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## **Criminal liability for an act of terrorism under the laws of the Republic of Kazakhstan: historical and legal review**

The article considers the peculiarities of regulating the composition of the act of terrorism in the current laws and regulations applicable in the territory of Kazakhstan. Authors considered criminal laws of the Soviet period (The Criminal code of RSFSR of 1922, the Criminal code of RSFSR of 1926, the Criminal code of KAZSSR of 1959) and the modern Kazakhstan legislation (The Criminal code of the Republic of Kazakhstan of 1997 and the Criminal code of the Republic of Kazakhstan of 2014). Analysis of changes and amendments to the Criminal Code of the Republic of Kazakhstan includes the theoretical basis of legal innovations of recent years.

*Key words:* act of terrorism, the history of criminal law, the Soviet criminal law, the law of the sovereign Kazakhstan.

Terrorist crimes have become one of the most acute and urgent problems with global significance and predictions of scientists and experts concerning the further anti-terrorism acts fail to sound reassuring. In modern conditions the threat of terrorism is increasing each day, because humanity has got an access to weapons with enormous destructive power (nuclear, chemical, biological, laser, etc.). The cruel and inhumane terror acts in all its forms and manifestations by its scale and intensity considered as the most dangerous crimes.

These days there is no state in the world which can state with full confidence that its citizens have not faced with or heard about this phenomenon. In this regard collective opposition of all the subjects of anti-terrorism organizations against the current destructive power must create all conditions to stop global threat for the safe of whole community.

Kazakhstan, unlike many countries within the international community, actually has not handled with terroristic manifestations on its territory. This was largely due to the fact that the series of measures taken to strengthen the foundations of regional and international security, preservation and maintenance of internal political stability, interethnic and interreligious harmony, communal tolerance act as a guarantor of public anti-terrorist protection of the state have been found effective.

The period of terrorist acts explosion in 2011–2012 became the turning point for Kazakhstan (more than a hundred crimes were recorded which led to a dozen of helpless victims and police officers) which demonstrated the weakness of security power and political ideology and politics itself.

Spontaneous, unrelated to each other terrorist acts followed by the planned ones and were nourished by some criminal groups with particular ideological gain.

The Institute of World Economy report provides the data identifying countries affected most and less by terror acts. So in 2011 Kazakhstan settled down in the 47th place with Global terrorism index of 2,804. Two days later in 2013 the republic ranked among the risk countries experiencing high level of terrorism.

The problem of countering terrorist mobility requires a careful study in Kazakhstan as it is complicated by the political and socio-economic situation in the countries of the Commonwealth of Independent States, particularly in neighboring countries such as Russia, Kyrgyzstan and Uzbekistan. Thus, all over the territory of the Russian Federation there was a sharp increase in tyrannous activities aimed at the mass killings, bombings and arson with a view to influence the decisions of the authorities. Along with the increasing number of terrorist acts, the way they are committed is getting more violent. Bold terrorist acts in the Russian regions generate fear and panic among the civilians, disturb public order and pose a real threat to the security of society and the state itself [1].

Due to the events the state reinforced anti-terrorism law, adopted a new program of fight against terrorism and extremism, and established the Anti-Terrorism Centre of the Republic of Kazakhstan of the National Security Committee and the Ministry of Internal Affairs activated its work.

«The state and citizens must stand against all forms and manifestations of radicalism, extremism and terrorism», — said the President of Kazakhstan Nursultan Nazarbayev. According to his message, extremism and terrorism in Kazakhstan «have not ideological but criminal basis». Criminal activities, which hide behind pseudo-religious rhetoric, undermine the foundations of society. It is a threat to peace and stability in our country. This is a strength test to our statehood and civil ripeness. ...We need to improve the anti-terrorism laws» [2].

A new national system of the fight against terrorism is represented by a set of subjects of counter-terrorism acts and regulations that are directed to identify, prevent, suppress, detect and investigate terrorism activities, minimize and (or) liquidate consequences of terrorism. A crucial role is played by the criminal laws, which set forth the basis and principles of criminal responsibility and determine socially dangerous acts to be recognized as criminal, as well as to establish assigned penalties to people who have committed them. In accordance with the task let us consider preventive effects of current criminal laws within the country.

Thus, the initial years of Soviet rule was associated with terrorism, counter-revolutionary movement, respectively, in the regulations issued by the Russian government after the October Revolution in 1917, all offenses were designated by a single term — «counter-revolution». The legislation of that period also detailed and highlighted in the decision (about Red Terror) of the GSU (government of Soviet Union), dated 5 September, 1918, the normative act that first introduced the idea of fight against terrorism.

Since 1922 the Kyrgyz (Kazakh) Republic had become a separate constituent republic of the RSFSR the before they shared a common legislation.

