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## About Counteraction To Extremism And Terrorism In Kazakhstan

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### **Abstract**

The comparative and legal analysis of the criminal legislation as a method, gives the grounds to consider terrorism as the extreme form of extremist activity which is mainly realized in the political sphere and shown in violent acts. As a result, acts of terrorism and extremism can be made only with direct intention as the person in this situation realizes public danger of own actions, expects the possibility or inevitability of socially dangerous consequences and wishes their approach. In conclusion, it is important to define the ratio of the concepts terrorism, terrorist activity and terrorist act with the definition extremism.

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**Keywords**: Extremism, Terrorism, Definitions, Factors and Purposes.

# Sobre La Lucha Contra El Extremismo Y El Terrorismo En Kazajstan

### Resumen

El análisis comparativo y legal de la legislación penal como método, da las bases para considerar al terrorismo como la forma extrema de actividad extremista que se realiza principalmente en la esfera política y se muestra en actos violentos. Como resultado, los actos de terrorismo y extremismo solo pueden realizarse con una intención directa, ya que la persona en esta situación se da cuenta del peligro público de sus propias acciones, espera la posibilidad o inevitabilidad de las consecuencias socialmente peligrosas y desea su enfoque. En conclusión, es importante definir la proporción de los conceptos terrorismo, actividad terrorista y acto terrorista con la definición de extremismo.

**Palabras clave:** extremismo, terrorismo, definiciones, factores y propósitos.

### 1. INTRODUCTION

The Kazakhstan society undergoes the deformation of the former system of group and individual values in the conditions of sovereignty formation, caused by external and internal political, economic and social factors. The consequences were stratification of society, the hidden internal tension in the interpersonal, confessional and interfaith relations. In these conditions, the radical extremist and terrorist positions of the separate groups, planning to destabilize the

situation in the country for achievement of the own purposes began to be shown. Distribution of extremism in Kazakhstan (first of all, Islamic) and its radical form of aggravation of terrorism – is one of the main threats of national security of the state. It is especially relevant, because about 1000 citizens of the country were involved in military operations in Syria and Iraq on the party of ISIL. Here, in our opinion, most of the young people who do not have the firm moral and spiritual vital guidelines, as a rule, become an easy mark of adherents of extremism.

The threat of terrorism and extremism in Kazakhstan does not have the hypothetical, but quite real character in the conditions of globalization of the international terrorism. According to statistical data for 2017, the law enforcement agencies of the republic registered 453 crimes, connected with extremism and terrorism (the main part of crimes was made, according to Article 174 Incitement of social, national, clan, racial or religious enmity- 219 crimes, Article 256 Advocacy of terrorism or public incitement to commit an act of terrorism- 133 crimes, Article 257 Creation or leadership of the terrorist group and participation in its activities- 40 crimes) that is 9% less in comparison with 2016 (497 crimes); whereas for 9 months 2018 - 279 crimes (the main part of crimes was made, according to Article 174 Incitement of social, national, clan, racial or religious enmity- 132 crimes, Article 256 Advocacy of terrorism or public incitement to commit an act of terrorism - 62 crimes, Article 257 Creation or leadership of the terrorist group and participation in its activities- 11 crimes) that is 26% lower in comparison with the same period of 2017 (379 crimes). It is an observed penetration from the foreign Islamic centers on adjacent territories of the Central Asian republics of

religious-extremist and radical emissaries. It is fixed in the Southern Kazakhstan and Jambyl regions propaganda activity of the foreign radical movement Tablighi Jamaat which created an underground network of cells.

