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## **Forms of interaction between state and law enforcement agencies on the use of information on countering the financing of weapons of mass destruction**

The relevance of research. The relevance of the problem under study is due to the need to develop a national concept for the control of weapons of mass destruction, taking into account national legislation, in order to develop a mechanism for monitoring activities in the field of trafficking in weapons of mass destruction, as well as measures to counter the merging with terrorist and religious extremist activities. Currently, financing of weapons of mass destruction poses a potential and real danger to the national security of the Republic of Kazakhstan, as well as the EAG countries. This is due to the common borders with many countries of the near abroad, a common historical past, and the manifestation of extremely negative factors of destabilization of states and the conduct of aggressive wars, with the use of such weapons, both in the Middle East and in other territories in the international community. The purpose of the article: is to determine the ways of interaction on the use of information by competent authorities countering the financing of weapons of mass destruction in the framework of international cooperation, as well as the system for the exchange and use of information by competent authorities countering the financing of weapons of mass destruction in the framework of international cooperation, consideration of legal and other mechanisms cooperation, coordination and control of weapons of mass destruction (manufacture, acquisition, storage and disposal, transportation), within the framework of national legislation. Research results: A national concept for the control of weapons of mass destruction of a national and international mechanism for monitoring activities in the field of the trafficking of weapons of mass destruction, sanctions for this criminal offense is presented and considered, new risks of financing WMD and their most problematic issues in the Republic of Kazakhstan are identified, taking into account the national legal system ensuring their effective resolution, as well as preventive measures for merging with the terrorism and religious extremist activities. Practical significance: Based on the current national legislation, the methodology for investigating crimes related to WMD and its financing and merging with international terrorism is determined, the main elements of the criminalistic characteristics of the type of criminal offense under consideration are identified, certain aspects related to the definition of weapons of mass destruction, their classification and types, the degree of the damaging effect and the severity of the consequences of their use, the purpose of punishment are identified, and the threats and vulnerabilities associated with financing the proliferation of weapons of mass destruction for modern Kazakhstan are identified.

*Keywords:* financing of weapons of mass destruction, identifying and suppressing the financing of terrorism, biological terrorism, chemical attacks, biological attacks, pathogens, effective measures to counter the financing of terrorism and WMD, terrorist financing risks and WMD, terrorist organizations and groups, terrorists, exploitation of natural resources, payment products and services

### *Introduction*

Proliferation, as well as financing the proliferation of weapons of mass destruction, is one of the dominant threats to peace and international security.

The UN Security Council resolution adopted on April 28, 2004, better known as the 1540 Committee, is a fundamental international document in the field of non-proliferation of weapons of mass destruction. The provisions of the 1540 Committee determined the further direction in this area, having laid the foundation for sufficiently universal provisions and recommendations of the UN Security Council regarding the ban on financing the proliferation of weapons of mass destruction, which are considered and have their own effective mechanism to date, and also determine the means of delivery of weapons of mass destruction, which include missiles and other unmanned systems capable of delivering nuclear, biological and chemical weapons, specially designed data for this application [1].

It should be noted that nuclear, chemical and biological weapons are classified as weapons of mass destruction. These types of weapons are defined as mass destruction of humanity, as a biological species, as well as causing irreparable biological harm to subsequent generations of people.

In accordance with the FATF provisions on countering the proliferation of weapons of mass destruction, the term «proliferation financing» is defined as the act of providing funds or financial services that are used, in whole or in part, for production, acquisition, possession, development, export, cross-border move-

ment, mediation, transportation, transfer, stockpiling or use of nuclear, chemical or biological weapons and their delivery vehicles and related materials (including dual-use technologies and products used for illegal purposes) in violation of national legislation or, where applicable, international obligation [2].

The UN Security Council in the area of countering the financing of the proliferation of weapons of mass destruction logically defines an approach in two main areas, namely:

- global, in accordance with the Provisions of the 1540 Committee and subsequent UNSC Resolutions;
- country (with respect to specific states, at the present stage of Iran, with the Corps of Guardians of the Islamic Revolution belonging to it, as well as the DPRK) based on UN Security Council Resolutions 1718 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 2231 (2015), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017), 2397 (2017), including the expansion of sanctions against such states for repeated violations of UN Security Council resolutions.

In addition, in the scope of its resolutions, the UN Security Council imposes mandatory obligations on participating countries (not only states, permanent members of the UN) with respect to financing the proliferation of weapons of mass destruction.

The FATF has a special role in countering the financing of the proliferation of weapons of mass destruction.

The mandates of the considered group for the development of financial measures to combat money laundering, as an intergovernmental body, provide for the standards established by it and the maximum assistance in the expedient and efficient use of existing regulatory measures of a legal and operational nature in order to finance the proliferation of weapons of mass destruction.

The developed recommendations of the FATF have identified a set of necessary measures that countries should use to counter the legalization of proceeds from crime, the financing of terrorism and the financing of the proliferation of WMDs. Also, in order to ensure national security of the state and, in accordance with this, to strengthen the regime of attention to counteract the financing of the proliferation of weapons of mass destruction, to strengthen and intensify the use of targeted financial sanctions by immediately freezing funds or other property in favor of / for any individual or legal entity, which are established by the UN Security Council, in accordance with Chapter VII of the UN Charter and the implementation of UN Security Council resolutions, in terms of preventing and preventing FROM.

