific research works in criminal procedural law literature that fully cover the institute of termination of criminal prosecution and criminal cases. The researchers such as O.V. Volynskaya, N.Y. Buksha, S.V. Ilyukhina, Y.A. Rubinstein, and others have not investigated this issue in its entirety, but rather by focusing on various selected aspects.

The theoretical basis of the research is based on theoretical sources reflecting theoretical views and interpretations of legal norms on the issues related to the subject of the research. In preparing the dissertation, works by national researchers such as prof. J.I. Suleymanov, prof. A.I. Aliyev, prof. K.N. Salimov, prof. F.M. Javadov, as well as foreign researchers like L.V. Golovko, Y.S. Belkin, A.S. Barabash, Y.V. Gerasimova, K.F. Gutsenko, M.P. Davidov, Z.Z. Zinatullin, K.B. Kalinovski, V.A. Mikhaylov, V.T. Tomin, and others have been used.

The objects and subject of research. The object of the dissertation research is the social relations related to the provisions of the legislation regulating the development history, essence, and procedural foundations of the institute of termination of criminal cases and criminal prosecution in pre-trial proceedings. The subject of the research consists of the theoretical provisions of general legal, criminal procedural law, criminal law and other legal sciences of the institute of termination of criminal cases and criminal prosecution in pre-trial proceedings, as well as the data from the practical application of this institute.

The purpose and objectives of the study. The dissertation research was carried out with the aim of developing scientifically grounded proposals for improving the legal norms and legal procedures that regulate the termination of criminal cases and criminal prosecution during pre-trial proceedings.

To achieve this goal, the following tasks were set for the research, and studies were conducted in this direction:

- defining the concept of the institution of termination of criminal cases and prosecution in modern criminal procedural law, and investigating the socio-legal nature and significance of this legal institution;

- conducting a retrospective analysis of the institution of termination of criminal cases and prosecution, including a detailed analysis of the provisions regulating the termination of criminal cases and prosecution in the pre-trial process in the Criminal Procedure Codes (CPC) of the Azerbaijan SSR in 1923 and 1961.

- investigating the regulation of the institution of termination of criminal cases and prosecution in the criminal procedural legislation of foreign countries in a comparative-legal context;

- defining the concept, system, classification, and significance of the grounds for termination of criminal prosecution and cases in the pre-trial process;

- determining the nature of the exonerating grounds for the termination of criminal cases and prosecution.;

- defining the nature of non-exonerating grounds for the termination of criminal cases and prosecution, as well as clarifying issues related to exceptions to these grounds;

- analyzing the procedural elements of the termination of criminal cases and prosecution;

- determining the nature and significance of the prosecutor's and court's supervision over the termination of criminal cases and prosecution.

Research Methods. In the dissertation research, the dialectical method of cognition and the complex of general scientific and specific scientific methods that conditioning this method have been used.

The formal logical method was applied to analyze the criminal procedural law norms regulating the termination of criminal cases and prosecution. The historical method was applied to the study of the genesis of the institution of termination of criminal proceedings and criminal prosecution in criminal proceedings, as well as its stages of development. The features of the regulation of the institution of termination of criminal proceedings and criminal prosecution in the criminal procedural legislation of various states were studied through the method of comparative law, and compared with the corresponding provisions of the national CPC.

The statistical analysis method was applied for the analysis and generalization of the practice and statistics related to the termination of criminal cases and prosecution. The legal modeling method was applied to put forward relevant legislative proposals and recommendations to ensure more effective implementation of the institution of termination of criminal cases and prosecution.

The main statements made regarding the defense:

1. According to Article 45.5 of the Criminal Procedure Code (CPC), it should not be accepted the inclusion of independent elements such as "circumstances preventing the execution of criminal prosecution" to the cases of termination of criminal prosecution proceedings. The categories "circumstance excluding criminal prosecution" and "circumstance preventing the execution of criminal prosecution" used in Article 46.5 of the CPC have been employed in the same meaning.

