

REPORT ON THE APPLICATION OF BAIL (ALTERNATIVE MEASURE TO PRE-TRIAL DETENTION) IN AZERBAIJAN



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**REPORT ON THE APPLICATION OF BAIL
(ALTERNATIVE MEASURE TO PRE-TRIAL
DETENTION) IN AZERBAIJAN**

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1. Summary

The bail restrictive measure was included in the Code of Criminal Procedure (CCP) of the Republic of Azerbaijan, adopted in 2000, and is applied to accused persons as one of the restrictive measures.

The bail restrictive measure is closely related to the right to liberty and security, as well as the right to a fair trial. So, the increase in the application of the bail restrictive measures will lead to a decrease in the choice of the arrest restrictive measure, which, in turn, will contribute to both the better guarantee of the right to liberty and security and the humanization of criminal proceedings.

The lack of detailed study on bail to date has encouraged consideration of this topic. Our purpose in conducting the study is to evaluate the legislation regulating the bail restrictive measure and the application of that legislation in practice and to make recommendations to expand the scope of the bail restrictive measure.

In order to assess the current situation, first, the status of the bail restrictive measure in local and international legislation was assessed. Later, in order to find out the situation in practice, information requests were sent to the district courts of Baku and a survey was conducted among advocates.

According to legislation, bail is regulated only by the Code of Criminal Procedure. However, a broader regulatory framework is needed to improve and promote the mechanism of this restrictive measure.

Furthermore, our practical study shows that the norms related to the bail restrictive measure have become "dead norms" and are not applied in reality.

At the end of the report, the following recommendations are made:

- Gaps and ambiguity in legislation should be eliminated;
- The sum of the amount of bail should be reduced and aligned with the minimum wage;
- A uniform judicial practice should be formed regarding the application of the bail restrictive measure;
- Initiative should be taken to start and expand the application of the bail restrictive measure;
- Control over the activities of the bodies that carry out the preliminary investigation should be increased.

2. Introduction

Pursuant to Articles 154.2.3 and 154.3 of the Code of Criminal Procedure of the Republic of Azerbaijan, bail, which is one of the restrictive measures, is imposed only on accused persons.

The definition of the bail restrictive measure is to deposit a sum of money (securities) or other items of value determined by a court to be deposited in the state bank in the court's name according to Article 164.1 of the Code of Criminal Procedure.

According to the conducted statistical studies, the bail restrictive measure has never been applied since its introduction into the Code, and a number of basic reasons for this are indicated. For example, the high amount of bail, failure to meet the standards of justice and fair trial in Azerbaijan, the real influence of the prosecutor's office on the courts, failure to take serious measures against those who violate the rules prescribed in the legislation, etc.

However, widespread use of the bail restrictive measure can eliminate many problems: as an alternative to arrest restrictive measure, it can free the state from the high costs of keeping arrested persons in prisons, protect accused persons from problems such as breaking social bonds and falling into a criminogenic environment, etc.

Another indication of the importance of the bail restrictive measure is its relation to the right to liberty and security and the right to a fair trial. So, if the application of the bail restrictive measure is expanded, the right to liberty and security will be ensured at a higher level, that is, as this restrictive measure is widely applied, there may be a decrease in the application of the arrest restrictive measure.

Let's explain its relationship with the right to a fair trial by process:

With the consent of the accused, the defense side (advocate) submits a motion for the choice of the bail restrictive measure, and the decision on its choice is made by the court. When making a decision, the court must independently examine the circumstances of the case: the level of guilt of the person, family and financial situation, etc. In other words, the level of application of the bail restrictive measure indicates the level of observance of the right to a fair trial.

A clear proof that the state of application of the bail restrictive measure is in need of extensive and serious reforms is the Order¹ of the President of the country dated February 10, 2017, on Improving Activities in the Penitentiary Field, Humanizing the Penal Policy, and Expanding the Application of Alternative Punishment and Procedural Coercion Measures Not Related to Social Isolation. If you pay attention to the content of each instruction and recommendation in this document, you can see the causes of the problem. For example, Paragraphs 8 and 9 of the Order state:

¹ <https://e-qanun.az/framework/34809> Order of the President of the Republic of Azerbaijan on Improving Activities in the Penitentiary Field, Humanizing the Penal Policy, and Expanding the Application of Alternative Punishment and Procedural Coercion Measures Not Related to Social Isolation

8. The provisions of the criminal-procedural legislation on the grounds for applying the arrest restrictive measure should be strictly followed by primary investigative bodies and courts when choosing restrictive measures, and the application of alternative punishment and procedural coercive measures should be expanded in order to achieve the goals of punishment and restrictive measures without isolating the person from society;

9. The principles of criminal legislation and the general principles of determining punishment should be strictly observed, and more serious measures should be taken to prevent non-procedural relations, corruption, and abuse of office during criminal prosecution and execution of sentences.

According to these paragraphs, the causes include non-procedural relations, corruption, abuse of office, failure to strictly comply with the provisions of the criminal-procedural legislation during the choice of restrictive measures by preliminary investigation bodies and courts, the wide range of cases of unjustified application of arrest restrictive measure, poor implementation of alternative restrictive measures, etc.

