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A Comparison of Judicial Prevention and Criminal Prevention and an Analysis of Their Institutions in the Preliminary Investigation Phase

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1. Round 1

1.1. Reviewer 1

Reviewer:

The paragraph beginning "The preliminary investigation phase provides a particularly important context" requires a legally precise definition of the temporal and procedural boundaries of the preliminary investigation. The article states that this phase "begins when criminal justice authorities receive information concerning a suspected offense and continues through evidence collection," but this formulation may not correspond exactly to the terminology and stages recognized in Iranian criminal procedure. The authors should specify whether preliminary investigation includes the initial police inquiry, prosecutorial investigation, judicial investigation, the issuance of a final prosecutorial decision, or all pretrial activities preceding adjudication. They should also distinguish preliminary investigation from crime detection, prosecution, pretrial proceedings, and trial preparation. Without this clarification, the institutional analysis risks attributing preventive powers to officials who may exercise them at different stages or under different statutory conditions.

The article's central conceptual distinction needs greater analytical rigor. The sentence "Judicial prevention generally refers to preventive measures adopted, authorized, supervised, or reviewed by institutions exercising judicial authority" combines several potentially different concepts: prevention by judicial institutions, prevention through judicial procedures, and judicial supervision of preventive measures undertaken by other institutions. These categories should not be treated as interchangeable. The authors should distinguish an institutional definition, based on the identity of the authority, from a functional definition, based on the nature and objective of the measure. They should then justify which definition is adopted for the article. A prosecutor's supervision of a police search, a court's review of detention, and a judicially ordered mediation process do not necessarily represent the same form of prevention. A more precise conceptual taxonomy would substantially improve the article's originality and prevent circular reasoning.

The article should more clearly differentiate the constitutional and procedural positions of the prosecutor and the investigating judge. In the third section, the sentence "The prosecutor is frequently the most influential judicial actor during this phase" may be accurate in some systems, but it requires qualification and jurisdiction-specific support. In certain procedural models, the prosecutor is a party responsible for prosecution rather than a judicial authority in the strict sense; in others, the prosecutor performs quasi-judicial functions. The authors should therefore explain the legal status of the prosecutor in the system under examination and avoid using "judicial actor" without clarification. They should also identify which preventive decisions the prosecutor may adopt independently, which require judicial authorization, and which are subject to subsequent review. This allocation of authority is central to the article and should be presented more systematically.

The discussion of prosecutorial supervision risks idealizing the prosecutor's preventive role. The paragraph stating that "Judicial supervision can ensure that police actions remain connected to lawful objectives" assumes that prosecutorial control necessarily enhances legality. In practice, prosecutors may share investigative priorities with police, rely heavily on police-generated information, or lack the independence and resources required for meaningful supervision. The authors should analyze the institutional conditions under which prosecutorial supervision becomes effective, including independence, training, caseload, access to information, written decision-making, and accountability. They should also distinguish supervision directed toward investigative efficiency from supervision intended to protect rights. A critical treatment of prosecutorial incentives and possible institutional bias would make the analysis more balanced and scientifically credible.

The treatment of pretrial detention is normatively sound but should be legally more specific. The sentence "Pretrial detention should remain exceptional because it imposes a severe restriction before guilt has been established" should be followed by a precise analysis of the lawful grounds, evidentiary standards, maximum duration, review intervals, and procedural rights applicable to detention. The article currently lists flight, evidence interference, victim intimidation, and reoffending as legitimate purposes, but it does not distinguish actual legal grounds from general policy considerations. The authors should also discuss whether the seriousness of the charge may function as an independent ground or merely as one factor relevant to risk. The relationship between detention and the presumption of innocence should be examined through the prohibition of anticipatory punishment, not solely through general statements of proportionality.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The paragraph defining criminal prevention states that it "includes interventions that use criminal law, criminal procedure, penal institutions, policing, prosecutorial authority, judicial decisions, and rehabilitative mechanisms." This definition is so extensive that it may absorb judicial prevention entirely and make the comparison analytically unstable. The authors should identify the defining elements of criminal prevention and explain whether the term refers specifically to penal prevention, prevention through the criminal justice system, or the wider field generally called crime prevention. The article currently alternates among these meanings. It would be helpful to distinguish criminal or penal prevention from social and situational prevention and then explain where judicial prevention is located within that classification. The comparison should be based on equivalent conceptual levels; otherwise, the article compares a broad umbrella concept with one of its institutional components.