Circumstances preventing the criminal prosecution do not exclude the prosecution itself, but require measures to eliminate these circumstances and continue its usual course of proceedings of the case. Therefore, the following improved version of Article 45.5 of the CPC is proposed: *"When circumstances are found that exclude the proceedings of criminal prosecution or criminal prosecution, the criminal process may be terminated by the decision of the authority conducting the process."*

2. The latest version of Article 40.2 of the Criminal Procedure Code expanded the scope of cases in which criminal proceedings may not be pursued, as a continuation of the policy of humanizing

criminal law and criminal procedural legislation. In Article 73-1 of the Criminal Code, the condition for exemption from criminal liability for crimes against property is linked to a reduction in the payment to be made to the state budget, decreasing from 25% to 15%, and the percentage for Article 73.1.3 is reduced from 50% to 40%. This reduction can serve as an incentive to restore violated property rights. This reduction can serve as an incentive to restore violated property rights. It is advisable to include a provision in the legislation granting the court the authority to reduce the payments to the state budget, as specified by law, under certain conditions.

3. In our opinion, due to the expiration of the period for criminal liability, the imperative rule of exempting from criminal liability should be abandoned by the investigator, investigator, or prosecutor on this basis. In this regard, we propose the new version of Article 75.1 of the Criminal Code: 75.1. 'A person may be released from criminal liability if the following time periods have passed since the commission of the crime.' This ground does not constitute a basis for acquittal, and according to the law (Article 41.2 of the Criminal Procedure Code), the consent of the defense party is required for its application. However, the failure to consider the interests of the affected party in the application of this provision should be seen as a gap in the law. In terms of ensuring equality of the parties and the rights and legal interests of process participants, it is advisable to incorporate this change into the law."

4. although the provisions of Article 280.2 of the Criminal Procedure Code are satisfactory in terms of determining the general procedural form of a decision to terminate criminal proceedings, it is necessary to distinguish some other necessary elements of this decision:

4.1. If the decision to terminate criminal proceedings is made by referring to the conditions that allow for the non-prosecution of the criminal, the "AGREE" statement, which must be signed by the prosecutor and include the date of signing, shall be considered a mandatory requisite of the decision to terminate the criminal proceedings, and this should be mentioned in the Organizational

Rules of the General Prosecutor's Office of the Republic of Azerbaijan;

4.2. this decision should not only include information about when and by whom the criminal case was initiated, but also specify under which article of the Criminal Code the case was started, whether the description of the act changed during the preliminary investigation, and if so, on what grounds and to which article of the Criminal Code it was redescribed. This is essential because, in some cases, the decision to terminate criminal proceedings is of fundamental importance with respect to which article of the Criminal Code the case was initiated and the proceedings conducted under;

4.3. It is also not correct to consider only "circumstances that necessitate the termination of the proceedings on criminal case" as a situation that should be specified in this decision. This is because the termination of criminal proceedings can only be considered mandatory in cases specified in Article 39 of the Criminal Procedure Code. In contrast, the termination of criminal proceedings under the circumstances outlined in Article 40 of the Criminal Procedure Code is not mandatory but discretionary. Therefore, we propose adding a new Article 40.6 to the Article 40 of the Criminal Procedure Code with the content: 'When terminating proceedings on criminal case, the decision adopted must justify the appropriateness of terminating criminal proceedings;'

4.4. In cases where criminal proceedings are terminated on grounds of acquittal, the decision to terminate the criminal proceedings should also include an instruction regarding the recognition of the right to 'compensation for the damage caused.' In cases where criminal proceedings are terminated without acquittal grounds, it is advisable to include a relevant section at the end of the decision, where the person whose criminal case has been terminated can express their consent to this decision.

5. The CPC does not specify the "legal heir of the injured party" among the persons to whom the investigator must provide a copy of the decision to terminate the criminal case (criminal prosecution). This individual, with the exception of the right of the injured party to testify and inalienable rights of personality, exercises

other rights and carries out other duties. According to general legal principles, the right to appeal the 'decision to terminate criminal proceedings' passes to the legal heir of the injured party, and the right to be informed of the adoption of this decision must be recognized and ensured. We propose adding the phrase 'legal heir of the injured party' after the words 'to the close relatives of a deceased person up to being recognized as a person' in Article 281.1 of the Criminal Procedure Code.