It should be noted that a rather relevant issue is the organization of activities to counteract the proliferation of WMD proliferation in the aspect of national systems of countries and states.

This is due to the possibility and necessity of identifying and identifying existing risks and threats, and also helps to identify, suppress and disclose criminal schemes with the participation of legal entities and individuals that finance and directly proliferate weapons of mass destruction, which attract, transfer and use the necessary funds.

In accordance with Chapter VII of the UN Charter and the implementation of UN Security Council resolutions, the main aspects are identified for countering the financing of the proliferation of weapons of mass destruction in the following areas:

- the application of targeted financial sanctions for financing the proliferation of weapons of mass destruction (including the identification and prevention of evasion of sanctions), including guidance on the implementation of UN Security Council resolutions.

- the application of other measures included in UN Security Council resolutions that are outside of the FATF Recommendations 7, however, relating to FROM. This is due to the fact that they relate to targeted financial sanctions, which alone are not able to provide opposition to financing illegal procurement by Iran and the DPRK, which accordingly requires the use of alternatives from the private and public sectors;

- interdepartmental cooperation and coordination, including instructions for assisting and assisting in the formation and use of legal mechanisms for cooperation in countering the financing of the proliferation of weapons of mass destruction at the international and national levels.

- monitoring and supervision of compliance, containing recommendations to the relevant competent authorities on the monitoring and supervision of the use by the private sector of certain measures to counteract the financing of the proliferation of weapons of mass destruction.

The UN Security Council resolutions and the FATF Recommendations contribute to the actual implementation in domestic legislation, national legal systems, and in the practical activities of relevant state bodies of certain financial sanctions and other financial measures.

The aforementioned is enshrined in UN Security Council resolutions regarding the prevention of the proliferation of weapons of mass destruction, precisely in the unified established standards for international cooperation and legal assistance in this direction.

As stated earlier, the FATF recommendations form a comprehensive, logically sound system of measures that countries should use to counter the proliferation of weapons of mass destruction.

In this regard, the Republic of Kazakhstan is quite actively using in the national legal and legislative system, and, accordingly, in practical activities, UN Security Council resolutions and the FATF Recommendations on countering the legalization of money or other property obtained by criminal means (as defined by the current legislation of the Republic of Kazakhstan), financing of terrorism, and financing of distribution weapons of mass destruction.

It should be noted that the Republic of Kazakhstan, as an independent and sovereign state, not only openly, expresses a national peace policy, but also by its own example demonstrates the rejection of nuclear weapons.

The priority directions of the foreign policy of the Republic of Kazakhstan, as an anti-nuclear power, are the rejection of the use of nuclear, chemical and biological weapons.

The basis of this political and legal decision is the comprehensive strengthening of peace and international security, the comprehensive development of international cooperation and legal assistance, support in resolving military and other international conflicts (an example of this is the provision of a platform for international negotiations on the ATS).

The above serves to realize the goal of preventing the financing and proliferation of weapons of mass destruction, the dynamic development of strengthening the regime for the destruction of nuclear, chemical and biological weapons on a global scale, as well as developing a national concept for controlling the non-proliferation of weapons of mass destruction.

The Republic of Kazakhstan, which has been pursuing an anti-nuclear policy since the proclamation of its independence and sovereignty, constantly follows its political and legal principles of refusing to finance the proliferation of weapons of mass destruction.

In this regard, Kazakhstan has formed an intra-national non-proliferation regime for weapons of mass destruction, which was based on the decision of the Government of the Republic of Kazakhstan dated August 29, 1991 on the closure of the Semipalatinsk nuclear test site (SINP).

The results of this political step were the withdrawal of nuclear material from Kazakhstan, the staging of nuclear facilities of the Republic under the IAEA safeguards, the creation of the National Nuclear Center of Kazakhstan, where monitoring and experiments in the field of atomic energy and radiobiology (NNC RK) are carried out.

It should be noted that on the territory of the Republic of Kazakhstan there is a fairly developed nuclear infrastructure, within the framework of which there is industrial production of natural uranium and uranium ore, which has clear legislative regulation and is under the supervision and control of the relevant competent authorities.

In 1992, Kazakhstan launched an independent export of nuclear products, as well as their dual-use, as well as the development of strict export control measures. The dominant principles of export control measures were:

- strict adherence to international obligations regarding the non-proliferation of weapons of mass destruction and other types of weapons;
- strictly prioritizing political and legal interests in export controls;
- control of export of nuclear materials and dual-use technologies at the state level;
- clarity, transparency and reliability of the export control system, including at the international level.

The formation of the export control system in the Republic of Kazakhstan was founded by a Resolution of the Cabinet of Ministers of the Republic of Kazakhstan in 1993, and was marked by the adoption of a legislative act on the export and import of nuclear materials, materials and dual-use technologies. This led to the fact that Kazakhstan, a member country of the Union of Independent States (hereinafter referred to as the CIS), was one of the first to adopt the Law of the Republic of Kazakhstan «On export control of armaments, military equipment and dual-use products» in 1996.