The Introduction identifies several research aims, but the article lacks an explicit research question and a sufficiently precise thesis. The sentence "The article aims to compare judicial prevention and criminal prevention, clarify their conceptual boundaries, and analyze the principal institutions through which they operate" identifies the subject but does not formulate the legal problem that the article seeks to resolve. The authors should state one primary research question and several subsidiary questions concerning institutional competence, overlap, accountability, and rights limitations. They should also express the central proposition in a form that can be evaluated throughout the article. For example, the article appears to argue that judicial prevention is both a component of criminal prevention and an autonomous mechanism for controlling state coercion. This proposition should be explicitly announced in the Introduction and systematically demonstrated in the subsequent sections.

The article requires a distinct explanation of its methodology. Although the Abstract refers to a "descriptive-analytical legal method," the body of the article does not explain how the sources were selected, how concepts were compared, or which legal materials were analyzed. The paragraph ending with "The legitimacy of prevention depends not only on its capacity to reduce crime but also on its consistency with legality, proportionality, human dignity, procedural fairness, and the presumption of innocence" would be an appropriate location after which to add a methodological paragraph. The authors should identify whether the study is doctrinal, comparative, conceptual, or policy-oriented; specify the relevant statutes, scholarly sources, and institutional materials; and explain the criteria used to compare judicial and criminal prevention. A rigorous methodology is particularly important because the article makes normative recommendations but does not yet show how those recommendations were derived.

The discussion of primary, secondary, and tertiary prevention in the second section is useful but insufficiently connected to the preliminary investigation phase. The paragraph states that "the preliminary investigation phase belongs mainly to secondary and tertiary prevention," yet this classification is asserted rather than demonstrated. The authors should explain which specific preliminary-investigation measures correspond to each level of prevention and acknowledge that some measures may perform multiple functions. For example, victim-protection orders may constitute secondary prevention when directed toward an identifiable risk, while measures intended to prevent repeat victimization may be classified as tertiary prevention. Evidence preservation, however, is primarily procedural and may not fit easily within the traditional public-health classification. The authors should avoid forcing procedural measures into criminological categories without explaining the theoretical basis for doing so.

The treatment of social and situational prevention should be more tightly integrated with the article's central comparison. In the paragraph beginning "Another influential distinction separates social prevention from situational prevention," the authors provide general definitions and examples but do not sufficiently explain whether these measures constitute criminal prevention during a preliminary investigation or merely operate alongside the criminal process. The distinction is important because emergency housing, addiction treatment, digital-account protection, and environmental security measures may be initiated by judicial authorities but implemented by executive or private institutions. The article should develop criteria for determining when a non-judicial measure becomes part of the preliminary-investigation preventive framework. Possible criteria include formal referral, legal authorization, case-specific purpose, procedural supervision, and connection to an identified criminal risk.

The paragraph beginning "The concept of dangerousness presents one of the most controversial theoretical problems" raises a significant issue but requires deeper treatment. The article correctly states that dangerousness is contextual rather than a fixed personal quality, yet it does not distinguish clinical risk assessment, actuarial assessment, structured professional judgment, and ordinary judicial prediction. Nor does it explain the evidentiary threshold required before a risk assessment may justify detention or another restrictive measure. The authors should examine the risk of false positives, discriminatory variables, and institutional overreliance on prior police contact. They should also clarify whether risk assessment is used to predict reoffending, violence, flight, witness intimidation, or obstruction, since these are legally and conceptually distinct risks. This elaboration would strengthen the discussion of proportionality and individualized decision-making.

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2. Revised

Editor's decision: Accepted.
Editor in Chief's decision: Accepted.