6. The normative expression of the prosecutor's duty to exercise procedural supervision over the preliminary investigation of a criminal case is somewhat incomplete, as the prosecutor not only supervises the investigation of criminal cases but also oversees other materials related to criminal prosecution. More specifically, the prosecutor exercises procedural supervision over matters concerning the application of compulsory medical measures and materials related to simplified pre-trial proceedings. These materials are not covered by the concept of a criminal case. For instance, Article 7.0.7 of the Criminal Procedure Code distinguishes simplified pre-trial proceedings materials, and Article 471 makes a clear distinction between matters related to the application of compulsory medical measures and criminal cases. Therefore, after the words 'criminal case' in Article 84.2.2 of the Criminal Procedure Code, a comma should be added, followed by the phrase 'matters related to the application of compulsory medical measures and simplified pre-trial proceedings'.

7. Refusal to prosecute is not within the authority of the prosecutor supervising the preliminary investigation and overseeing the investigation and preliminary inquiry of the criminal case, but rather within the authority of the state prosecutor, and this can only be done during the court proceedings. During the preliminary investigation stage, however, the discussion can only be about the termination of criminal prosecution or the refusal to initiate it. The phrase 'refusal criminal prosecution' is not used properly in Article 84.5.13 of the Criminal Procedure Code and should be revised as follows: 'In the cases provided for in Articles 39 and 40 of this Code,

not initiating criminal prosecution against a person or terminating the initiated criminal prosecution.'

8. As a procedural institution, the grounds for terminating a criminal case and criminal prosecution, the procedural order, the formalization of the termination of the criminal case and prosecution, the form and content of the termination of the criminal case and prosecution, the procedural guarantees of the termination of the criminal case and prosecution consist of a set of certain groups of legal norms regulating the relations arising from the investigation, investigation, prosecution and judicial bodies in the termination of criminal cases and criminal prosecution.

Scientific novelty of the research. The scientific novelty of the dissertation research is primarily explained by the fact that there has been no independent research conducted about the termination of proceedings on criminal prosecution and criminal case in pre-trial in the Republic of Azerbaijan. The results obtained during the research do not repeat the findings of other authors who have addressed the same issues, and the proposals and recommendations developed by the author are aimed at improving legal drafting and law enforcement practices. The scientific novelty of the research is also evident in the main provisions presented for defense.

The theoretical and practical significance of the study. The research work, in its entirety, is of theoretical and practical significance due to its content and the results obtained on individual issues. The dissertation provides an interpretation of certain provisions of criminal procedural legislation, makes theoretical generalizations, and the author has developed an independent position on most of the issues discussed, which demonstrates the theoretical significance of the research. The practical significance of the work is explained by the potential application of its results and the proposed recommendations in practice. The dissertation can be used as a teaching aid in the teaching of various subjects at both the bachelor's and master's levels in law faculties of higher education institutions. The legislative proposals made, with proper justification, can be widely used in the improvement of criminal procedural legislation. Additionally, the results of the dissertation could be

useful as recommendations for enhancing the activities of law enforcement agencies.

Approbation and application. The main provisions, conclusions, and proposals that make up the content of the dissertation have been reflected in works published by the author in the form of scientific articles and in the materials of scientific-practical conferences, which have been presented to the attention of scientific workers and practitioners. Furthermore, the results of the research have been utilized in the author's investigative work. On the topic, 11 scientific articles and conference materials have been published in national and foreign scientific publications.

The name of the institution where the dissertation work was carried out. The dissertation work was completed at the Department of Criminal Procedure, Faculty of Law, Baku State University.

Structure of the thesis. The dissertation consists of Introduction – 31434 characters, Chapter I – 72666 characters, Chapter II – 100213 characters, Chapter III – 55863 characters, Conclusion – 21056 characters and a total of 288000 characters excluding the list of used literature, as well as appendices.