The events of the last years showed that in Aktyubinsk, Aktau, and Dzhambul and in other regions, the primary threat is represented by ideologists and predicants of non-traditional for Muslims of Kazakhstan the currents of Islam –Salafism and Wahhabism. Leaders and ideologists of the Salafi (Wahhabi) current expand the ranks of their adherents, first of all, at the expense of youth. In this regard, it was wrong to support the practice of opening of schools, lyceums and other educational institutions by representatives of the religious faiths of the foreign states. The teachers in every possible way encouraged the pupils who strictly observed the religious rites as well as propagandized the advantages of the state structure of the countries organizing these educational institutions. The task of illegal activity of these destructive elements - is a creation of the clean state on the Muslim (Wahhabi) basis, rejection of religious dissent, the statement of priority of the Muslim community over institutes of the governmental authorities and also the formation of the Islamic legislation as the legal basis of the political system. Ways of its solution are destabilization of the situation in the Kazakhstan society, destruction of government institutions of the secular establishment of the archaic regimes or autonomy of some country regions, and it is done in the background of the ideas of religious intolerance. It is obvious that the behavior of adherents of Islamic extremism and their supporters, motivated by the specified ideas, has

the strict orientation, directed against the persons preaching other religion or who are the atheists, that is even more dangerous.

### 2. DISCUSSION

The religious extremism on ways of realization has various forms, but it is steadily shown as aggressive behavior of the concrete social subject, the characteristic feature of whom is the noncritical attitude towards himself in combination with extremely critical attitude towards others (to adherents of the different faith, dissidents), that is to those who do not support his religious beliefs. The traditional religion proclaims tolerance of the believer to sinners and adherent of the different faith as well as self-criticism, understanding of complexity and variety, both the outside world, and inner spiritual world of the person, his openness in relation to other people, readiness to create good. And religious extremism turns the believer into slaves of the deformed belief where it is lost in his behavior the true moral freedom, which makes him the spiritual personality.

External forms of manifestation of religious extremism are illegitimate, violent, destructive, aggressive acts of the bearer of concrete religious beliefs on the attitude not only towards others, people of other faiths, but also towards himself, i.e. various ways of self-wrecking, up to self-destruction. Readiness of the extremist to pursue and destroy physically of the opponents is his hidden fear of the hostile outside world and adherents of the different faith. Behind noncritical conviction and self-conceit, pride of the believer extremist

there is concealed, per se, the actual disbelief in both the omnipotence of God and himself. The threat of commission of terrorism acts for the whole world remains high, despite the measures for prevention, identification and fight against terrorism manifestations, undertaken by the international community (Zinchenko, 2014; Wyrasti et al, 2019).

For today, the factors, having an impact on maintenance of the ideas of terrorism in Kazakhstan, are: 1) recruiting activity of the international terrorist organizations on the Internet (social networks like Facebook, in the contact, etc.) and 2) the return from hot spots to the homeland of radically minded individuals. The danger of these factors is caused by the fact that the persons, enlisted through social networks, often act as terrorists - lone persons, and those who were in the combat zone – have experience of warfare. At the same time, the strengthening of pressure on the terrorist organization Islamic State in Iraq and the Levant (ISIL) gives the focus of its attention towards the countries of the Central Asian region. It is observed in the background of the military conflict in the Syrian-Iraqi zone the transformation of forms and methods of terrorist activity worldwide. The acts of terrorism, committed in 2018, demonstrate that the international terrorist organizations moved from network structure to formation of autonomous cells. These approaches predetermined change of the forms of terrorist activity which were revealed in the following:

- 1) It is often practiced nonselective approach in the choice of purpose in large megalopolises with elements of spontaneity, suddenness and large number of the victims (such actions can be covering for the preparation of more resonant attacks on the strategic objects);
  - 2) Several acts of terrorism are committed simultaneously;

- 3) There are widely applied the supporters of radical Islam without combat experience, who were trained by the independent online courses of preparation and who are ready to die during terrorist activity;
- 4) There are applied the attempts to gaining access to the substances, removed from free circulation, for their further use and for the commission of terrorism acts;
- 5) The direct connection of members of international terrorist organizations with their commanders is weakened, and in the background of this, their independence in making of the solution increases;
- 6) It is observed independence in material-technical and personnel in terrorist activity of separate cells.