In addition, in 2002, Kazakhstan joined the Group of Nuclear Suppliers (hereinafter NSG) in the international association. The nuclear group, which includes 48 states, is designed to limit the risk of nuclear proliferation by establishing export controls for key materials, equipment, and technologies.

Kazakhstan, as a member of the YaP Group, aims to step up measures to combat terrorism, counter the proliferation of weapons of mass destruction, strengthen control over the use and movement of nuclear materials, as well as dual-use products.

The Republic of Kazakhstan, which controls the means of transit, movement and delivery of weapons of mass destruction, is systematically involved in the development of the International Code of Conduct against the Proliferation of Ballistic Missiles, launched at an international conference in The Hague in November 2002, including the Global Initiative to Combat Acts of Nuclear Terrorism. This was reflected in the holding in 2010 of the next International Conference of the Global Initiative to Combat Acts of Nuclear Terrorism in Astana. Already in 2012, at the International Anti-Nuclear Conference also held in Astana, the initiative «Abolish Testing Our Mission» («ATOM») was launched, the main idea of which is to organize an international campaign whose goal is to provide accessible information about the consequences and threats of nuclear tests for the entire world community.

As an initiative to strengthen the non-proliferation regime of weapons of mass destruction and its financing at the Washington Summit in 2010, the Republic of Kazakhstan presented a package of proposals for the development of fundamentally new international acts of nuclear disarmament, namely, treaties on the universal horizontal and vertical non-proliferation of nuclear weapons, on the prohibition of production fissile materials for military purposes, as well as under the auspices of the UN to conclude a new Global Compact on the universal and complete prohibition of nuclear weapons.

In addition, the Republic of Kazakhstan advocated strengthening international control over programs in the field of nuclear energy control and called for the formation of new nuclear-free zones, including in the Middle East, with strong security guarantees from nuclear states and preferences in the development of peaceful nuclear energy. In this sense, the Republic of Kazakhstan is in favor of building up the efforts of states, as members of the world community, to counter the threat of nuclear terrorism, with the fundamental role of the UN and the implementation of UN Security Council resolutions on the non-proliferation of weapons of mass destruction.

An important step in strengthening the WMD nonproliferation regime was the signing at the UN headquarters in New York by representatives of the countries of Great Britain, China, Russia, the United States and France (the «nuclear five»), the Protocol to the Treaty on the Establishment of a Nuclear-Weapon-Free Zone in Central Asia (CACFA), which took place in 2014. This made a new round in the legal and political stage of the formation of nuclear-free zones, with guarantees not to use nuclear weapons against the «nuclear five».

A special role in the non-proliferation of WMD and its financing belongs to the International Atomic Energy Agency (IAEA), the International Atomic Energy Agency (IAEA), which is the main international organization for the development of cooperation in the peaceful uses of atomic energy, and in 1994 Kazakhstan entered its 121 full-fledged party.

The Republic of Kazakhstan, in accordance with the provisions of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), signed the Safeguards Agreement between the Government of Kazakhstan and the International Atomic Energy Agency (Almaty, 1994), which entered into force in June 1995 after ratification by the Decree of the President of the Republic. This led to the fact that national Kazakhstani organizations participate in the IAEA Technical Cooperation Program with IAEA member countries, which are aimed at improving the safety level of the use of atomic energy and nuclear-physical technologies, the development and implementation of new advanced methods in industry, science, and the social sphere, including healthcare and environmental protection. Also, in accordance with the specified Agreement on the application of safeguards, all nuclear activities in the Republic of Kazakhstan are under IAEA safeguards, and are carried out in accordance with the standards and rules of the international organization.

In 2015, the International Atomic Energy Agency supported the Republic of Kazakhstan in hosting the International Bank of Nuclear Fuel under its auspices.

In this regard, the participating countries are provided with reliable access to fuel for nuclear power plants, which will allow countries that do not have uranium enrichment facilities to have stable supplies of nuclear fuel, as well as reduce the risk of the proliferation of technologies classified as «secret», which in general it guarantees global security in the field of nuclear fuel, strengthens the international authority of the Republic of Kazakhstan and its initiative for the peaceful use of the atom.

It should be noted that the creation of the IAEA Low Enriched Uranium Bank and its deployment on the territory of the Republic of Kazakhstan under the auspices and control of the IAEA provides an opportunity for all states to carry out peaceful nuclear research and significantly reduce the risks of nuclear terrorism throughout the world community.

The Nuclear Security Summit in Washington (USA) in 2016, confirmed the high level of nuclear safety in the Republic of Kazakhstan. The improved Kazakhstani system of export control of nuclear materials, as well as the consideration of the formation in Kazakhstan of an Identification Center for Nuclear and Radioactive Materials, is emphasized.

The need to consider the strategy for countering the proliferation of nuclear, chemical and biological weapons, as well as their financing, is one of the main, in terms of global mechanisms that reduce the need for the acquisition and production of WMD, as well as the use of scientific research in this regard strictly for peaceful purposes.

The growing political and economic tension between the parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) reduces the development of scientific research in the field of nuclear energy for peaceful purposes, which actually impede scientific and technological progress.