MAIN CONTENT OF THE WORK

The introduction outlines the relevance and degree of development of the topic, the object and subject of the research, the goals and objectives of the research, the research methods, provisions to be defended, the scientific novelty of the research, the theoretical and practical significance of the research, its approbation and application, the name of the institution where the dissertation work was performed, the volume of the structural sections of the dissertation, and the total volume of the dissertation with a symbol.

Chapter I of the dissertation is titled 'General characteristics of termination of criminal case and criminal prosecution in criminal proceedings.' In the first paragraph of Chapter I, titled 'The Concept, Socio-Legal Nature, and Significance of Terminating Criminal Cases and Criminal Prosecution,' an

analysis of the concept of criminal prosecution is provided in order to determine the essence of terminating criminal prosecution. Through the institution of criminal prosecution, the detection, prevention, uncovering of crimes, exposure of individuals who have committed crimes, and ensuring their involvement in criminal liability is guaranteed. The assignment of the duty to carry out criminal prosecution to investigation and preliminary inquiry bodies aims to give a public character to criminal prosecution, which is one of the important areas of state activity. Terminating criminal prosecution against a person who has been subjected to baseless criminal prosecution also assumes a public character and contributes to 'the establishment of respect for human rights and freedoms in society' (Article 1.3 of the Criminal Procedure Code), thereby forms public confidence in the law-based implementation of the activities of investigation, preliminary inquiry, prosecutorial, and judicial bodies.

Terminating criminal prosecution refers to the completion of procedural activities aimed at exposing the specific accused or suspected person for committing a criminal act and ensuring that a punishment is imposed on them.

In the second paragraph of Chapter I, titled 'History of the development of the institution of termination of criminal proceedings and criminal prosecution in criminal procedural legislation,' the evolution of the termination institute is traced. It is noted that in Azerbaijan's first 1923 Criminal Procedure Code (CPC), there were no legal definitions for the categories of 'criminal prosecution' and 'criminal case.' The 1923 CPC included norms on the termination of both criminal prosecution and criminal cases, or, in the terminology of the time, "completion." The 1961 CPC also did not use the concept of 'criminal prosecution,' and consequently, there was no term for 'termination of criminal prosecution.' The Code only discussed the termination of criminal cases.

Regarding the termination of criminal cases, a decision by the investigator could be appealed to the prosecutor within seven days after the injured party, the defendant, or other interested parties, agencies, institutions, and organizations were notified of the termination of the case. The investigator's decision to terminate the

case could be revoked by the prosecutor, either on the prosecutor's own initiative or based on a complaint from interested parties, agencies, institutions, or organizations, if there were grounds for doing so. The guilty party was recognized having the right to object to the termination of the case as a result of a general pardon or the expiration of the statute of limitations. When such objections were raised, the preliminary investigation had to be concluded on general grounds. In cases where the criminal case was terminated due to the death of the defendant, the close relatives of the deceased defendant or public organizations to which the deceased belonged could request the conclusion of the preliminary investigation with the aim of exonerate the deceased defendant's name. The 1961 Criminal Procedure Code developed the institute of termination of criminal cases and criminal prosecution based on certain grounds, expanded its scope, and to some extent, this can be considered as a liberalization.

In the third paragraph of Chapter I, titled **'The Institute of Termination of Criminal Cases and Criminal Prosecution in the Legislation of Some Foreign States,'** the legislative foundations and application practices of the institute of termination of criminal cases and criminal prosecution in states such as the United States, Germany, France, and the Russian Federation are analyzed comparatively. In the United States, there is no independent legal institution for the initiation of criminal cases, so there is no need for an independent legal institution for the termination of criminal cases within the system. This also means that in the U.S., the concept of a separate procedural decision to terminate a criminal case cannot be discussed. However, in the U.S., the legal significance of recording a crime or an event reflecting criminal signs is that after registration, the crime acquires a special procedural status. For actions categorized as 'reported crime' in English, a police investigation is initiated, and depending on the results of this investigation, a decision is made regarding the termination of the pre-trial proceedings or the initiation of criminal prosecution. In other words, the U.S. criminal process has an institute for the termination of pre-trial proceedings, which, in fact, serves as an alternative to the decision to send the case to court for criminal prosecution.

