



Release on Bail



Yerevan, 2007

1. What is bail?

Bail is an alternative preventive measure to the preventive measure applied as detention against the defendant and it is applied only in case the court has made a decision about detaining the defendant.

By saying bail we understand a sum of money, securities, other valuables or, if the court permits, also real estate, which is paid to the court's deposit account to ensure that the accused is at the disposal of the body carrying out criminal proceedings.

Thus, bail is a guarantee for the defendant to be in freedom until a judgment is made against him.

2. When can a person be released on bail upon the moment he appeared in custody?

An arrested person can be kept under custody no more than 72 hours. During this time a charge shall be brought against him and if necessary the question of choosing detention as a preventive measure shall be determined in court. If a preventive measure is chosen regarding not keeping the person in detention or a preventive measure is not chosen at all, the latter is released. And if detention is chosen as a preventive measure, the defendant has the right to file a motion about being released on bail.

3. Who makes the decision about release on bail and when?

The court makes a decision about releasing the defendant on bail. When discussing the motion made by the pre-investigation body, the investigator or the prosecutor about detention, the court discusses also the possibility of releasing the defendant on bail.

4. What if the bail issue is not discussed at all at that moment? Can the defendant or his defense attorney file a motion later?

Yes, later at any investigation or trial stage the defendant or his defense attorney can file a motion to the court to release the defendant on bail, as well as to reduce the bail amount.

5. If bail has been refused, can the defendant or his defense attorney again apply to court later with a request to discuss the issue once more?

According to the European Convention of Human Rights and Fundamental Freedoms, despite the fact whether the motion about release on bail has once been rejected or not, some time later the defendant has the right to file the same motion. It is prohibited to reject the motion with the reasoning that the previous court decision about rejecting bail has not been appealed to the Court of Appeals or to the Court of Cassation.

In *Bezicherie vs. Italy* the European Court found that since new circumstances may arise after the bail issue has been first discussed, an opportunity shall be given so that the issue of lawfulness of the detention is regularly discussed within reasonable time periods.

Considering the essence of pre-trial detention, the court found that those time periods must be short and in that particular case a one-month period was considered sufficient.

Pursuant to paragraph 4 of Article 137 of the RA Criminal Procedure Code the court can later review its decision about the inadmissibility of bail or the sum of the bail according to the motion filed by the defense party.

The court's decision about finding bail inadmissible can be appealed to the superior court.

6. What types of crime does bail apply to?

According to the Criminal Procedure Code of the Republic of Armenia, bail can be applied to not grave crimes and medium gravity crimes.

In case of grave and particularly grave crimes the Criminal Procedure Code of the Republic of Armenia does not provide such a right, although the European Court practice gives such a possibility. For example, in *Nikilov vs. Bulgaria*, March 25, 1999 and *Coballero vs. United Kingdom*, February 8, 2000 the European Court made a decision that automatic rejection to appoint bail in case of grave and particularly grave crimes according to the national legislation is considered a violation of Article 5(3) of the European Convention of Human Rights and Fundamental Freedoms. Following the European Court precedent, the RA courts directly apply Article 5(3) of the European Convention. For instance, the decision made by RA Shengavit First Instance Court on May 16, 2006 or the one made by the First Instance Court of RA Gegharkunik marz on January 24, 2007¹.

7. In the existence of which circumstances is bail applied?

Bail is an alternative preventive measure to detention. Like detention, it can only be applied to the defendant. Bail should be applied in all cases when the defendant has committed a crime which is not grave or is of medium gravity and detention as a preventive measure has been undertaken against him. Only in the existence of certain circumstances the court can find the release on bail inadmissible by mentioning about the motives by all means. Such motives may include lack of knowledge about the defendant's identity, not having a permanent place

¹ It is planned to pass a new RA Criminal Procedure Code. We hope that the contradictions found in the effective Code, specifically regarding bail, will be complied with the European Court standards.

for living or if the defendant has made an attempt to hide from the body carrying out criminal proceedings.

The European Court has found that in any case it is wrong for the court to write just a general idea in its decision about rejecting bail that the defendant will hide from the trial or he will commit a new crime. It is indispensable to bring evidence substantiating that idea. It stands to reason that the defense party should have a chance to study all the evidence presented to substantiate bail.

The rejection of bail is impermissible when there are only reasonable doubts that a crime will be committed.

8. Who can file a motion about applying bail?

Detention and bail are applied only by the court's decision upon the investigator's or the prosecutor's motion or on personal initiative while the case is being heard in the court. The court can also apply bail instead of detention upon the motion made by the defense party.

9. What are the minimum and the maximum amounts for bail?

The law provides the minimum amount of bail, which is 200,000 AMD for not grave crimes and 500, 000 AMD for medium gravity crimes.

The RA legislation does not provide the maximum amount for bail. However, in accordance with the European Court case law the amount for bail shall be determined by taking into account each individual's personal means and should not be stipulated by the law, for example, *Styakov vs. Bulgaria*, October 12, 2006, *Skrobol vs. Poland*, September 13, 2005, *Toshen vs. Bulgaria*, August 10, 2006.

10. Where is bail paid at and how?

Bail is paid to the court's deposit account in the form of money, securities and other valuables. With the court's permission real estate can also be accepted as bail. In the event bail is made in the form of other valuables or real estate the pawnshop shall bear the burden of proof for the amount of the those valuables.

11. Who can pay the bail?

The defendant, his/her relatives and any person can pay the bail.

12. How and when is the defendant released from detention once the bail is paid?

Once the bail is paid the relevant document evidencing it shall be submitted to the body carrying out the proceedings, i.e. the court, the prosecutor, the investigator, the pre-investigation body. Shortly afterwards the body carrying out the proceedings shall give an assignment to the administration of the detention center, which in its turn is obliged to release the defendant promptly from detention.

13. Who determines the amount of the bail?

The court determines the amount of the bail by considering the rules mentioned in question 8. Although the legislation does not provide the maximum amount of the bail, nevertheless the court, while determining the amount of the bail, should consider the financial state of the accused, his family conditions and the number of people who are under his care.

14. What kind of responsibilities does a person who has been released on bail have?

The defendant who has been released on bail is at the disposal of the body carrying out the proceedings. This means that he/she should not hide from the trial, must appear upon summons and not to leave for another place without his permission.

15. What consequences can violation of the terms of the bail have?

If the terms of release on bail are violated, the prosecutor shall apply to court with a motion to take the bail as state income. The prosecutor can also file a motion on substituting bail with detention.

16. Can the decision on making the bail as state income and/or substituting it with detention be appealed?

Yes, if the court grants the prosecutor's motion and makes a decision on making the bail as state income and substituting it with detention, these decisions can be appealed.

The defendant or his/her defender can appeal such court decisions to the Court of Appeal and later to the Court of Cassation.

17. When is the bail returned?

In all cases the bail is returned to the pawnshop, with the exception of cases when a decision has been made to make the bail as state income. If the defendant has not violated the terms of the bail, the bail is returned after the judgment has been made. Bail is returned in all cases irrespective of the fact whether the person is sentenced to imprisonment or not.