### 3. RESULTS

In our opinion, it is necessary to know the deeply essence of these phenomena for effective counteraction to extremism and terrorism and also for making preventive actions in society (first of all among youth). At the same time, it is difficult to give the general concept of extremism in connection with a variety of its manifestations. This wrongful act is defined by Ojegov S.I. and Shvedov N.Yu. as follows: Extremism (from French extremisme, from Latin extremus – extreme) – is the commitment to extreme views and, in particular, to measure (usually in the policy). For the first time, the term extremism in international law was confirmed in the Declaration

on measures to eliminate international terrorism, adopted by Resolution of the United Nations General Assembly of December 9, 1994, No. 49/60. The Shanghai convention on combating terrorism, separatism and extremism of June 15, 2001 gives the following definition: Extremism is any act of commission directed to the forcible seizure or retention of the power and also to forcible change of the constitutional system of the state, and equally forcible infringement of public safety, including the organization in the above-stated purposes of illegal armed groups or participation in them, and prosecuted criminally according to the national legislation of the Parties (Primbetov & Mukashev, 2016).

There is no concept of extremism in the Criminal Code of Kazakhstan. The legislator was limited only by enumeration of articles of the Code which are recognized as extremist crimes. So, according to Article 3 p. 39 of the Criminal Code of Kazakhstan (further as CC RK), those are the act of commissions provided by Articles 174, 179, 180, 181, 182, 184, 258, 259, 260, 267, 404 (by parts of the second and third) and 405 of the present Code. Etymologically, the basis of extremism is the aggression filled with any ideological contents (sense). Extremism could be treated as the illegal acts of the desperate, unbalanced people, as a rule, of young age, and also the parties pursuing the specified purposes and using them as tactics of the political struggle (Polina & Elena, 2012; SaadatEmam & Shajari, 2013).

The analysis of the current legislation showed that despite heightened interest in problems of terrorism and extremism, the common approach to their understanding did not develop. In some cases, it is taken place the identification of extremism and extremist activity (Russia, Kyrgyzstan), in others, there are carried out their consecutive differentiation (Moldova). In this sense, it is deserved the positive assessment the Law of the Republic of Kazakhstan On counteracting extremism of February 18, 2005, No. 31 which is not only differentiated the concepts extremism and extremism financing, but it is also subdivided the first into several types (political, national, religious). However, the marked out extremism forms, as it is fairly noted in the literature, in fact, act rarely in the clean view. So, the national extremism always has the elements of extremism of political and rather frequent as religious.

The similar situation is developed regarding the ratio of the concepts terrorism, terrorist activity and act of terrorism. In this sense, it is caused the objection and interpretation of terrorism in the Law of the Republic of Kazakhstan On combating terrorism of July 13, 1999 No. 416-I which is actually identified with the act of terrorism. Meanwhile, the correct interpretation of the used concepts is represented extremely important from the point of view of the question solution on the criminal liability of the concrete persons involved in similar activity. Anyway, it is necessary to differentiate extremism and terrorism as well as the concepts derived from them, in order to avoid contradictions in law enforcement. Meanwhile, the analysis of qualification of participation in the activity of the extremist organization has the rather serious divergence in their legal assessment by the courts. It is, partly, explained by that the extremism and terrorism follow from the cultural, political, social and economic situation in society, predetermining their rather specific motivation, and also methods and ways of criminal activity. At the same time, its substantial party can be characterized by the actions which are inherent

in other criminal manifestations. Owing to this fact, there are big problems with attribution of the concrete committed acts to the number of terrorist acts. There is another extreme: to call terrorism, what it is not in essence

Thus, the complex of the considered manifestations of human activity and lack of the clear understanding of their ratio are created, quite often, the considerable difficulties at the qualification of the committed acts; it creates the problem of duplication of the norms on the criminal legislation, which are generated the difficulties at the qualification of the criminally punishable acts. At the same time, the determination of objective signs of corpus delicti is quite often problematic. In this sense, it is interesting the disposition of the norm in Article 233-3 of the CC RK establishing the responsibility for the creation of group for the commission of the crimes pursuing the terrorist aims (terrorist group), and, it is equal, the management or participation in it or in committed acts. The fact is there can be the competition with norms according to the Article 233 considered through a prism of norms about participation. And, this calls into question the expediency of separation of such corpus delicate as independent (Osipov et al., 2015).