In the Order, recommendations were given to the Prosecutor General's Office, the Supreme Court, as well as other courts, and a number of tasks were given to the Ministry of Justice regarding the elimination of the current situation.

Based on the above, we can say that the main focus of this report will be on the difficult situation in the application of the bail restrictive measure, its reasons, its position in local and international legislation, and the situation of this restrictive measure in other countries.

3. Methodology

In order to assess the current situation, first, the status of the bail restrictive measure in local and international legislation was evaluated. Then, in order to determine the general situation in its application, a survey was conducted among advocates, as well as information requests were sent to the courts, and based on the information obtained as a result of comparisons, analyses, surveys, and information requests, the problems that arose in connection with the application of the mentioned restrictive measure, its causes and consequences were highlighted (it should also be noted that it was not possible to carry out media monitoring due to the lack of media information regarding the application of the bail restrictive measure.). Furthermore, the concept of the bail restrictive measure, grounds for its application, etc., were investigated in the criminal procedural legislation of a number of former USSR countries.

4. Monitoring of legislation

Bail is related to the right to liberty and security and the right to a fair trial. According to Articles 7 and 28 of the Constitution² of the Republic of Azerbaijan, the judicial power, which is one of the branches of state power, is independent within the limits of its respective authority, and everyone has the right to liberty, and this right may be restricted only in accordance with the procedure prescribed by law, by detention, arrest, or imprisonment. The basic local act regulating the bail restrictive measure is the Code of Criminal Procedure. The Code defines the concept of the bail restrictive measure, cases of application, the amount of bail, etc. Among other regulatory local acts, we can mention the Decision of the Plenum of the Supreme Court (Decision of November 3, 2009, on Judicial Practice on Consideration of Appeals for Restrictive Measures of Arrest and House Arrest), where explanatory points regarding the articles related to the bail restrictive measure in CCP are included. The judgments of the European Court of Human Rights (ECtHR) and Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) refer to the international regulatory acts related to the bail restrictive measure. Here, domestic courts' compliance with the law regarding the bail restrictive measure, the conclusions, recommendations, and criteria established by the ECtHR regarding the correct application of the bail restrictive measure are provided.

Local legislation

Bail, being one of the restrictive measures, is an integral part of criminal proceedings. In this part, we will first look at the principles of criminal proceedings and the rules applicable to all restrictive measures.

Basic principles of criminal proceedings. Basic principles are listed in Articles 10-36 of the CCP³ to ensure the legal and reasonable implementation of criminal proceedings: legislation, equality before the law and the courts, guarantee of the human and civil rights and liberties established by the Constitution, respect for the honour and dignity of the person, guarantee of the right to inviolability of the person, guarantee of the right to liberty, etc. In particular, the principles set forth in Articles 12 and 14 of the Code (guarantee of the human and civil rights and liberties established by the Constitution and guarantee of the right to liberty) aim to prevent illegal interference with human rights.

A **restrictive measure** is a coercive procedural measure intended to prevent unlawful behaviour by the suspect or accused during criminal proceedings and to ensure the execution of the sentence (Article 154.1 of the CCP). Azerbaijan's criminal procedural legislation provides for 10 preventive measures, including bail. Three of them (arrest, bail, and house arrest) may be applied

² <https://www.e-qanun.az/framework/897> Constitution of the Republic of Azerbaijan

³ <https://www.e-qanun.az/framework/46950> Code of Criminal Procedure

only to an accused person, nine of them shall be the principal restrictive measures and may not be combined.

Restrictive measures may be applied by the relevant preliminary investigator, investigator, or prosecutor in charge of the procedural aspects of the investigation or court when the material in the prosecution file gives sufficient grounds to suppose that the suspect or accused has (Article 155.1 of the CCP):

- hidden from the prosecuting authority;
- obstructed the normal course of the investigation or court proceedings by illegally influencing parties to the criminal proceedings, hiding material significant to the prosecution or engaging in falsification;
- committed a further act provided for in criminal law or created a public threat;
- failed to comply with a summons from the prosecuting authority, without good reason, or otherwise evaded criminal responsibility or punishment;
- prevented execution of a court judgment.

In the Decision⁴ of the Plenum of the Supreme Court of the Republic of Azerbaijan dated November 3, 2009, on Judicial Practice on Consideration of Appeals for Restrictive Measures of Arrest and House Arrest, it is instructed that when choosing the arrest restrictive measure, the courts should not be satisfied with only formally listing the procedural grounds specified in Article 155 of the CCP, but should check the existence of each ground in relation to a specific accused person and whether they are confirmed by the materials of the criminal case.

Article 155.2 of the CCP also instructs the courts to consider the following factors when choosing a restrictive measure:

- the seriousness and nature of the offence with which the suspect or accused is charged and the conditions in which it was committed;
- his/her personality, age, health and occupation and his/her family, financial and social positions, including whether he/she has dependents and a permanent residence;
- whether he/she has committed a previous offence, the previous choice of restrictive measure and other significant facts.
- whether he/she has reconciled with the victim or his/her legal heir who is his/her close relative, whether the damage caused as a result of the crime has been paid, and other important circumstances.