Both the United States and European countries do not provide as broad and detailed a framework for the termination of cases in pre-trial proceedings as is found in the legislation of post-Soviet states. This can be explained by the fact that, in those countries, pre-trial proceedings have a somewhat 'subsidiary' character in relation to court proceedings.

In France, since the preliminary investigation is conducted by judicial authorities, the authority to terminate criminal prosecution in the preliminary investigation lies with the investigating judge, and as a rule, termination of criminal prosecution during the preliminary investigation is related to exemption from criminal liability.

The closest equivalents to the institute of termination of criminal cases and criminal prosecution in pre-trial proceedings in the criminal process of the Republic of Azerbaijan can be found in the post-Soviet states' criminal processes.

Chapter II of the dissertation is titled '**The Grounds for Termination of Criminal Prosecution and Criminal Cases in Pre-Trial Proceedings and Their Classification.**' The first paragraph of Chapter II, titled '**The Concept, System, and Classification of the Grounds for Termination of Criminal Prosecution and Criminal Cases in Pre-Trial Proceedings,**' states that the existence of circumstances indicating that the continuation of the initiated criminal prosecution (criminal case proceedings) is inadmissible or the circumstances indicating that it is more expedient not to continue the criminal prosecution (criminal case proceedings) in terms of achieving the objectives of criminal proceedings is the basis for terminating criminal prosecution and criminal case. The basis for terminating criminal prosecution and criminal case must have both legal and factual aspects. The grounds for termination of criminal prosecution and criminal case proceedings must have both a legal and factual aspect.

The grounds for termination of criminal prosecution and criminal case proceedings can be divided into two categories: circumstances that exclude criminal prosecution and circumstances that make it impossible to carry out criminal prosecution. The functional purpose of this classification is that when the termination

act (relevant decision) is adopted, it determines whether the termination act is mandatory (imperative) or discretionary (dispositive) for the competent authority conducting the proceedings, depending on which of these two categories the referenced circumstance falls under.

An exception to this approach can be found in the interaction between Article 39.1.3 of the Criminal Procedure Code (CPC) and Article 75.4 of the Criminal Code (CC), because according to Article 39.1.3 of the CPC, criminal prosecution is excluded when the limitation periods for bringing criminal charges have expired, whereas Article 75.4 of the CC states that the issue of applying the term to a person who has committed a crime punishable by life imprisonment is resolved by the court.

Circumstances that prevent criminal prosecution" should not be considered as those that hinder, obstruct, or prevent the realization of the principle of the necessity of criminal liability or cause the non-performance of a task. In this sense, it is unacceptable to formulate provisions in the law such as "the preliminary investigation must be completed", "criminal prosecution must be terminated", and etc.

The circumstances that prevent criminal prosecution do not, in fact, prevent criminal prosecution and should not. The existence of such circumstances necessitates measures to eliminate them and ensure the continuation of the normal operation of the case. Therefore, the categorization of "circumstances excluding criminal prosecution" and "circumstances preventing the conduct of criminal prosecution" in the law has neither scientific nor practical basis. Hence, Article 45.5 of the Criminal Procedure Code (CPC) should be revised and presented in a new version."

In the second paragraph of Chapter II titled "Exonerating Grounds for Termination of Criminal Prosecution (Criminal Case)," the theoretical and practical issues of exonerating grounds are examined. It is equally important as the duty to administer justice, with the aim of acquitting innocent persons and determining the guilt and punishment of those accused of committing crimes. In addition to circumstances that expose the suspect or accused, it is essential to consider the circumstances that exonerate them, as well

as to review applications and petitions presented by the suspect or their defense attorney regarding the innocence of the accused and the evidence supporting exonerating circumstances. These provisions are an integral part of the principles of objectivity, impartiality, and fairness in criminal proceedings.