At the same time it is impossible to deny that commission of the terrorist acts by the group of persons represents big public danger, therefore, it has to be reflected in the qualified structure of the considered crime, for example, in the criminal legislation of the number of the states (Part 2, Article 205 of the Criminal Code (further CC) of the Russian Federation, 214.2 of CC of Azerbaijan, Parts 2 and 3 of Article 217 of CC of Armenia, Parts 2 and 3 of Article 179 of CC of Tajikistan, etc.). It gives the grounds to make the suggestion about

addition of p. 2 in Article 233 of CC RK with subparagraph c) on responsibility for the commission of crime by the group of persons by previous concert, and paragraph 3 – by subparagraph c), establishing responsibility for the commission of crime by the organized group. It is remarkable that similar approach is realized by the legislator in relation to other corpus delicti of terrorist character – seizure of hostages (subparagraph a Part 2, 3 of Article 235 of CC RK), seizure of buildings, constructions, means of communication and also (subparagraph a Part 2, 3 of Article 238 of the CC RK), the hijacking, as well as the seizure of the aircraft or watercraft, or railway rolling stock (subparagraph a Part 2, 3 of Article 239 of the CC RK) (Ojegov & Shvedov, 2012).

Anyway, acts of terrorism and extremism can be made only with the direct intention as the person in this situation realizes public danger of own actions, expects the possibility or inevitability of socially dangerous consequences and wishes their approach. At the same time, the motivation of terrorist and extremist activity has very difficult character and within criminal proceedings can be the object of the independent expert investigation and legal treatment, and during the execution of punishment – as object of educational influence. The purposes on commission of acts of terrorism and extremism can significantly differ. Moreover, there is basis to speak about their multileveledness. Together with it, the purposes pursued by ideologists of extremism can be invisible for ordinary performers who are under their influence. It is noted in the literature that the sanctions of the norms, establishing responsibility for the crimes of extremist character, significantly reduce the possibilities of differentiation. In particular, it was hardly worth to limit the choice of the punitive measure for

propaganda of terrorism or public calls for the commission of the act of terrorism, as well as distribution of materials of the specified contents only by the determination of the term of deprivation. In our opinion, the alternative could be restriction of freedom or arrest, at least, if the person is prosecuted for the first time.

Thus, it is represented paramount the improvement of criminal and legal mechanisms of counteraction to extremism and terrorism. including the solution of the questions on determination and execution of the punishment concerning the persons, guilty in commission of similar crimes. In addition, within the framework of the existing criminal and procedural procedure, it is very difficult to collect in the short time the sufficient complex of evidence for criminal prosecution and just punishment of the persons, involved in terrorism and extremism. In this regard, it is necessary to consider the question about the introduction of corresponding changes and additions into the CPC RK with introduction of chapter about special proceedings in such cases of the features of pre-trial investigation and court consideration of criminal cases about terrorism and extremism. We offer to add into the CPC RK the special withdrawals of the procedural form on criminal cases about terrorism and extremism, directed strengthening of guarantees of the interests of justice, at simultaneous restriction on the possibilities of interested participants of process to counteract disclosure of crimes and exposure of guilty persons (Oleynik, 2017; Francisco, 2018; Bintibadrulmunir et al., 2018).

The first, it is necessary to provide on the specified category of criminal cases the possibility at the discretion of the person, conducting pre-trial investigation, proceedings of urgent investigative actions, including secret, as a rule, without sanction of the investigative judge with the subsequent his notice (the search, seizure, compulsory survey, seizure of property, etc.). As the result of it, the efficiency of exposure of guilty person's increases, the risks of disclosure of operational information and destruction of proofs are minimized. The second, it is necessary to restore as soon as possible among tasks the crime detection in the Law of RK on criminal investigation activities. Otherwise, there are undermined such basis of operational search activity (further: OSA) as conspiracy of activity, the suddenness and tactics of operational search actions, confidentiality of secret sources; it is complicated the transformation of OSA results in such source of proofs as documents within Part 2 of Article 120 of the CPC RK.