The above also acts as a provocative factor, according to which the parties to the Treaty can illegally carry out activities contrary to the signed Treaty and provide the opportunity to obtain the necessary scientific, economic and other potential for the creation of weapons of mass destruction, its financing and proliferation.

In our opinion, the antinuclear policy of Kazakhstan, which it pursues in the world community, contributes to the creation of real and potential conditions for maintaining not only national but also international security.

In this regard, the Republic of Kazakhstan has a sufficient legislative base and strict legal regulatory mechanisms in the field of countering the financing of the proliferation of weapons of mass destruction.

Organization of activities for financing the proliferation of weapons of mass destruction (hereinafter referred to as FROMU) in the Republic of Kazakhstan is legally based on legislative acts (for example, the Law of the Republic of Kazakhstan «On the Use of Atomic Energy», the Law of the Republic of Kazakhstan «On Export Control», the Criminal Code of the Republic of Kazakhstan, etc.)

Considering the issue from the point of view of control and supervision, it can be noted that the principles and methodology of control and supervisory activity have not changed significantly since the collapse of the USSR and the legal system, including in the area of the proliferation of weapons of mass destruction and its financing.

Control and oversight functions were carried out not only by specially created state and national structures, but also by other state bodies within their competencies. At present, state bodies whose competence includes control and supervision of counteraction to the financing of the proliferation of weapons of mass destruction constantly perform their functions, including the correct implementation and application of legislative norms. The exercise of such functions takes place not only in relation to public authorities and administration, but also in relation to various institutions and organizations, as well as officials and citizens.

The functions of the control and supervisory bodies of state power and administration of Kazakhstan include dual measures, on the one hand law enforcement, and on the other hand administrative nature.

Law enforcement control and oversight activities include actions to identify and suppress violations of the secrecy, law and order regime, applying appropriate sanctions to offenders or raising the issue of correcting violations of the law and bringing perpetrators to legal responsibility before the competent authorities.

Administrative measures include the development and approval of various rules and standards in the field of countering the financing of the proliferation of WMD, both technical and organizational in nature, including the rules of accreditation, licensing, approval of the rules of state accounting and safety in the field of nuclear, chemical and biological weapons.

State bodies performing control and supervision functions carry out their activities in various areas of government.

The decisive role in organizing activities to counteract the proliferation of weapons of mass destruction belongs to the law enforcement and special bodies of Kazakhstan, as well as to the ministries that regulate relations in this area.

The Law of the Republic of Kazakhstan «On the Use of Atomic Energy» defines the legal basis and principles for regulating public relations in the field of the use of atomic energy in order to protect the life and health of people, their property, environmental protection, and is aimed at ensuring the non-proliferation of nuclear weapons, nuclear, radiation and nuclear security when using atomic energy.

In addition, in 2014, the Republic of Kazakhstan established the Committee for Atomic and Energy Supervision and Control of the Ministry of Energy of the Republic of Kazakhstan, where one of its main tasks is the implementation of state policy in the field of electric power and the use of atomic energy.

The functions of the Committee for Atomic and Energy Supervision and Control cover a fairly complete list of directions regarding the provision of state policy in the field of countering the financing of the proliferation of weapons of mass destruction.

These include not only the implementation of the regulatory and control and oversight functions, but also participation in the strategic functions of the central executive bodies, legal entities and individuals, as well as the adoption of regulatory legal acts (except those that affect the rights and freedoms of man and citizen in RK), international cooperation and licensing control.

The Committee for Atomic and Energy Supervision and Control is authorized, within its competence, to carry out inspections in the field of atomic energy and to carry out state control in the field of its use, compliance with radiation safety standards and rules, licensing conditions, as well as in the field of public radiation safety.

The powers regarding export, import, transfer, transit and placement of nuclear materials and other sources of ionizing radiation, as well as in the field of atomic energy use, are emphasized.

The State Atomic and Energy Supervision and Control Committee of the Republic of Kazakhstan is also responsible for maintaining state accounting of nuclear materials and sources of ionizing radiation, making decisions on the registration or removal of nuclear materials, sources of ionizing radiation from it, and the Committee for Atomic and Energy Supervision.

The current legislation of Kazakhstan establishes the right of the Committee for Atomic and Energy Supervision and Control to agree on the issuance of a license to state bodies implementing state regulation in the field of export control for the export \ import of nuclear and special non-nuclear materials, equipment, plants, technologies, sources of ionizing radiation, equipment and relevant dual-use goods and technologies, as well as works and services related to their production.

In addition, the implementation of licensing and permitting procedures within its competence, and the coordination of calculation methods related to nuclear, radiation and nuclear security, submitted by an expert organization;

On the territory of the Republic of Kazakhstan, the Committee for Atomic and Energy Supervision and Control organizes research on nuclear, nuclear physical and radiation safety.

Ensuring the nuclear non-proliferation regime and monitoring nuclear tests, developing and approving methodological recommendations for individuals and legal entities operating in the field of atomic energy use, regarding methods and ways to confirm the compliance of the atomic energy object with nuclear, nuclear physical and radiation safety requirements, analysis and reconciliation of the received information on the presence, location and movement of ionizing radiation sources and enter e in the appropriate register (Register of sources of ionizing radiation)

The Committee for Atomic and Energy Supervision and Control is entrusted with the functions not only of certifying personnel engaged in labor activities at nuclear facilities, but also of accrediting organizations that conduct nuclear, radiation, and nuclear safety assessments and register them.