The legislator equates the consequences of terminating criminal prosecution on the grounds of acquittal with the consequences of an acquittal, and it should be considered logically correct. In cases where the accusation against a person is not proven, obtaining an acquittal is one of the basic procedural rights of the accused. In cases where the criminal event is not established, the termination of criminal prosecution is a result stemming from formal logic. In cases where the criminal event does not exist, the decision not to initiate criminal prosecution or to terminate an ongoing prosecution should be regarded as the duty of the investigation and inquiry bodies. Even if the event occurred as a result of the victim's own actions, this should not be considered as the absence of a criminal event. If no signs of another crime are present in the actions of the victim, the fact that the event occurred as a result of the victim's own actions must be taken into account."

In the third paragraph of Chapter II titled "Non-exonerating Grounds for Termination of Criminal Prosecution (Criminal Case) and the issue of Procedural Guarantees during Their Application," it is noted that Article 39.3 defines the scope of exonerating grounds for terminating criminal prosecution (criminal cases). According to the legal position (*de lege lata*) of the current criminal procedural legislation and the technical method of interpreting legal norms based on the rules of formal logic, all other grounds not covered by the scope of those cases should be considered as non-excusing (non-excusing, accusatory, etc.) grounds for terminating criminal prosecution (criminal case).

The termination of criminal prosecution in the legislation implies the determination of certain circumstances of the case, for example, circumstances that require the acquittal of a deceased person. In such cases, a thorough, complete, and objective investigation must be conducted. In order for a deceased person to be

fully or partially acquitted, criminal prosecution must be terminated on acquittal grounds unless it is established that the deceased person committed an act under criminal law. However, if there are sufficient grounds to prove that the deceased person committed the act, the criminal prosecution initiated against them can be terminated in accordance with Article 39.1.5 of the Criminal Procedure Code (CPC).

The absence of a complaint from a victim can be understood as the absence of a complaint from a person who has suffered physical, moral or material damage as a result of a crime and is procedurally recognized as a victim, as well as a person who has been defined as a victim due to the crime but has not yet been procedurally recognized.

The legislation does not envision a system where "criminal prosecution is initiated without the prosecutor's initiative in certain cases;" however, "exceptions for public-private prosecution, where criminal prosecution can be initiated by the prosecutor without the victim's complaint," have been identified. Therefore, in the absence of the second category of cases, and when criminal prosecution is carried out on a public-private accusation basis, criminal prosecution (criminal case) can be terminated based on the lack of the victim's complaint. The third chapter of the dissertation is titled **"The Procedural Order of Terminating Criminal Prosecution and Criminal Cases in Pre-Trial Proceedings and the Means of Ensuring Their Legality."** The first paragraph of the section titled **"The Procedural Basis for the Termination of Criminal Prosecution and Criminal Cases and Its Optimization"** analyzes the procedural basis for termination and addresses issues related to increasing its efficiency. A systematic analysis of Article 41 of the Criminal Procedure Code of the Republic of Azerbaijan, which provides for the general rule for terminating criminal prosecution, leads to the conclusion that if the investigator or investigator terminates criminal prosecution (criminal case) by referring to the grounds excluding (imperative) criminal prosecution, that is, if they terminate by referring to any of the circumstances specified in Article 39 of the CPC, they are not obliged to coordinate their decisions on this matter with the prosecutor who is conducting the

procedural management of the preliminary investigation. In our opinion, the right set out in Article 86.4.11 of the CPC, which states “to make a decision to terminate the criminal case and submit it to the prosecutor for approval,” applies specifically to these situations. In such cases, the investigator or prosecutor is obliged to send a copy of the decision to the prosecutor, who conducts the procedural supervision of the preliminary investigation, within 24 hours of the decision being made.

However, if the investigator or prosecutor terminates the criminal prosecution (criminal case) by referring to the (dispositive) grounds that allow for the non-prosecution of the criminal case, that is, any of the circumstances established in Article 40 of the CPC, they are obliged to coordinate in advance the decisions they are prepared to make in this regard with the prosecutor who is conducting the procedural management of the preliminary investigation.