⁴ <https://e-qanun.az/framework/19147> Decision of the Plenum of the Supreme Court of the Republic of Azerbaijan dated November 3, 2009, on Judicial Practice on Consideration of Appeals for Restrictive measures of Arrest and House Arrest

The procedure of restrictive measures

The restrictive measures are chosen based on the decision of the preliminary investigator, the investigator, the prosecutor in charge of the procedural aspects of the investigation, or the court. So, the preliminary investigator, investigator, or prosecutor in charge of the procedural aspects of the investigation who is responsible for the criminal case shall verify the legality of, and the need to maintain unchanged, restrictive measures previously applied by other persons and shall make the appropriate decision (Article 174.1 of the CCP). There are two exceptions:

- Other persons (preliminary investigator, investigator, prosecutor) shall not be empowered to verify the decision of the judges regarding the application of preventive measures;
- The preliminary investigator or investigator shall not be empowered to verify a decision of the prosecutor.

The court, after receiving the case on completion of the investigation, may confirm, annul or alter a restrictive measure applied at the pre-trial stage (Article 174.2 of the CCP).

The prosecuting authority shall immediately inform the suspect or accused (excluding the wanted person) of the restrictive measure chosen and present him with a copy of the decision (Article 156.3 of the CCP). The decision should reflect the following:

- reasonable suspicions that the person has committed the crime for which he is suspected or charged;
- preliminary evidence indicating the existence of grounds for the application of the relevant restrictive measure.

The following entities may complain against a decision adopting or amending a restrictive measure to the prosecutor in charge of the procedural aspects of the investigation or to the court (Article 173.1 of the CCP).

- the suspect or accused;
- his/her defence counsel and legal representative;
- other interested parties to criminal proceedings.

Note: Complaints against court decisions on restrictive measures, other than at the pre-trial stage, may not be lodged with the court of appeal (Article 173.2 of the CCP).

Pursuant to Article 175.3 of the Code, the restrictive measures of arrest, house arrest, or bail decided by a court may be altered or annulled only by the court. Although there is a certain exception in the circumstances of arrest and house arrest for the case shown here, the rule for the bail restrictive measure is as shown without exception.

Alteration (replacement) of a restrictive measure means choosing a more severe or less severe restrictive measure:

- replacement with a more severe restrictive measure – its necessity must be confirmed by the body in charge of the criminal proceedings with evidence within the limits of its authority;
- replacement with a less severe restrictive measure – it is carried out when if it is possible to guarantee the behaviour of the suspect or accused and execution of the judgment in the course of a criminal case.

According to Article 175.2 of the CCP, if there is no longer any need for a restrictive measure, the prosecuting authority shall annul it in accordance with its powers.

The **bail restrictive measure** is a procedural coercive measure chosen against the suspect and the accused in the cases provided for in Article 155.1 of the CCP. The bail restrictive measure is one of the principal restrictive measures and cannot be chosen together with other restrictive measures.

The purpose of bail is that the person remains at the disposal of the prosecuting authority (Article 164.1 of the CCP).

The bail restrictive measure is chosen by the court on the basis of the motion submitted by the defense party when choosing a restrictive measure, while considering the measure of extension or replacement of the restrictive measure.

The grounds for choosing the bail restrictive measure and the circumstances to be taken into account by the authorized body implementing it are the same as other restrictive measures.

The court may choose the bail restrictive measure when it concludes that there is no need to completely isolate the accused from society by detaining him on remand (Article 157.5 of the CCP) and for persons accused of the following crimes (Article 164.1 of the CCP):

- an offense that does not pose a major public threat (refers to offenses committed intentionally or recklessly, the sanctions should not include a non-custodial sentence or the upper limit of the custodial sentence in the sanctions should not exceed two years);
- a minor offense (refers to offenses committed intentionally or recklessly, the upper limit of the custodial sentence in the sanctions should not exceed seven years);
- an offense, public threat of which is only related to pecuniary damage;
- a major offense committed through negligence, in the sanctions of which the upper limit of the custodial sentence should not exceed 12 years.

Procedure of bail

Bail is chosen by the court only through the motion submitted by the defense party. The defense has the right to file an appeal against the court decision regarding the application or refusal of the bail restrictive measure. Alteration or annulment of the bail restrictive measure is possible only by a court decision.

In cases where the bail restrictive measure is applied, the passport or other document confirming the identity of the suspect or accused shall be taken from him/her and added to the prosecution file until the final resolution of the suspicion or charge (Article 155.6 of the CCP).

The accused shall be kept under arrest until the sum to be deposited shall be transferred to the state bank in the court's name. When the prosecuting authority receives confirmation that the deposit has been made, and once the court decision has become final, it shall inform the head of the remand facility that the accused is to be released immediately (Article 164.7 of the CCP).

Amount of bail

According to Article 164 of the CCP, the amount of the bail must be greater than the damage caused as a result of the offense or its unpaid part (Article 164.5-1 of the CCP), but shall not be excessively high (Article 164.5 of the CCP). So, the amount of the bail is not less than *five thousand manats* for an offence which that not pose a major public threat (Article 164.5.1 of the CCP), not less than *ten thousand manats* for a minor offense or an offense, the public threat of which is only related to pecuniary damage, or a major offense committed through negligence (Article 164.5.2 of the CCP).