The Law of the Republic of Kazakhstan «On Export Control» regulates the basis and procedure for export control of armaments, military equipment, nuclear and special non-nuclear materials, military products, dual-use goods and technologies (destinations), raw materials, materials, equipment, technologies, scientific and technical information and services related to their production and use in the interests of international and national security, and strengthening the non-proliferation of weapons of mass destruction.

The main objectives of export control are ensuring national security, strengthening the non-proliferation of weapons of mass destruction, promoting the formation of a stable and secure system of international relations, as well as strengthening international security and stability, and preventing the proliferation of weapons of mass destruction and their means of delivery.

Currently, in addition to the above state competencies in organizing activities to counteract the proliferation of weapons of mass destruction, financial intelligence units and the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan play a special role. The activities of this organization in countering the financing of the proliferation of weapons of mass destruction acts as a structure assisting the law enforcement and special bodies of Kazakhstan in identifying FROMU, thereby providing evidence in accordance with the criminal procedure law.

In this regard, the most effective activities are carried out by law enforcement and special bodies of Kazakhstan to identify, suppress, disclose and investigate crimes related to financing the proliferation of weapons of mass destruction.

The criminal legislation of the Republic of Kazakhstan defines a specific norm (Article 162 of the Criminal Code of the Republic of Kazakhstan), according to which punishment is imposed in the form of prolonged imprisonment for the production, acquisition or sale of prohibited chemical, biological, nuclear or other types of weapons of mass destruction. Also on this type of crime in Kazakhstan there is a judicial practice, which currently has 12 investigated criminal cases implemented in court [3].

However, the specified substantive law norm is capable of its direct function only by means of operational-investigative and intelligence activities.

Thus, the Republic of Kazakhstan, as a state that has undertaken the obligation to renounce nuclear weapons (even to the detriment of its own national interests), not only exercises control and supervision so that no state, an international organization, legal entities or individuals, through transit, did not carry out operations in its territory related to financing the proliferation of weapons of mass destruction, but also coordinates activities to counteract the financing of the proliferation of weapons of mass destruction.

The successful detection, suppression and disclosure of various types of crimes is largely determined not only by the definition of their forensic nature.

In this regard, criminal activities related to the financing of the proliferation of weapons of mass destruction deserve special attention and comprehensive consideration not only from the standpoint of international legal standards, but also national legislation.

Moreover, a special role in this area belongs to preventive measures to prevent the facts of the acquisition by terrorist organizations and persons involved in such organizations of not only weapons of mass destruction, but also their precursors.

The legislation of the Republic of Kazakhstan does not determine the financing of the proliferation of weapons of mass destruction, but considers it only within the framework of countering the legalization of the financing of terrorism, as the provision or collection of money and (or) other property, property rights or benefits of a property nature, as well as gift, barter, donations, charitable help, the provision of information and other types of services or the provision of financial services to an individual or group of persons, or to a legal entity, committed by a person who was obviously aware of the terrorist or extremist nature of their activities or that the property provided, information, financial and other services rendered will be used to carry out terrorist or extremist activities or providing a terrorist or extremist group, terrorist or extremist organization, illegal militarized formation.

The above definition is fully consistent with the International Convention for the Suppression of the Financing of Terrorism, adopted in 1999 and the standards of the Group for the Development of Financial Anti-Money Laundering Measures (FATF), as international standards in this field, taking into account the flexibility of criminalization goals in the national laws of different countries.

#### *Materials and methods*

The leading approach to the study of counteracting the financing of the proliferation of weapons of mass destruction lies in the systemic-activity approach and the method of legal analysis of existing national legislation in this area.

#### *Results*

When considering the financing of the proliferation of WMDs as a crime, two main aspects must be distinguished.

Firstly, the general criminal law aspect of terrorist financing.

Secondly, the risks of financing the proliferation of weapons of mass destruction and their use by terrorist organizations.

This defines the purpose of immediate and effective adoption of measures to counter this criminal act. This is due to the fact that WMD financing is a phenomenon that is developing quite quickly in terms of new financial transformations and the logical emergence of the latest financial developments, including means of payment (cryptocurrencies) and money and value transfer systems.

In our opinion, effective counteraction to WMD financing also lies in the recognition of the factor that various types of terrorist organizations have financial and information management systems (a kind of budget and intelligence) that they have formed, which allows not only to acquire, but also to produce WMD.

In accordance with this, there is a need for the development by law enforcement and other competent authorities of legislative measures of strategic measures to counteract the financing of WMD in Kazakhstan.

From the point of view of substantive norms of the criminal legislation of the Republic of Kazakhstan, it is noted that the qualification of financing WMD of its precursors (for example, the use of precursors for the manufacture of artisanal weapons, the formation of an illegal paramilitary formation, etc.), as a criminal act, refers to any person who knowingly provides, or / and collects money, property, rights or benefits to him, including a barter, donation, charity, information, financial and other services, physical a person or a group of persons, or a legal entity. However, in the national legislation of Kazakhstan, the disposition of Article 162 of the Criminal Code of the Republic of Kazakhstan does not indicate a sufficiently significant element for qualifying WMD financing, namely, various assets as controlled resources for obtaining economic and financial benefits. This disposition is due to the fact that the aspects of financing WMD, and various forms of its implementation, have acquired a fairly wide international scale, reimbursement of the costs of terrorist operations, also related to the conduct of hostilities in the Middle East and terrorist attacks in Europe, increased activity of manufacturing of chemical weapons and its use both for offensive purposes to destabilize the situation, and when using robotic systems, including unmanned ones).

