



## THE ROLE OF PRECAUTION MEASURES USED IN CRIMINAL PROCEEDINGS IN COMPENSATING FOR PROPERTY DAMAGE CAUSED BY CRIME

Mavlonov Temur Anvar ugli

Senior Lecturer of the Department of Criminal Procedure Law of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan

E-mail: [temurmavlonov12345@gmail.com](mailto:temurmavlonov12345@gmail.com)

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**Abstract:** The article highlights the role and importance of preventive measures, in particular, detention and bail, in ensuring compensation for material damage caused by a crime. The author, having analyzed the existing legislation, substantiates the need to develop a mechanism for replacing detention with a lighter measure of restraint when damages are compensated by persons in respect of whom a preventive measure has been applied. Also, the experience of Japan and other foreign countries was analyzed, and proposals were put forward for the introduction of a new article into the Criminal Procedure Code of Uzbekistan and the improvement of existing norms.

**Keywords:** criminal procedure, preventive measure, detention, bail, damage, compensation, consequences of a crime, legislation, proposal, foreign experience.

Today, pre-trial detention and bail are of great importance in ensuring compensation for material damage caused by a crime. By applying a preventive measure of detention at the stage of preliminary investigation and trial to persons who have committed crimes of minor or higher social danger and caused a certain degree of property damage, compensation for the damage is achieved by these persons and their relatives. That is, the practice of replacing the preventive measure of detention applied to persons who have eliminated the consequences of a crime with a milder preventive measure is widely used. We believe that the legislative consolidation of this practical experience may lead to its application on a legal basis and an expansion of the scope of compensation for damages.

In what form is it advisable to implement this practice?

The cancellation of the preventive measure of detention applied to them as a result of compensation for damages by persons to whom any preventive measure of detention has been applied may entail certain negative consequences. For example, the compensation of property damage by the person who committed the crime of hooliganism does not reduce the social danger of the person or act. Also, this situation leads to dissatisfaction of persons who have suffered physical or moral damage from the crime.

Therefore, it is necessary to introduce a mechanism according to which, if persons who have committed crimes, the object of which is a direct property relationship, have fully or partially compensated for the property damage caused, the preventive measure of detention is not applied to them, and if it is applied, it must be replaced with a milder preventive measure. In this case, it is necessary to clearly define the circle of persons to whom this rule does not apply even in cases of full compensation for property damage.

In cases where the direct object of the crime is not property relations, that is, in the case of full compensation for property damage caused as a result of the crime by persons who have committed crimes in which property relations exist as an additional object, the opinion of the

victims should also be taken into account when considering the issue of changing the preventive measure against these persons. In the cases provided for in part 2 of Article 242 of the Criminal Procedure Code, as well as when charging a person for committing another crime provided for in part one of this article, the issue of applying a preventive measure in the form of detention to persons in respect of whom the preventive measure for compensation for property damage has been replaced by a milder one, also entails consideration of the issue of applying a preventive measure in the form of detention to these persons.

Despite the fact that part 2 of Article 241 of the Criminal Procedure Code establishes the possibility of appealing a court ruling on the application of a preventive measure in the form of detention in the appellate procedure, and Article 240 establishes the procedure for changing or canceling the preventive measure applied to a person, the provisions related to the fact that persons who have committed crimes for which a punishment in the form of imprisonment is not imposed due to compensation for damage, as well as persons who have committed other types of crimes and compensated for damage, may apply with a request to cancel or change the preventive measure in the form of detention applied to them due to compensation for damage, are not regulated by law.

In the criminal procedure legislation of foreign countries, in particular Japan, it is established that persons in respect of whom a preventive measure in the form of detention has been applied may request the replacement of this preventive measure with bail, and if it causes property or physical damage to the victim and compensates him, a decision on the application of bail may be made instead, and if the damage is not compensated, this request may be rejected[1], and this, in our opinion, is a positive practice that can be implemented.

Taking into account the foregoing, we propose to supplement part two of Article 240 of the Criminal Procedure Code of the Republic of Uzbekistan with a provision of the following content:

"A preventive measure in the form of detention or house arrest, applied at the pre-trial stage of the case, may be canceled or changed by the prosecutor in the absence of grounds for further detention or house arrest of a person, as well as by the investigator or inquiry officer with the consent of the prosecutor, with mandatory notification of the court that issued the decision on the preventive measure. In the event that, in order to ensure the execution of the sentence, a preventive measure in the form of detention or house arrest is applied to persons who have committed a crime, for which the relevant article of the Special Part of the Criminal Code of the Republic of Uzbekistan provides for exemption from liability in connection with compensation for material damage and (or) elimination of the consequences of the crime, or the application of punishment in the form of restriction of liberty and imprisonment in the event of compensation for material damage, in the event of full compensation for the damage caused by them, this preventive measure, in the absence of other grounds for its further application, is subject to cancellation or replacement with a less severe one. The cancellation or amendment of a preventive measure in the form of detention or house arrest does not prevent a repeated application to the court with a petition for the application of this preventive measure to the same person.

Also, the Criminal Procedure Code of the Republic of Uzbekistan is supplemented

Article 241-1 is proposed to be supplemented:

Article 241-1. Filing a petition for the cancellation or replacement of the preventive measure with a milder one

A person to whom a preventive measure in the form of detention or house arrest has been applied, his defense counsel or legal representative has the right to petition the court that issued the ruling on the application of this preventive measure for the cancellation or replacement of the preventive measure with a milder one.