Payment of bail

The bail restrictive measure requires a sum of money (securities) or other items of value determined by a court to be deposited in the state bank in the court's name. Not only money and other valuables but also immovable property can be accepted as bail (Article 164.1 of the CCP). The deposit may be taken from the property and funds of the accused or the property and funds of his/her close relatives or of other individuals and legal entities. The duty to prove the value of the deposit shall rest with the person making it (Article 164.3 of the CCP).

Transfer of bail to the state or its replacement with arrest

The prosecutor may apply to the court for the transfer of the deposit to the state (Article 164.8 of the CCP) or the replacement of bail with arrest (Article 164.10 of the CCP) in the following cases:

- if the accused hides from the prosecuting authority;
- if he/she eludes criminal responsibility and punishment;
- if he/she goes elsewhere without the prosecutor's permission.

Refund of bail

According to Article 164.9 of the CCP, the deposit shall be returned to the person who placed it in the following cases:

- after the court judgment has become final;
- in cases where the violations provided for in Article 164.8 of this Code are not proven;
- if bail is canceled or altered.

Finally, regarding the practical application of all procedural coercive measures, including bail, Paragraph 1 of the Decision of the Plenum of the Supreme Court on Judicial Practice on Consideration of Appeals for Restrictive Measures of Arrest and House Arrest states that the attention of the courts should be drawn to submissions regarding the application of procedural coercive measures against the accused persons, with strict adherence to the requirements of Article 28 of the Constitution of the Republic of Azerbaijan, Articles 5 and 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and criminal procedural legislation, and the need for a timely and quality review, taking into account the experience of the European Court of Human Rights

International legislation

The bail restrictive measure is of particular importance in terms of ensuring the right to liberty and security. Indeed, although there are not many specific norms related to bail in international documents, it is provided in a number of acts on guaranteeing the right to liberty and security. One of them is the Universal Declaration of Human Rights⁵ adopted in 1948. Since Azerbaijan was a part of the USSR and the USSR was neutral to the Declaration, this Declaration was not ratified by Azerbaijan at that time. However, some provisions of the Declaration were reflected in the Constitution of the Republic of Azerbaijan adopted in 1995.

Article 3 of the Declaration states:

- Everyone has the right to life, liberty and security of person.

Another act is the International Covenant on Civil and Political Rights⁶. The Covenant was approved by the Republic of Azerbaijan on August 13, 1992. Let's note a number of provisions from Article 9 of the Covenant that are of primary importance for the subject:

- Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law (These grounds are provided for in Article 155.1 of the CCP of the Republic of Azerbaijan.).

⁵ <https://www.coe.int/az/web/compass/the-universal-declaration-of-human-rights-full-version-> Universal Declaration of Human Rights

⁶ <https://www.coe.int/az/web/compass/the-international-covenant-on-civil-and-political-rights> International Covenant on Civil and Political Rights

- Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
- Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
- Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Another act that provides for international norms related to bail is the Convention for the Protection of Human Rights and Fundamental Freedoms⁷. Azerbaijan ratified this document on December 25, 2001.

One of the norms provided for in the Convention regarding bail is the right to a fair trial, which is established in Article 6. According to this Article, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Another norm of the Convention, which is of particular importance for the bail restrictive measure, is Article 5 § 1 (c). According to this Article, everyone has the right to liberty and security of person. The legal conditions and procedures for deprivation of liberty are provided in the mentioned article. One of them is provided in Paragraph 1 (c) - the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

Based on the content of this Paragraph, there must first be a reasonable doubt that a crime has been committed. A second issue is the purposes for which a person is legally arrested and detained. These are as follows:

1. To bring the person before the competent judicial body;
2. To prevent the violation of rights committed by him/her;
3. To prevent him/her from hiding after committing the violation.

⁷ <https://e-qanun.az/framework/1405> Law of the Republic of Azerbaijan on the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols No. 1, 4, 6, and 7

At this time, the main condition is that there must be enough necessary grounds to ensure these three stated goals.

According to Article 5.3 of the Convention:

- Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

According to Article 5.4 of the Convention:

- Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

According to Article 5.5 of the Convention,

- Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ECtHR judgment on the case of Piruzyan v. Armenia

We can determine the importance of the mentioned norms in practice based on the experience of the ECtHR. So, the ECtHR has a number of specific judgments on the subject, and one of them is the judgment on the case of Piruzyan v. Armenia⁸ dated June 26, 2012.

The facts of the case: The applicant was detained in October 2006 and imprisoned on charges of robbery. His detention was subsequently extended several times on the grounds that he might abscond and obstruct the investigation and that further investigative measures were necessary and that the proceedings were still pending. Referring to Article 143 § 1 of the Code of Criminal Procedure (CCP), the court further decided to refuse the applicant's request for bail, on the ground that he was accused of a "serious crime", and stated that only persons accused of "crimes that do not pose a major public threat and minor crimes" may be released in this way. Finally, the applicant was released in December 2007 after the charges against him were dropped.