It should be noted that the money provided, including in the form of donations and / or charitable assistance, as well as other property or services, are spent to a greater extent on the organizational, technical and educational direction of militants and terrorists, and the terrorist act itself, as the final stage, act as a consequence of the financing of terrorism using WMD, that is, it merges.

As indicated earlier, the next aspect is the risks of WMD financing, due to the timely and effective adoption of measures to counter the criminal offense under consideration. In the broadest sense, terrorism refers to all the diverse methods of combating the use of various forms of violence and intimidation, which are manifested in various types of criminal activity, including the use of biological and chemical weapons.

In the domestic and foreign literature, various classifications are given of the forms and types of manifestations of modern terrorism as a multifaceted phenomenon with a rather complex configuration, where not only the financial component in such criminal structures occupies a special place, but also the availability of handicraft chemical weapons and the possibility of acquiring and developing biological weapons at the expense of these funds.

Terrorist attacks can manifest themselves in the forms of biological, chemical and nuclear attacks, in the form of organizational-group and individual groups and units that currently have acquired certain structural changes due to technological advances in the financial sector (cryptocurrencies, prepaid cards, payment services via the Internet network etc.) In particular, such changes relate to the structure, size and spatial characteristics of the organizational and group composition of terrorists, which naturally affects the management of financial resources, as well as the movement and use of funds and other assets that can be used as payment for production, acquisition or transportation of weapons.

#### *Discussions*

A separate consideration is required by Article 162 of the Criminal Code of the Republic of Kazakhstan, where it is noted that a criminal offense is only the production, acquisition or sale of a chemical, biological, nuclear, or other type of weapon of mass destruction prohibited by an international treaty of the Republic of Kazakhstan, and clause 2 of Article 163 indicates that the use of WMD is a prohibited means of warfare.

At the same time, precursors for the manufacture of chemical weapons are not legally defined and have no prohibition, as well as biological agents and pathogens that pose a threat to biological and chemical attacks specifically for the civilian population of the country.

In addition, the concept of financing ROMU in national legislation is not defined, and is completely absent.

The above creates the conditions for the manifestation of biological and chemical terrorism, which, in fact, will be financed. Article 258 of the Criminal Code of the Republic of Kazakhstan «Financing of Terrorism» determines that a person «is consciously aware of the terrorist or extremist nature of their activities, or that the property provided, information, financial and other services provided will be used to carry out terrorist or extremist activities or to provide terrorist or extremist group, terrorist or extremist organization, illegal paramilitary group» [1]

This provision clearly indicates the criminal purpose, namely, the crime should be terrorist or extremist in nature or should be used by an illegal paramilitary group, which, of course, may be part of a terrorist organization. The specified provision in Kazakhstani legislation has a certain drawback, namely, a significant narrowing of criminal acts, which come down only to terrorist or extremist purposes. In turn, Resolution 17

of UNSC Resolution 2253 adopted in 2015 establishes that FATF Recommendation 5 relates to the financing of terrorism for any purpose with an unlawful intention and awareness of its actions, which emphasizes a wider context of acts than in the national legislation of the Republic of Kazakhstan [2] In practical activities, namely regarding the qualification of a crime in the process of investigation and sentencing by a court, conditions and prerequisites are created for avoiding the criminal liability of the guilty person due to the fact that *ozitsiya* Art. 258 of the Criminal Code of the Republic of Kazakhstan «Financing of Terrorism» does not define criminal activity in the broad sense, and is rather narrow in interpretation. In addition, art. 258 of the Criminal Code of the Republic of Kazakhstan and other international standards and sources of law, the term «awareness». In the context of Art. 258 of the Criminal Code of the Republic of Kazakhstan, a person who is consciously aware of the terrorist or extremist nature of the activity, but despite this is engaged in the financing of terrorism, implies that such a person has an illegal intention or purpose. Moreover, this article, contrary to the standards of the FATF and the International Convention for the Suppression of the Financing of Terrorism, does not indicate such a significant qualification element as the illegality of intent. Although it is an illegal intention, the pursuit of a criminal goal involves the provision or collection of money, property, benefits and rights to it, donations, charitable assistance, and the provision of information and financial services.

