



THE ROLE OF THE RULES RELATED TO THE APPLICATION OF THE INSTITUTE OF PRIVATE PROSECUTION IN ENSURING COMPENSATION FOR PROPERTY DAMAGE

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

Email: temurmavlonov12345@gmail.com

<https://doi.org/10.5281/zenodo.17287810>

Annotation: This article reflects the impact of some provisions related to the institution of private prosecution on ensuring compensation for property damage caused by a crime and other related opinions and considerations, reviewed the literature, and made a general conclusion.

Keywords: private prosecution, damage, property damage, civil defendant, compensation for damages, victim's complaint.

The institution of private prosecution, applied under Article 325 of the Criminal Procedure Code under the name "Initiation of a criminal case based on a complaint of the victim," is applied for crimes stipulated by 16 articles of the Criminal Code. Reconciliation can be applied after the initiation of criminal proceedings for the crimes provided for in 14 of these articles. We know that all crimes provided for in Article 325 of the Criminal Procedure Code are directed at social relations affecting the interests of individuals, and the interests of the state and society are practically not harmed. In the commission of crimes stipulated by these articles, the decisive role in the initiation of criminal proceedings depends on the victim's application. Most victims are not interested in the prosecution of the perpetrators and the application of punishment to them, on the contrary, compensation for the material and moral damage caused to them is more important for them.

Today, the reasons why persons who have suffered from crimes provided for in Article 325 of the Criminal Procedure Code do not submit an application are:

- compensation for all damage caused by the person who committed the crime at the pre-investigation stage;
- the pardoning of persons who have suffered from a crime by those who have committed a crime for various reasons;
- kinship and other close relationships with the persons who committed the crime;
- the existence of the opinion that the initiation of a criminal case will lead to unnecessary hassle, etc.

As mentioned above, compensation for damage caused by a crime prevents the victim from filing an application, thereby contributing positively to the practice of compensation.

However, there are some problems associated with it. Today, many issues related to the institution of private prosecution remain unresolved in our legislation. In particular, **if the victim refuses to file a complaint, will they lose the right to reapply for this situation later?**

Of course not. According to our current legislation, if the damage caused is compensated, but the victim of the crime subsequently files a complaint, this leads to the initiation of a

criminal case. This will inevitably affect the effectiveness of the private prosecution institution in compensating for damages.

In the course of our research, it became clear that although the damage caused by the persons who committed the crime is compensated, there are cases of subsequent appeals by victims of the crime, which led to a decision to initiate criminal proceedings, and the issue of bringing them to criminal responsibility is being considered, although the persons who committed the crime compensated for the damage. This leads to the emergence of fear among individuals who subsequently commit crimes of this category that "even if I compensate for the damage, if the victim later files an application, a criminal case will still be initiated."

In cases involving private prosecution, the legislation of foreign countries, in particular Japan[8] and Kazakhstan[1], stipulates that if the victim refuses to file a complaint or withdraws it, the proceedings are terminated, and they lose the right to reapply. Japan also sets deadlines for private prosecution, and the victim loses the right to appeal after six months after realizing that these crimes were committed against them.

B.N. Rashidov proposed to introduce into the Criminal Procedure Code a norm on the refusal to consider a person's appeal in cases of private prosecution, even if they withdraw their complaint and subsequently apply for it [2, p.208].

In our opinion, if persons who have suffered from crimes related to private prosecution refuse to file a complaint or withdraw their complaint, they should be deprived of the right to subsequently appeal this situation.

Also, one of the problems associated with private prosecution in the practice of pre-investigation checks is that in cases where a person who has filed a complaint wants to withdraw their application, we can observe the absence of procedural rules regulating this process, and in such cases, there are cases of receiving a "counter-application" from individuals by practitioners.

Another negative consequence arising as a result of private prosecution is that persons who have suffered material damage as a result of this crime demand from the person who caused the damage to them the return of material assets in an amount significantly greater than the actual damage caused. There are also cases of threatening to apply to law enforcement agencies with a statement if the requested amount is not paid, even if the actual damage is compensated.

Moreover, at the stage of pre-investigation verification, when a person who could subsequently be involved in the case as a victim refuses to file a complaint, the issue of how this circumstance is formalized is not regulated within the framework of criminal procedure legislation. In connection with this circumstance, B.N. Rashidov emphasized the need to "create a real opportunity for the victim to exercise their dispositive rights, provide them with the opportunity to exercise the rights provided for. It is advisable to explain in detail the procedural rules established in Article 325 of the Criminal Code of the Republic of Uzbekistan and to formalize the case of the victim's refusal to file a complaint without any pressure on him, as well as to record this process on video" [3, p.28].

D.R. Turaeva emphasized that in this case, the victim of the crime should be explained that they have the right to file a complaint or refuse to file a complaint in the presence of witnesses, and if they refuse to file a complaint, they will be deprived of the right to subsequently file a

complaint regarding this situation, and these processes should be formalized in a protocol [5, p.58].

The introduction of these provisions into the Criminal Procedure Code will give impetus to the desire of persons who have committed crimes to eliminate the consequences of the crime, and will put an end to their fear that if the victim refuses to file a complaint and subsequently files another complaint regarding this situation, their actions to compensate for the damage will be ineffective.