Legal issues – Article 5 § 3

a) Impossibility of release on bail – The authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures to ensure his appearance at trial. The ECtHR has held in a number of previous cases that automatic rejection of the applicant's applications for bail is a violation of Article 5 § 3 of the Convention

In the present case, the applicant's petitions were rejected on the ground that Article 143(1) of the Code of Criminal Procedure prohibits release on bail in the case of crimes described as "serious

⁸ <https://hudoc.echr.coe.int/eng?i=001-111631> CASE OF PIRUZYAN v. ARMENIA (Application no. 33376/07)

or particularly serious" crimes. Such automatic rejection of the applicant's bail applications made a judicial review of the specific circumstances of his detention impossible and contravened the guarantees provided for in Article 5 § 3. In the present case, the applicant's requests to be released on bail were dismissed, on the grounds that he was accused of an offence that was qualified as a "serious offence" and that Article 143 § 1 of the CCP precluded release on bail in such cases. Such automatic rejection of the applicant's applications for bail, devoid of any judicial control of the particular circumstances of his detention, was incompatible with the guarantees of Article 5 § 3.

Conclusion: a violation has been found (unanimously).

b) Reasons for the applicant's continued detention –The domestic courts, when ordering the applicant's detention and its extension, relied on the risk of his absconding and obstructing the proceedings in view of the serious nature of the charge, and on several occasions on the fact that certain investigative measures were to be carried out and that the proceedings were still pending. As to the last issue, the Court noted that grounds such as the need to carry out further investigative measures or the fact that the proceedings have not yet been completed do not correspond to any of the acceptable reasons for detaining a person pending trial under Article 5 § 3. As to the risk of absconding or obstructing the proceedings, the Court noted that domestic courts limited themselves to repeating these grounds in their decisions in an abstract and stereotyped way, without indicating any reasons why they considered well founded these allegations. A general reference to the serious nature of the offence with which the applicant had been charged, on which the courts relied on several occasions, cannot be considered as a sufficient justification of the alleged risks. In the light of the above, domestic courts in their decisions concerning the applicant's detention and its extension were not "relevant and sufficient".

Conclusion: Article 5.3 of the Convention has been violated.

5. Regional comparison

According to the Code of Criminal Procedure of the **Russian Federation**, bail may be chosen at any stage of criminal proceedings. According to the Code, bail shall consist of an entry or transfer by the suspect or the accused person, or by another natural person or legal entity at the stage of preliminary investigation to the body that has taken over a criminal case, or at the stage of court proceedings - to the court, of immovable property and movable property in the form of money, valuables, as well as of shares and bonds admitted to free circulation in the Russian Federation.

The purpose of the bail restrictive measure is to guarantee the appearance of the suspect or the accused person before the investigator or the inquirer, or before the court, and to prevent him/her from committing new offences.

According to Article 108 of the Russian CCP, the motion for the application of bail is submitted to the court where the preliminary investigation is conducted. The type and amount of bail shall be determined by the court, taking into account the nature of the committed crime, the identity of the suspect or the accused, and the property status of the bailor. However, the amount of bail cannot be less than fifty thousand rubles in criminal cases for crimes that do not pose a major public threat and minor crimes, and not less than five hundred thousand rubles in criminal cases for serious and especially serious crimes.

Apparently, in contrast to Azerbaijan, in the Russian Federation, the bail restrictive measure is envisaged for all types of crimes.

According to the Code of Civil Procedure of the Russian Federation, property that cannot be seized cannot be taken as bail.

In the Russian Federation, immovable property, stocks and bonds, and valuables can be accepted as bail, provided that the original documents certifying the ownership of the bailed property of the bailor are presented and there are no restrictions (encumbrances) on the property. The money, which is the subject of bail, is transferred to the deposit account of the relevant court or the body dealing with the criminal case.

A protocol for the acceptance of bail by a court or a body dealing with a criminal case is drawn up and a copy of the document is given to the bailor.

If bail is given by a person who is not a suspect or an accused person, then the essence of the suspicion, the charge, the obligations related to this restrictive measure, and the consequences of violation of these obligations are explained to him/her.

According to the criminal procedural legislation of the neighboring country, in the decision of the court on the application of bail, the court determines the period of payment of the bail. If the suspect or the accused person is detained, the court shall extend the period of detention until the

bail is paid, but not more than 72 hours from the moment of the court decision, provided that the detention is legal and justified.

If the bail is not paid within the specified period, the court considers the issue of choosing another restrictive measure against the suspect or the accused based on the motion submitted in accordance with Article 108 of the Code of Criminal Procedure of the Russian Federation.

In case of breach of bail obligations by the suspect or accused person, the bail is transferred to the state by a court decision issued in accordance with Article 118 of the Code of Criminal Procedure of the Russian Federation. In other cases, the court makes a decision on the return of the bail to the person who gave the bail when issuing a verdict or making a decision on the termination of the criminal case.⁹

According to Article 200 of the Code of Criminal Procedure¹⁰ of the **Republic of Georgia**, bail is a monetary sum or immovable property. A monetary sum shall be deposited by the accused or by another person on behalf of or in favour of the accused to the deposit account of the Legal Entity under Public Law within the Ministry of Justice of Georgia – the National Bureau of Enforcement, with the written undertaking given to the court that the accused will behave properly and that he/she will timely appear before the investigator, prosecutor, or the court.