The court must consider this petition no later than seventy-two hours from the moment of its receipt. If the damage caused by the crime is not compensated, the court may refuse to consider this petition.

High efficiency can be achieved through the effective use of existing rules related to the application of bail as a preventive measure in ensuring compensation for property damage caused by a crime, as well as by making certain changes to them.

In particular, Article 48-6 of the Law of the Republic of Uzbekistan "On the Enforcement of Judicial Acts and Acts of Other Bodies" establishes the rule that "funds deposited by the accused or defendant as collateral must be directed to the execution of the requirements of the relevant court decision no later than three working days from the date of issuance of the enforcement document by the court"[2]. That is, the funds contributed by the accused and the defendant for the precautionary measure of bail can subsequently be used to compensate for property damage (however, the question of whether the funds contributed by other persons as collateral, as well as valuables and real estate accepted as collateral from the accused and defendants, will be used for the execution of the court decision remains open).

The fact that our legislation does not establish a maximum amount of the collateral amount allows it to be adjusted depending on the amount of damage caused. However, Article 249 of the Criminal Procedure Code stipulates that the minimum amount of bail cannot be less than 20 times the basic calculated value, and in most cases, investigators and inquiry officers, when applying a preventive measure in the form of bail, limit themselves to applying this amount.

As previously noted, the legislation of the Republics of Japan, Tajikistan, and Kyrgyzstan establishes that when using bail as a preventive measure, its minimum amount should not be less than the maximum amount of damage caused by the crime, as well as the fine that may be subsequently applied to it. We consider it expedient to apply some aspects of this experiment to our practice. In particular, in cases where the amount of material damage is more than 20 times the basic calculated value, it is necessary to strengthen the rule that the minimum amount of the preventive measure of bail should not be less than the property damage caused as a result of the crime. According to the results of surveys conducted among employees of investigative and judicial bodies, 67% of them noted that the establishment of this rule will have a positive impact on the practice of compensation for damages[3]. For these purposes, we propose to state Article 249 of the Criminal Procedure Code of the Republic of Uzbekistan in the following wording:

"Pledge consists of funds or valuables deposited by the suspect, accused, defendant, their relatives, other citizens or legal entities into the deposit account of the inquiry body, preliminary investigation, or court. Real estate can also be accepted as collateral.

In the case of the application by the court of bail in monetary form against the suspect or accused at the stage of pre-trial proceedings, the bail is credited to the deposit account of the inquiry or preliminary investigation body.

The investigator, inquiry officer, and prosecutor draw up a protocol on the acceptance of bail, and the court makes a corresponding entry in the minutes of the court session. The record

must indicate that the suspect, accused, or defendant has been informed of their obligations specified in Articles 46 and 48 of this Code and has pledged not to violate these obligations, and the pledgor has been informed that they will be deprived of the bail amount if the suspect, accused, or defendant fails to fulfill their obligations. The record is signed by the official who accepted the pledge, the pledgor, and the suspect, accused, defendant.

The amount of bail cannot be less than twenty times the basic calculated value and is determined by the investigator, inquiry officer, prosecutor, or court that chose this preventive measure, taking into account the severity of the charges, the amount of material damage caused by the crime, the identity of the suspect, accused, defendant, and the pledgor, the property status of the pledgor, and his relationship with the suspect, accused, defendant.

In order to ensure the execution of the sentence, the investigator, inquiry officer, prosecutor, or court may determine the amount of the bail in an amount not less than the amount of material damage caused by the person to whom this preventive measure is applied, as well as the fine that can be imposed on him, or both.

When a pledge is used for the purposes provided for in part five of this article, only the person to whom this preventive measure is applied or the civil defendant may be designated as the pledgor.

When transferring a pledge, the pledgor must be informed of the essence of the charge against which this preventive measure was chosen, the punishment that may be imposed on the suspect, accused, defendant, and his own liability. He may renounce the obligations assumed before the grounds arise for the transfer of the pledge to state ownership.

The pledgor is not entitled to invoke the impossibility of observing the behavior of the suspect, accused, or defendant, except in cases where it proves the influence of an insurmountable circumstance.

If the change in the preventive measure does not occur due to a violation of the conditions for its selection, as well as in the event of termination of proceedings in the case or entry into force of a court verdict, the pledge is returned to the pledgor. The bail provided by the person to whom this preventive measure is applied or by the civil defendant may be used to ensure the execution of the sentence.

In case of violation of the obligations assumed by the suspect, accused, defendant, the bail shall be transferred to state ownership by court order and a more stringent preventive measure shall be applied to the suspect, accused, defendant."

### References:

1. Criminal Procedure Law of Japan // URL: <https://elaws.e-gov.go.jp/document?lawid=323AC0000000131> (Referred: 16.01.2025)
2. Law of the Republic of Uzbekistan dated August 29, 2001 No. 258-II "On the Enforcement of Judicial Acts and Acts of Other Bodies" // URL: <https://lex.uz/docs/26477> (Referred: 28.05.2025)
3. Surveys conducted among employees of investigative and judicial bodies.