In this regard, it is advisable to consider the purpose of the term «awareness» for a more accurate understanding of the alleged action. Awareness is a psychological phenomenon inherent in a person, and is defined as a subjective state, while in which a person understands, is aware of something in the surrounding reality. The term has different meanings from awareness of stimuli in the physical world, to awareness of one's internal «I» and its impact on human behavior [3] In relation to legal phenomena, the terrorist financing entity must fully understand the consequences of his actions, which is possible from a certain age, and understand and be aware of the consequences of his criminal actions. In accordance with Clause 2, Article 15 of the Criminal Code of the Republic of Kazakhstan, criminal liability for committing terrorist financing comes from the age of 14. In this regard, a rather problematic question arises regarding the 14-year-old age of a person as a subject of criminal liability under the current legislation of Kazakhstan for the financing of terrorism. It should be noted that the age of 14 years is quite complicated in biological, psychological and socio-legal senses. A feature of the considered age category is the factor that it is during this period that the moral and social attitudes of the person are laid. From a legal perspective, this age is characterized by a limitation in legal capacity, in accordance with paragraph 1 of article 17 of the Civil Code of the Republic of Kazakhstan. «The ability of a citizen to acquire and exercise civil rights through his actions, create civil duties for himself and fulfill them (civil legal capacity) arises in full with coming of age, that is, after reaching the age of eighteen» [4] In our opinion, it is advisable to legislatively review the age of criminal responsibility for financing terrorism. This is due to age-related characteristics of minor subjects, for which it is quite difficult, psychologically, legally and intellectually, to realize the real consequences of their actions.

### *Conclusion*

Thus, we tried using the available scientific methods to formulate the aspects of combating the financing of terrorism in the conditions of modern Kazakhstan, taking into account its legal system and current national legislation. This made it possible to determine the necessary operational and interim measures, which in turn form a system of combating the financing of terrorism in Kazakhstan, to determine the range of problematic issues in the field of protection of financial and natural resources and their control.

### *References*

- 1 Резолюция СБ ООН 1540 (2015 г.) [Электронный ресурс]. — Режим доступа: [www.un.org/ru/documents/decl\\_conv/](http://www.un.org/ru/documents/decl_conv/)
- 2 Резолюция СБ ООН 2253 (2015 г.) [Электронный ресурс]. — Режим доступа: [www.un.org/ru/documents/decl\\_conv/](http://www.un.org/ru/documents/decl_conv/)
- 3 Уголовный кодекс Республики Казахстан от 3 июля 2014 г. № 226-V (с изм. и доп. по состоянию на 12.07. 2018 г.) [Электронный ресурс]. — Режим доступа: [adilet.zan.kz](http://adilet.zan.kz)

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## **Мемлекет пен құқық қорғау органдарының жаппай қырып-жою қаруын қаржыландыруға қарсы іс-қимыл туралы ақпаратты пайдалану мәселелері бойынша өзара іс-қимыл нысандары**

Зерттеліп отырған мәселенің өзектілігі ұлттық заңдарды ескере отырып, жаппай қырып-жоятын қаруды бақылаудың ұлттық тұжырымдамасын, жаппай қырып-жоятын қаруды сату саласындағы қызметті бақылау тетіктерін, сондай-ақ террористік және діни экстремистік әрекеттерге қосылуға қарсы іс-қимыл шараларын әзірлеу қажеттілігімен байланысты. Қазіргі уақытта жаппай қырып-жою қаруын қаржыландыру Қазақстан Республикасының, сондай-ақ ЕАТ елдерінің ұлттық қауіпсіздігіне әлеуетті және нақты қауіп төндіреді. Бұл жақын шетелдердің көптеген елдерімен ортақ шекараларға, ортақ тарихи өткенге және мемлекеттердің тұрақсыздығына және жағымсыз факторлардың көрінуіне, сондай-ақ Таяу Шығыста да, халықаралық қоғамдастықтың басқа аймақтарында да осындай қаруды қолдана отырып, агрессивті соғыстарды жүргізуге байланысты. Мақаланың мақсаты: халықаралық ынтымақтастық шеңберіндегі жаппай қырып-жою қаруын қаржыландыруға қарсы іс-қимыл жасайтын құзырлы органдардың ақпаратты пайдалануындағы өзара іс-қимылдың жолдарын, сондай-ақ халықаралық ынтымақтастық аясында жаппай қырып-жою қаруын қаржыландыруға қарсы іс-қимыл жасайтын құзыретті органдардың ақпаратпен алмасу және пайдалану жүйесін анықтау, құқықтық және басқа механизмдерді қарастыру ынтымақтастық, үйлестіру және бақылау қаруы оны жою (дайындау, иемдену, сақтау және жою, тасымалдау) ұлттық заңнама аясында. Зерттеу әдістері: Жаппай қырып-жоятын қаруды таратуды қаржыландыруға қарсы іс-әрекетті зерттеудің жетекші тәсілі жүйелік-іс-әрекеттік тәсілге және осы саладағы қолданыстағы ұлттық заңнаманы құқықтық талдау әдісіне негізделген. Зерттеу нәтижелері: жаппай қырып-жоятын қаруды бақылаудың ұлттық және халықаралық тетіктерін жаппай қырып-жоятын қаруды сату саласындағы қызметті бақылаудың ұлттық тұжырымдамасы ұсынылған және қарастырылған, ЖҚК қаржыландырудың жаңа қауіптері және олардың Қазақстан Республикасындағы ең мәселелі сұрақтары анықталған, олардың тиімді шешілуін қамтамасыз ететін ұлттық құқықтық жүйені, сондай-ақ террористке қосылудың алдын алу шараларын ескеру, ру және діни экстремистік қызметі. Тәжірибелік маңыздылығы: қолданыстағы ұлттық заңнама негізінде АЖҚ-ға қатысты қылмыстарды тергеу әдістемесі және оны халықаралық терроризммен біріктіру анықталған, қарастырылып жатқан қылмыстық құқықбұзушылық түрінің криминалистикалық сипаттамаларының негізгі элементтері анықталған, жаппай қырып-жою қаруын анықтауға, олардың жіктелуіне және түрлеріне, зақымдайтын әсердің дәрежесі мен оларды қолданудың салдарының ауырлығына, жазалаудың мақсатына, сонымен қатар қазіргі Қазақстан үшін жаппай қырып-жою қаруын таратуды қаржыландырумен байланысты қауіптер мен осалдықтармен байланысты кейбір аспектілер анықталған.