Taking the above into account, it is recommended to supplement Article 325 of the Criminal Procedure Code of the Republic of Uzbekistan with the following third part:

"The fact of refusal to file a complaint or withdrawal of the filed complaint must be reflected in the minutes in the presence of at least two witnesses. In the process of drawing up a report, the person who refuses to file a complaint must be explained that they will lose the right to subsequently file a complaint regarding this circumstance."

The desire to evade responsibility encourages the perpetrators to compensate for the damage caused by the crime on their own initiative. Effective use of these aspects of the institution of private prosecution plays an important role in ensuring compensation for property damage caused as a result of the crime. Taking this purpose into account, to expand the range of circumstances under which a criminal case can be initiated based on a complaint from the victim, **which elements of a crime stipulated by the Criminal Code should be added to the list in Article 325 of the Criminal Procedure Code?**

As previously noted, reconciliation can be applied after the initiation of a criminal case in relation to the majority of crimes for which a criminal case can be initiated based on the victim's complaint. Today, the times themselves demand that a number of articles of the Criminal Code (most of which are articles where reconciliation can be applied) be included in the scope of cases where criminal proceedings can be initiated based on a victim's complaint. Clause 37 of the "Comprehensive Program of Measures for Further Reforming the Judicial and Legal System, Strengthening Guarantees of Reliable Protection of the Rights and Freedoms of Citizens," approved by the Decree of the President of the Republic of Uzbekistan dated October 21, 2016 No. UP-4850 "On Measures for Further Reforming the Judicial and Legal System, Strengthening Guarantees of Reliable Protection of the Rights and Freedoms of Citizens," also serves as a basis for expanding the list of elements of a crime, for which the initiation of a criminal case is carried out only at the request of the victim, as a priority task[7].

Several scholars, including: D.R. Turayeva, cited Article 266, Part 1 (Violation of traffic safety rules or operation of vehicles) and Article 268 (Violation of rules for ensuring the safe operation of vehicles) of the Criminal Code. It is necessary to record the crimes provided for in Part 1 of Article 325 of the Criminal Procedure Code and classify these crimes as cases initiated only on the basis of an application filed by the victim" [5, p.103]. These articles, proposed by D.R. Turaeva, should be supplemented in accordance with Certain provisions of the theory may prevent inclusion in Article 325. That is, social relations related to the person should occupy the main place as the main direct object of crimes provided for in Article 325 of the Criminal Procedure Code. The main direct object of the proposed articles 266, 268 of the Criminal Code is social relations consisting of ensuring public safety in the field of traffic and operation of vehicles [4, P.769]. But this is just a theory. In our opinion,

these articles of the Criminal Code, to which reconciliation can subsequently be applied, must be included in Article 325 of the Criminal Procedure Code.

B.N. Rashidov listed a number of articles of the Criminal Code as crimes that should be included in this article. In particular, Articles 106-109, 112, parts one and two of Article 116, Articles 122-123, Article 125, 137¹, Articles 138-140, 148, 141-1-143, 168, 169, 181-181-¹, 191-192-¹, 229, parts one and two of Article 256, part one of Article 257, part one of Article 258, part one of Article 259, part one of Article 260, part one of Article 262, part one of Article 263, 263-¹, part one of Article 266, part one of Article 267, part one of Article 268, part one of Article 269, part one of Article 277, and part one of Article 298 of the Criminal Procedure Code.

We consider it inappropriate to include some of these articles in order to compensate for property damage caused as a result of the crime. In particular, the third part of Article 122 (Evasion of material support for minors or incapacitated persons) and the second part of Article 123 (Evasion of material support for parents) of the Criminal Code stipulate that a person is released from criminal liability if they have fully repaid the alimony debt.

And in our opinion, in accordance with part one of Article 168 (Fraud), part one of Article 170 (Inflicting property damage by deception or abuse of trust), Article 172 (Deliberate attitude to the protection of property), Article 173 (Intentional destruction or damage of property), Article 229 (Arbitrariness), part one of Article 266, part one of Article 268 and crimes provided for in part one of Article 298 of the Criminal Procedure Code We consider it expedient to **include the first part of Article 325 in the category of cases initiated on the basis of a complaint filed by the victim.**

Taking these considerations into account, we recommend to state part one of Article 325 of the Criminal Procedure Code of the Republic of Uzbekistan in the following wording:

"in part one of Article 105, Article 109, part one of Article 110, Article 111, part one of Article 118, part one of Article 119, part one of Article 121, Article 136, parts one and two of Article 139, parts one and two of Article 140, part one of Article 141, Article 149, part one of Article 168, part one of Article 170, Article 172, Article 173, Criminal cases concerning crimes provided for in Article 229, part one of Article 266, part one of Article 268, part one of Article 298 are initiated only on the basis of a complaint filed by the victim with a request to bring the guilty party to justice. In exceptional cases, when the victim is unable to protect their rights and legitimate interests due to helplessness, dependence on the accused, or for other reasons, the prosecutor is obliged to initiate criminal proceedings without the victim's complaint."

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