In the Republic of Georgia, the application of the bail restrictive measure is not limited by the classification of crimes.

The immovable property deposited instead of a monetary sum shall be arrested. A record shall be drawn up on the receipt of bail; one copy of the record shall be kept by the bailor.

When filing a motion with the court requesting bail as a measure of restraint against the accused, the prosecutor shall indicate the amount of the bail and the date of its posting. After determining the amount of bail, the accused or any other person on behalf of or in favour of the accused may, instead of the bail amount, post as bail immovable property that is equivalent to the monetary sum.

As it can be seen, in this country, the motion for the application of the bail restrictive measure is submitted by the prosecutor.

The bail amount shall be determined taking into consideration the gravity of the crime committed and the financial status of the accused.

According to Georgian legislation, bail amount shall not be less than GEL 1,000.

This can be considered more realistic and accessible compared to the lower limit of the bail amount (5,000 manats) stipulated in the legislation of Azerbaijan.

⁹ http://www.consultant.ru/document/cons_doc_LAW_34481/

¹⁰ <https://www.matsne.gov.ge/ru/document/download/90034/37/ru/pdf>

The prosecutor shall, according to the place of investigation, file a motion with the court requesting the application of bail as a measure of restraint against the accused.

If the accused fails, within the specified period, to deposit the bail amount to the deposit account of the National Bureau of Enforcement, or to deposit immovable property, the prosecutor shall file a motion with the court requesting a more severe measure of restraint.

The court shall, upon motion of the prosecutor or on its own initiative, in order to ensure the application of bail, impose detention on an accused who was subjected to arrest as a coercive measure in criminal procedure, until he/she deposits, in full or in part (but not less than 50%), the bail amount to the deposit account of the National Bureau of Enforcement.

The posting of bail shall be confirmed by the court or by the prosecutor.

If the accused against whom bail has been selected as a measure of restraint violates the conditions of this measure or the law, the court, upon motion of the prosecutor, shall render a ruling replacing the bail with a more severe measure of restraint. Under the same ruling, the monetary sum posted as bail shall be transferred to the State Budget, and the immovable property, to ensure the recovery of the bail amount, shall be transferred for enforcement in accordance with the Law of Georgia on Enforcement Proceedings.

According to the Georgian legislation, the accused or the bailor who posted bail in his/her favour shall, within a month after the enforcement of the judgment, be fully reimbursed with the monetary sum deposited as bail (taking into consideration the exchange rate at the time the bail was posted) and immovable property, provided the accused was performing his/her obligations properly and in good faith, and the measure of restraint selected against him/her has not been replaced with a more severe measure of restraint.

If, before a final decision is delivered in the case, the bailor who posted bail in favour of the accused files a written statement with the prosecutor or with the court, respectively, claiming that he/she is not able to ensure the appropriate behaviour and timely appearance of the accused before the investigator, the prosecutor, or the court, the bailor shall, within a month, receive back the total bail amount (taking into consideration the inflation rate at the time the bail was posted) and immovable property, and a more severe measure of restraint may be applied against the accused.

A bailor shall receive back the bail amount after he/she presents the decision of the relevant court or prosecutor to the National Bureau of Enforcement.

If the accused fulfills the assumed obligation in good faith, the prosecutor may file, according to the place of investigation or jurisdiction, a motion with the court requesting the reduction of the bail amount. When filing and reviewing the above motion, the procedures provided for by this paragraph and by this Code shall apply. At the stage of investigation, a motion shall be reviewed without an oral hearing, within 24 hours after it has been filed.

According to Article 143 of the Code of Criminal Procedure¹¹ of the **Republic of Armenia**, bail may consist of money, securities, and other valuables deposited in the court by one or more persons for the release from prison of a person who does not pose a major public threat and who is accused of committing a minor crime.

With the permission of the court, the immovable property can also be put as bail. The value of the bail is proved by the bailor.

According to the legislation of Armenia, the amount of bail determined by the court should not be less than the following:

1. For crimes that do not pose a major public threat - in the amount of 200 times the minimum wage;
2. For minor crimes - in the amount of 500 times the minimum wage

After receiving the notification about the appointment of bail, the body conducting the criminal proceedings orders the release of the accused person.

When the accused hides from the body conducting the criminal proceedings or moves to another place without its permission, the prosecutor submits a motion to the court to transfer the amount of the bail to the state budget.

The bailor can appeal the decision of the court on confiscation of the bail to the higher instance court.

If it is not proven that the accused person is hiding from the body conducting criminal proceedings or has moved to another place without its permission, or if the bail is canceled or the restrictive measure is altered, the amount of bail is returned to the person who posted the bail.

If the obligations and restrictions imposed on the accused by law are violated, bail can be revoked and the person can be arrested.

¹¹ http://parliament.am/law_docs/010998HO248eng.pdf?lang=eng

6. Situation in practice

Information requests and their results

Within the framework of the report, the following information request was sent to the 12 district courts of Baku city to determine the operational level of the bail restrictive measure in practice:

"In the last 5 (five) years - during the years 2016-2021, how many motions were submitted by the defense side to the court regarding the choice of the bail restrictive measure, how many of those motions were granted, and how many of them were rejected?"