*Кілт сөздер:* жаппай қырып-жою қаруын қаржыландыру, терроризмді қаржыландыруды анықтау және жолын кесу, биологиялық терроризм, химиялық шабуылдар, биологиялық шабуылдар, қоздырғыштар, терроризмді және ЖҚК-ны қаржыландыруға қарсы тиімді іс-шаралар, терроризм мен ЖҚК-ны қаржыландыру тәуекелі, аумақтық ұйымдар мен топтар, террористер, табиғи ресурстарды пайдалану, тауарлар мен қызметтерге ақы төлеу.

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## **Формы взаимодействия государственных и правоохранительных органов по использованию информации противодействия финансированию оружия массового уничтожения**

Актуальность исследуемой проблемы обусловлена необходимостью разработки национальной концепции контроля за оружием массового уничтожения (ОМУ), с учетом национального законодательства, с целью разработки механизма контроля за деятельностью в сфере оборота оружия массового уничтожения, а также мер противодействия сращивания с террористической и религиозно-экстремистской деятельностью. В настоящее время финансирование оружия массового уничтожения создает потенциальную и реальную угрозу для национальной безопасности Республики Казахстан, а также стран ЕАГ. Это обусловлено общностью границ со многими странами ближнего зарубежья, общим историческим прошлым и проявлением крайне негативных факторов дестабилизации государств и ведением агрессивных войн, с применением такого оружия, как на Ближнем Востоке, так и на других территориях в международном сообществе. Цель статьи заключается в определении способов взаимодействия по использованию информации компетентными органами, осуществляющими противодействие финансированию оружия массового уничтожения в рамках международного сотрудничества, а также системы обмена и использования информации компетентными органами, осуществляющими противодействие финансированию оружия массового уничтожения в рамках международно-

го сотрудничества, рассмотрения правовых и иных механизмов сотрудничества, координации деятельности и контроля за оружием массового уничтожения (изготовлением, приобретением, хранением и утилизацией, транспортировкой) в рамках национального законодательства. Ведущим подходом к исследованию вопросов противодействия финансированию распространения оружия массового уничтожения являются системно-деятельностный подход и метод правового анализа действующего национального законодательства в рассматриваемой сфере. Автором представлены и рассмотрены национальная концепция по контролю за оружием массового уничтожения национального и международного механизма контроля за деятельностью в сфере оборота оружия массового уничтожения, санкционные меры по данному уголовному правонарушению, определены новые риски финансирования ОМУ и их наиболее проблемные вопросы на территории Республики Казахстан, с учетом национальной правовой системы, обеспечивающей их эффективное разрешение, а также меры профилактики сращивания с террористической и религиозно-экстремистской деятельностью. На основе действующего национального законодательства определена методика расследования преступлений, связанных с ОМУ, и его финансированием и сращиванием с международным терроризмом; выявлены основные элементы криминалистической характеристики рассматриваемого вида уголовных правонарушений; выявлены дискуссионные и требующие дополнительного законодательного урегулирования отдельные аспекты, связанные с определением оружия массового уничтожения, их классификацией и видами, степенями поражающего действия и тяжести последствий его применения, назначением наказания; а также угрозы и уязвимости, связанные с финансированием распространения оружия массового уничтожения для современного Казахстана.

*Ключевые слова:* финансирование оружия массового уничтожения, выявление и пресечение финансирования терроризма, биологического терроризма, химических атак, биологических атак, патогенов, эффективные меры по борьбе с финансированием терроризма и ОМУ, риски финансирования терроризма и ОМУ, террористические организации и группы, террористы, эксплуатация природных ресурсов, оплата товаров и услуг.

#### References

- 1 Rezoliutsiia SB OON 2253. (2015). [UNSC resolution 1540 (2015)]. *un/org/ru*. Retrieved from [www.un.org/ru/documents/decl\\_conv/](http://www.un.org/ru/documents/decl_conv/) [in Russian].
- 2 Rezoliutsiia SB OON 2253. (2015). [UNSC resolution 2253 (2015)]. *un/org/ru*. Retrieved from [www.un.org/ru/documents/decl\\_conv/](http://www.un.org/ru/documents/decl_conv/) [in Russian].
- 3 Uholovnyi kodeks Respubliki Kazakhstan ot 3 iiulia 2014 hoda No. 226-V (2014) [The Criminal Code of the Republic of Kazakhstan dated July 3, No. 226-V]. *adilet.zan.kz*. Retrieved from <https://adilet.zan.kz> [in Russian].