The decision on the termination of a criminal case must include not only information about when and by whom the criminal case was initiated but also which article of the Criminal Code (CC) the case was initiated under, whether the description of the offense has changed during the preliminary investigation, and if it has changed, on what grounds and to which article of the CC it was reclassified. This is because, in some cases, for example, when the termination of the criminal case is based on a reference to a condition specified in Article 39.1.8 of the CPC, it is crucial to clarify which article of the Criminal Code the criminal case was initiated under and what the basis of the investigation was.

In the decision to terminate the proceedings in the criminal case should not only include information about when and by whom the criminal case was initiated, but also specify under which article of the Criminal Code the case was started, whether the description of the act changed during the preliminary investigation, and if so, on what grounds and to which article of the Criminal Code it was redescribed. This is essential because, in a number of cases, for example, when the criminal case proceedings are terminated with reference to the circumstances provided for in Article 39.1.8 of the Criminal Code, etc., in such cases, it is of fundamental importance

under which article of the Criminal Code the criminal case was initiated and the proceedings were conducted. Additionally, we do not consider it correct that Article 280.2.6 of the CPC stipulates only "circumstances that necessitate the termination of criminal proceedings" as the circumstances that must be indicated in the decision on termination of criminal proceedings, because termination of criminal proceedings can be considered mandatory only in the cases specified in Article 39 of the CPC, and termination of criminal proceedings in the cases specified in Article 40 of the CPC is not mandatory, but discretionary. Therefore, when the termination of a criminal case is based on the circumstances defined in Article 40 of the CPC, the decision to terminate should justify the "circumstances indicating the appropriateness of terminating the criminal case."

The second paragraph of Chapter III, titled "Prosecutor's Supervision Over the Termination of Criminal Prosecution and Criminal Cases," is dedicated to studying the procedural foundations and consequences of prosecutor supervision over the termination. According to Article 4 of the Law on the Prosecutor's Office, it is stated among the directions of the prosecutor's activity that the prosecutor exercises procedural supervision over the preliminary investigation and ensures compliance with the law; they supervise the enforcement and application of the law in the activities of investigative and operational-search bodies. During the implementation of criminal prosecution - its initiation, suspension or termination if appropriate grounds exist, etc., prosecutorial supervision should not be limited to monitoring only the superficial, i.e. formal, compliance with criminal procedural legislation. The prosecutor should take measures to ensure that the law is implemented in accordance with its substance. Prosecutor supervision encompasses identifying violations of the law in a timely and complete manner, eliminating them, and preventing new violations from occurring.

When conducting prosecutorial control over the resolution of the issue of termination of a criminal case and criminal prosecution, the instructions provided for in the Order No. 09/84 dated February 1, 2006, of the Prosecutor General "On taking into account the provisions of the Convention for the Protection of Human Rights and

Fundamental Freedoms” and “the case law of the European Court of Human Rights in the course of criminal prosecution” should be taken into account.

The third paragraph of Chapter III, titled “Judicial Oversight of the Termination of Criminal Cases and Prosecutions,” is dedicated to the examination of procedural matters related to judicial oversight in cases of termination. Judicial oversight constitutes a distinct criminal procedural function, separate from the primary adjudicative function of the court.

Pursuant to Article 449.3.5 of the Criminal Procedure Code (CPC) of the Republic of Azerbaijan, the accused (or suspect) and their legal counsel, the victim and their legal representative, as well as any other individuals whose rights and freedoms have been infringed as a result of a procedural decision, are entitled to file a complaint with the court challenging the procedural decision of the prosecuting authority regarding the termination of criminal proceedings.

In Azerbaijani criminal procedure legislation, the concepts of “judicial oversight” and “judicial sanction” are conceptually integrated into a unified legal institution, functioning as a specialized form of judicial review or procedural authority. However, judicial oversight primarily entails the examination of procedural decisions made at the preliminary investigation stage that may unduly restrict individuals’ rights and lawful interests. The judicial sanction mechanism applies to motions and requests concerning investigative or other procedural actions that impose restrictions on the constitutional rights of individuals and citizens. This mechanism encompasses the review of such motions and the issuance of necessary authorizations.