Moreover, an information request was sent to the State Statistical Committee (SSC) with the following content :

"How many decisions were made by the courts in Azerbaijan during the years 2001-2021 regarding the choice of the bail restrictive measure?"

Of the information requests sent to 12 district courts, two did not answer at all (Garadagh District Court and Nasimi District Court), five refused to answer the request on various grounds (Khazar District Court¹², Yasamal District Court¹³, Nizami District Court¹⁴, Khatai District Court¹⁵, and Surakhani District Court¹⁶), and only five responded to the request (Binagadi District Court, Narimanov District Court, Sabail District Court, Pirallahi District Court, and Sabunchu District Court).

The responses of the five district courts that responded to the information request are as follows:

- The court **did not receive a motion** regarding the choice of the bail restrictive measure in 2016-2021 (Binagadi District Court, Pirallahi District Court, Sabunchu District Court);

¹² The reason for the Khazar District Court's refusal – it is impossible to satisfy your information request, as the court practice on the subject has not been summarized

¹³ The reason for the Yasamal District Court's refusal – according to Article 21.1.1 of the AR Law on Access to Information (... if the requester does not have the authority to obtain this information or, in the cases required by this Law, if the requester does not provide a document confirming his identity)

¹⁴ The reason for the Nizami District Court's refusal – ... it was not possible to respond to the information request as the information regarding the purpose for which you want to obtain the information mentioned in your request, as well as the information about yourself (service position), was not reflected.

¹⁵ The reason for the Khatai District Court's refusal – it was not possible to respond to the information request as the information regarding the purpose for which you want to obtain the information mentioned in your request, as well as the document confirming your identity, was not submitted.

¹⁶ The reason for the Surakhani District Court's refusal – in order to provide information on how many motions have been submitted by the defense side to the court in the last five years regarding the choice of the bail restrictive measure, the relevant category of cases should be removed from the archive and reviewed and analyzed, and relevant information should be systematized. Carrying out the mentioned works requires the involvement of several employees of the court, which will seriously hinder the performance of these employees' daily duties. Based on the above and in accordance with Articles 21.2.3-21.2.5 of the AR Law on Access to Information, we do not consider it possible to answer your request in the current situation.

- The court **did not consider the materials** related to the choice of the bail restrictive measure in 2016-2021 (Narimanov District Court);
- There is **no information** about this in the court (Sabail District Court);

The State Statistical Committee refused to answer the information request on the following grounds:

- Since the requested information is not included in the list of indicators submitted by the Ministry of Justice, it is appropriate for you to apply to the relevant body in order to obtain this information.

Note: The information request we sent is statistical in nature and this information should be in the database of the State Statistical Committee. If all the required information is in the Ministry of Justice and not in the SSC, then according to Article 23 of the Law of the Republic of Azerbaijan on Access to Information, if the owner of the information does not have the requested information, it must identify the owner of the relevant information and send the information request to it without delay, but no later than five working days, and inform the requester about this.

A survey among advocates and its results

In the survey conducted among advocates, 45 lawyers with different periods of professional activity experience specializing in criminal cases were selected, and it was possible to contact 14 of them. Two of these advocates work in the province, and 12 work in Baku. Advocates can be grouped according to their professional activity periods in the following order:

- 1) 1-5 years; 2) 6-10 years; 3) 11-15 years; 4) 16-20 years 5) 21-25 years; 6) 26-30 years

Among the advocates who took part in the survey, two advocates belong to group 1, four advocates to group 2, five advocates to group 3, two advocates to group 4, and one advocate to group 6 (there is no advocate belonging to group 5).

None of the mentioned advocates submitted a motion in court regarding the application of the bail restrictive measure during their experience, with the exception of one advocate, who belongs to group 3.

The advocates were asked the reasons why the bail restrictive measure was not applied in practice and their suggestions on how to eliminate this situation. However, five of the advocates who participated in the survey did not express their opinion due to the fact that they do not have detailed information about the reasons for the current situation.

Let's group the opinions expressed by the remaining nine advocates according to the above categories:

Problems regarding the legislation:

- Gaps in the legislation, uncertainty, and the lack of a concrete mechanism for the application of the bail restrictive measure;
- The fact that the amount of bail is too high and contradicts the income level of the population.

Problems regarding practice:

- Lack of substantiated judicial experience;
- The defense's preference for the house arrest restrictive measure;
- Lack of initiative of the authorities to increase the practice of applying the bail restrictive measure;
- The fact that the prosecutor in charge of the procedural aspects of the preliminary investigation has a strong subjective opinion about the impossibility of bail, has a lack of interest in its implementation, and obstructs its implementation.

As it can be seen, although the bail restrictive measure is provided for in the law, in fact, it has become a "dead norm" and is not actually applied.

7. Conclusion

Based on the facts obtained as a result of the information requests sent, a survey conducted, and monitoring of the legislation, the following conclusions can be noted regarding the application of the bail restrictive measure in the Republic of Azerbaijan:

There are a number of loopholes in the legislation on bail. The most important of them is the norm on the amount of bail. The minimum amount of bail set for the relevant offenses is inconsistent with the real earnings of people and is disproportionate to the means of all sections.