For reference only: Part 2 of Article 120 of the CPC RK provides that materials which are recorded the actual data about illegal acts, obtained with observance of the requirements of the Law of the Republic of Kazakhstan On criminal investigation activities, are documents and can be used in criminal proceedings as proofs. The third, the application of the Miranda rule on cases of such category is possible to postpone until the announcement to the suspect of the resolution on the qualification of his act. For reference only: Part 6 of Article 64 of the CPC RK: If the suspect did not use the right to refuse from evidence prior to the first interrogation, he has to be warned that his evidences can be used as proofs in criminal proceedings, including at his subsequent refusal from these evidences. Part 1 of Article 131 of the CPC RK: At detention of the person on suspicion of the commission of criminal offense, the official of the criminal prosecution authority orally announces to the person on suspicion in commission of what kind of criminal offense he is detained, explains

him the right for the invitation of the defender, the right to remain silent and that what he said can be used against him in court. This restriction gives the possibility to body of investigation effectively and in a short time to use the evidences of a suspect as the only reliable source of the proof for disclosure and prevention of acts of terrorism, extremism, establishment and withdrawal of material and other evidences, identification of accomplices (Tabatabaei et al, 2014).

The fourth, the lawyers, having admission to the state secrets, have to participate as the defenders in cases of terrorism and extremism. Involvement of the defender by such cases should be determined from the moment of announcement to the suspect about resolution on the qualification of his act. These cases are investigated under the corresponding security classification. The constitutional right of the suspect on protection will be limited according to Article 39 of the Basic law of Kazakhstan. For reference only: Paragraph 1 of Article 39 of the Constitution of RK: Human rights and liberties and citizenship may be limited only by laws and only to the extent that it is necessary for full protection of the constitutional system, defence of social order, individual rights and freedoms, health and morality of the population. The fifth, provided by the Part 6 of Article 619 of the CPC RK, The order of the conclusion of the procedural cooperation agreement, the guarantees of confidentiality and safety of the person, concluding this cooperation agreement with criminal prosecution authorities on cases of terrorism and extremism, have to be applied without fail, but not at the discretion of the person conducting the process. Besides, it is necessary to apply unambiguously the Article 67 of the CC RK on relief from criminal liability of the person,

cooperating with criminal prosecution authorities on such affairs in all cases (Aris, 2009).

Thereby, the motivation of the person to cooperation with criminal prosecution authorities will be increased that, in turn, it will increase the crime detection of this category, will provide the comprehensiveness and completeness of the investigation of such cases. The sixth. In relation to this category of criminal cases in the offered special proceedings, it is necessary to detail the withdrawals of the rights of participants of process and minimization of guarantees of justice connected with evidences of anonymous witnesses (Parts 7 and 8 of Article 115 of the CPC RK), security measures (Chapter 12 of the CPC RK), terms of detention (up to 30 days – Part 1 of Article 139, Part 4 of Article 151 of the CPC RK), interrogation of the confidants and defended persons at investigation and in judicial examination (in the mode of online remote interrogation in the conditions excluding the recognition and decoding of the person according to evidences), jurisdiction of the jury. In the Republic of Kazakhstan, Law No. 191-IV On countering the legalization (laundering) of the proceeds of crime and the financing is in force since August 28, 2009 (Bakshi, 2002; Kosko & Singh, 2019).

In its framework the important institutional measure of strengthening of the fight against financing of terrorism is the change of departmental accessory of Service of economic investigations. This service was moved from structural submission of Committee of state revenues to the system of Committee of financial monitoring of the Ministry of Finance of RK. In this regard, it is increased possibilities of the independent, comprehensive and qualified implementation of criminal prosecution in the activity of the main department, including

in questions of counteraction to financing of terrorism in the country (Jenaabadi & Khosropour, 2014).