The scope of judicial oversight is defined by the range of issues that fall within the jurisdiction of the court. Under the prevailing criminal procedure legislation, courts exercising judicial oversight have the authority to review complaints regarding decisions to terminate criminal prosecutions or proceedings and to declare such decisions unlawful. In cases where a court annuls a termination decision, the continuation of the criminal prosecution against a specific individual (suspect or accused) or the resumption of

proceedings concerning a particular fact becomes a mandatory directive for the competent law enforcement authorities.

In accordance with Article 109.1.6 of the CPC, the possibility of a judge subsequently presiding over the case is not precluded and is not regarded as a procedural risk. However, the annulment of a termination decision by the court may create the perception of prosecutorial bias, as it effectively signals the court's determination that the individual in question should remain subject to criminal prosecution.

The coexistence of prosecutorial oversight and judicial oversight over the termination of criminal cases and prosecutions remains a subject of ongoing legal debate. A complete shift from prosecutorial oversight to judicial oversight at the pretrial stage would be premature and not yet advisable within the framework of Azerbaijan's legal system.

In conclusion, the findings of the analysis are summarized, and proposed recommendations and policy suggestions are systematically presented.

Additionally, the dissertation incorporates the results of an anonymous survey conducted among legal practitioners, along with statistical data on prosecutorial oversight of case terminations (2015–2023).

The main content of the dissertation is presented in the author's published scientific articles:

1. Theoretical considerations on the concept of termination of a criminal case // Materials of the international scientific and practical conference “Heydar Aliyev and the construction of a legal state in Azerbaijan” dedicated to the 93rd anniversary of the birth of the National Leader of the Republic of Azerbaijan Heydar Aliyev. In 2 volumes, volume II. – BSU, – Baku, – June 3, 2016, – pp.168-170.
2. The socio-legal essence and importance of terminating a criminal case and criminal prosecution / – Baku: Law, – 2016, – No. 12 (266), – pp. 130-137.

3. Grounds for termination of criminal prosecution and its classification / – Baku: Law, – 2017, – No. 1 (267), – pp. 97-102.
4. On the essence of the institution of criminal prosecution in the criminal process of the Republic of Azerbaijan / – Baku: Law, – 2018, – № 2 (280), – pp.84-91 (co-author).
5. Features of termination of criminal prosecution (criminal case) due to the expiration of the period for bringing to criminal responsibility / – Baku: Qanun, – 2018, – No. 4 (282), – pp.75-82.
6. Termination of criminal prosecution (criminal case) in cases that allow for the non-implementation of criminal prosecution / – Baku: Qanun, – 2018, – No. 9 (287), – pp. 68-74.
7. Classification of the grounds for termination of criminal prosecution and criminal case in pre-trial proceedings and their legal consequences / Baku: Qanun, – 2018, – No. 10 (288), – pp. 23-30.
8. The concept of criminal prosecution: under the legislation of the Republic of Azerbaijan / - Moscow: Eurasian Law Journal. - 2018, - No. 12, - pp.332-333.
9. Some issues of improving the legislation on the termination of criminal cases / – Baku: Scientific News of the Police Academy. – 2023, – No. 2 (38), – pp.20-24.
10. Criminal prosecution in the legislation of the Commonwealth of Independent States / Internauka. Collection of conference articles. – Moscow, – 2023, – No. 11 (43) June, – pp. 120-124.
11. 11.Participation of the victim in criminal prosecution: foreign experience / LXXIII International scientific and practical conference. Internauka. Collection of conference articles. - Moscow, - 2023, - No. 7 (73) July, - pp. 102-105.



The defense will be held on 25 04 2025 at 14.00 at the meeting of the Dissertation Council ED.2.45 operating at the National Aviation Academy of High Attestation Commission Under The President of The Republic Of Azerbaijan

Address: Baku, Khazar district, Mardakan ave., 30, Az.-1045

The dissertation is accessible in the Scientific Library of the National Aviation Academy Library

Electronic versions of the abstract are available on the official website of the National Aviation Academy

The abstract was sent to the required addresses on 19 03 2025.

Signed for print: 14.03.2025

Paper format: A5

Volume: 38853 characters

Number of hard copies: 20