According to the Order of the President of the Republic of Azerbaijan, Ilham Aliyev, dated December 17, 2021, from January 1, 2022, the minimum wage in the country was set at 300 manats. Previously, the minimum wage in Azerbaijan was 250 manats.

Note: In January 2022, the minimum wage in Azerbaijan was 300 manats¹⁷, and the average monthly nominal wage was 765.9 manats¹⁸.

In the legislation, the minimum amount of bail is defined as five thousand manats for the charge of an offense that does not pose a major public threat, ten thousand manats for the charge of a minor offense or an offense, the public threat of which is only related to pecuniary damage, or a major offense committed through negligence. This reveals a clear discrepancy between the minimum wage or average monthly nominal wage and the minimum amount of bail.

Another norm that creates uncertainty regarding the amount of bail is Article 164.5-1 of the CCP. In that norm, it is stated that the amount of bail must be greater than the damage caused as a result of the offense or its unpaid part. However, it is not clear how much the amount of bail should exceed the damages incurred or the unpaid part. The mechanism for determining the exact criteria on which this is calculated raises unanswered questions.

Another gap is related to the scope of crimes. So, according to the legislation, only offenses that do not pose a major public threat, minor offenses, offenses, the public threat of which is only related to pecuniary damage, and major offenses committed through negligence belong to the sphere of application of bail. In other words, the legislation does not provide for bail for intentional serious and especially serious crimes, which significantly narrows the scope of application of the bail restrictive measure.

According to the survey conducted among advocates and information requests sent to the courts, the bail restrictive measure is not used in practice, for the following reasons:

- the fact that the amount of bail is not affordable from a financial point of view;

¹⁷ https://www.sosial.gov.az/post_509945 İşçilərin minimum əmək haqqı 2022-ci il yanvarın 1-dən 300 manatdan az ola bilməz

¹⁸ <https://www.stat.gov.az/news/index.php?id=5155> İqtisadiyyatda işləyənlərin sayı və əməkhaqqı barədə

- loopholes in the legislation and unclear implementation mechanisms;
- lack of formed uniform judicial practice;
- the defense's preference for the house arrest restrictive measure;
- lack of interest of the preliminary investigation authorities and the prosecutor in charge of the procedural aspects of the preliminary investigation in the application of bail restrictive measures, and unjustified preference for arrest restrictive measures in many cases;
- the defendant's lack of interest in the procedure for the application of the bail restrictive measure in a number of cases regarding the fact that it takes a long time.

8. Recommendations

In order to solve the mentioned problems, gaps and ambiguities in the legislation should be eliminated first, so that real mechanisms for the implementation of the bail restrictive measure can be formed in practice. We believe that first, an amendment should be made to the Code of Criminal Procedure regarding the amount of bail. So, taking into account the standard of living, minimum and average monthly wages of the broad population, a realistic and affordable amount that will allow the application of bail must be determined.

Based on the general conclusion and the results of the report, the recommendations can be grouped according to the state bodies as follows.

Milli Majlis of the Republic of Azerbaijan:

- Mili Majlis should revise the norms reflected in the Code of Criminal Procedure regarding the bail restrictive measure, make additions and amendments to the legislation in order to eliminate the existing gaps, and adopt norms providing for a simplified application mechanism of this restrictive measure;
- The application of the bail restrictive measure for intentional serious and especially serious crimes should be introduced into the legislation.
- The amount of bail should be adapted to the real income of the population.

President of the Republic of Azerbaijan:

- The President must adopt decrees and orders characterizing the bail restrictive measure and providing for its application.

Supreme Court of the Republic of Azerbaijan:

- In order to ensure the stability of the approach to the resolution of legal issues related to the bail restrictive measure in the courts, as well as its application, serious measures should be taken for the formation of a unified judicial practice, and an appropriate decision of the Plenum should be adopted;
- When determining the amount of bail, the courts should examine the financial and family situation of each person in detail, and should cooperate flexibly with the accused's advocate in this direction;
- When reviewing the submissions of investigative bodies regarding the choice of the arrest restrictive measure, whether there are material and procedural legal grounds for the choice of this restrictive measure should be investigated in detail, and non-custodial restrictive measures should be preferred. At this time, judges must **strictly follow the basic principles and conditions of criminal proceedings**;

Prosecutor General's Office of the Republic of Azerbaijan:

- Actions should be taken to involve the employees of the prosecutor's office in consistent training on non-custodial restrictive measures, including the bail restrictive measure;
- It should be encouraged that primary investigative bodies take the initiative to widely apply non-custodial restrictive measures, including the bail restrictive measure;
- When addressing the courts with submissions regarding the choice of preventive measures for accused persons, they should avoid subjective considerations and non-procedural attitudes.

Bar Association of the Republic of Azerbaijan:

- Advocates should be involved in continuous training on issues related to the right to liberty and security, including the bail restrictive measure, and advocates should be encouraged to submit motions for the application of bail in courts.

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Reference to IDI is compulsory when using information.

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