Besides, in the context of financial counteraction to criminal manifestation of terrorism and extremism, it is expedient to remove the artificial barriers, interfering application in Kazakhstan of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, adopted in Strasbourg November 8, 1990. In our opinion, the following two inadmissible reservations were made by Parliament of our country at the ratification of the Convention by the Law RK of May 2, 2011 No. 431-IV:

- 1) According to Paragraph 2 of Article 2 and Paragraph 4 of Article 6 of the Convention, the Republic of Kazakhstan applies Paragraph 1 of Article 2 and Paragraph 1 of Article 6 of the Convention to only those offenses which entail the criminal liability in accordance with the laws of the Republic of Kazakhstan;
- 2) According to Paragraph 3 of Article 14 of the Convention, the Republic of Kazakhstan applies Paragraph 1 of Article 2, Paragraph 1 of Article 6 and Paragraph 2 of Article 14 of the Convention in accordance with the Constitution and laws of the Republic of Kazakhstan.

These reservations, on the one hand, contradict Paragraph 3 of Article 4 of the Constitution of RK, saying about the priority of the international treaties, ratified by the Republic, before its laws. With another – they formed the basis for refusal in acceptance on storage in depositary of the Council of Europe of the original text of the ratified law that logically excluded the possibility of application of the Strasbourg Convention in the territory of Kazakhstan.

### 4. CONCLUSION

It is important to define the ratio of the concepts terrorism, terrorist activity and terrorist act with the definition extremism. In our opinion, terrorism should be considered as the extreme form of extremist activity which is mainly realized in the political sphere and shown in the violent acts, aiming at the creation of the atmosphere of tension in society and ensuring adoption of political decisions favorable to terrorists. It allows to draw the conclusion that the concept of extremism is much wider than the concept of terrorism, and the corresponding acts are not always penal.

It is expedient to reduce the age of the criminal liability for commission of crimes of extremist character (Articles 164, 168-171, 233-3, 236, Part 2 and 3 of Article 337, Article 337-1 of the CC RK) that will allow to perform earlier individual prevention concerning this group of persons, including with the use of coercive measures of educative influence which are outside of criminal justice and to realize them very difficult. At the same time, it is necessary to approach very carefully to qualification of actions of minors at the age of 16 years as an extremist, as well as to approach more flexibly to the prescription of punishment for the crimes committed by them, using the potential of educational measures.

It is deserved attention the potential, put in additional measures of punishment, which is used insufficiently. It is expedient to provide deprivation of the official or the head of the public association, guilty in distribution of materials of extremist contents, the rights to be appointed for the official position and to be engaged in the certain activity. Taking into account the above mentioned, it is suggested to state the sanction of the norm of Part 2 of Article 233-1 of the CC RK in the following edition: are punished by imprisonment for the period up to five years with deprivation of the right to hold certain positions and to be engaged in the certain activity. For differentiation of the sanction of the norms, establishing responsibility for crimes of extremist orientation, it is advisable to change Part 1 of Article 233-1 of the CC RK, presented it in the following edition:

- 1. Propaganda of terrorism or public calls for a commission of the terrorist act, as well as distribution of materials of the specified contents are punished by the penalty in the amount from three hundred to one thousand monthly notional units or in the amount of the salary or other income of the convict for the period from three to ten months, or restriction of freedom for the period up to three years, or arrest for the period up to six months, or imprisonment for the period up to two years.
- 2. The same acts committed repeatedly are punished by imprisonment for the period up to five years.

Introduction of a chapter in the CPC RK on features of proceedings on criminal cases about terrorism and extremism will allow to provide free investigation and objective consideration of the specified categories of criminal cases, the pronouncement of timely and fair sentence to terrorists and extremists. The norms of chapters on such criminal cases may contain the special withdrawals of the procedural form, guaranteeing first of all the justice interests, at the simultaneous restriction of the possibilities of the interested participants of proceedings to counteract in the crime detections and

exposure of guilty persons. In order to increase the effectiveness of counteraction to the international extremism and terrorism, it is represented obvious and reasonable to exclude two reservations, made at the ratification of the Convention by Kazakhstan on laundering, search, seizure and confiscation of the proceeds from crime, made in Strasbourg on November 8, 1990.

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