The first Criminal Code of RSFSR was introduced 1 June, 1922. Chapter 1 of the Criminal Code (the general part) titled «crimes against the security of the state» also covered issues of 'counter-revolutionary crimes' in its subsection.

Thus, in the first years of Soviet power was associated with terrorism, counter-revolutionary movement, respectively, in the regulations issued by the Russian government after the October Revolution of 1917, all offenses designated by a single term — «counter-revolution». The law of this period should be to highlight the decision of SNK of September 5, 1918 «On Red Terror», which can be called the first normative act, fix the fight against terrorism.

Since 1922, the Kyrgyz (Kazakh) Republic is an autonomous republic of the RSFSR, therefore acted in its territory legislation of the RSFSR.

First RSFSR Criminal Code was introduced with effect from 1 June 1922. The special part of the Criminal Code, Chapter 1 began with «crimes against the state», which includes a subsection «On counter-revolutionary crimes.»

Any action aimed at subversion of the Workers and Peasants Council's power conquered by the proletarian revolution and undergoes on the basis of the Constitution of the RSFSR Workers' and Peasants' Government, and also measured that would help the part of the international bourgeoisie, which failed to accept the equality of the follow-on capitalism communism system of property and endeavored to overthrow it by means of intervention or blockade, espionage, subornation of the mass media (Article 57 of the Criminal Code).

Article 61 of the Criminal Code provided for criminal responsibility for participation in the implementation of terrorist acts on counter-revolutionary purposes against the Soviet authority representatives or activists of revolutionary worker and peasant organizations, at least a single member who did not belong to a counterrevolutionary organization.

The resolution of the Central Executive Committee of the twelfth convocation on November 22, 1926 in the Russian Federation adopted a new criminal law, which was almost entirely reproduced the system of the Criminal Code in 1922. It just included a new list of state crimes in a wholesome system. We can note that those days such concept as «white terror» and «red terror» were identified and widely applied [3; 71].

Terrorism was also mentioned in the Law titled «Criminal responsibility for crimes against the security of the state» of the USSR on 25 December, 1958. Article 3 of the Law «terrorist act» establishes liability for the murder of a statesman or public figure or representative of authority or the drawing of this person serious bodily harm committed in connection with his/her activities, with the aim to undermine or weaken Soviet power.

Under Article 4 of the Act the act of terrorism against a representative of a foreign country (murder or serious bodily injury) with the purpose of provoking a war or international complications was the subject for prosecution. These acts are punished by penalties of imprisonment for a term of 8 to 15 years with confiscation of property and with reference to a fixed term or the death penalty and confiscation of property.

Also worthy of note that the Decree of the Supreme Soviet «On strengthening the fight against particularly serious crime» (May 5, 1961) provided for liability for terrorizing prisoners reoffend.

As can be seen, under the Soviet criminal law the whole country itself was subjected to offences, moreover the commitments of terrorist acts were punished by severe penalties that were sufficient to prevent the emergence and spread of terror attacks.

The Criminal Code of the Kazakh Soviet Socialist Republic was adopted by the Supreme Council of the Kazakh Soviet Socialist Republic July 22, 1959, came into force on January 1, 1960. It was the first national criminal law in the history of the state and the rights of Kazakhstan, it encompassed all the best that had passed the test of time, reflected the achievements in the theory of the Soviet penal law.

«State crimes» Chapter 1 of the Criminal Code was consisted of two sections of «Specific dangerous state crimes» and «Other crimes against the state.» Criminal liability was differentiated: a terrorist act (Article 52 of the Criminal Code) and an act of terrorism against a representative of a foreign state (Article 53 of the Criminal Code).

Under Article 52 of the Criminal Code provided for criminal responsibility for the murder of a state or public figure or representative of authority committed in connection with his/her state or social activities with the aim to undermine or weaken Soviet power; serious bodily injury inflicted in the same order state or public figure or representative of authority due to his/her public or social activities.

To assassinate the representative of a foreign state, as well as causing him grievous bodily harm was identified provocation of war or international complications (Article 53 of the Criminal Code).

In line with the goal of the protection and consolidation of the Soviet state relations with other countries, criminal law expressed negative attitude towards any manifestations of terrorism, on the one hand, and concern about the strengthening of friendly relations with all countries — on the other. On the objective side the stated offense is similar to the actions which are specific to terrorist acts. The only difference is in its object (the representative of a foreign state) of abuse; generic object is the interests of the Soviet state in the field of international relations, its external security [3; 97].

A new impetus to the criminal-legal regulation of public safety received in the early 80's, when domestic legislative process was directly linked to the intensification of the process of international criminal law development. At that time most dangerous crimes that affected the common interests of different states, regarded as terrorism, and therefore it always drew the international community's attention.

In the mid 80-ies of XX century, Kazakhstan was one of the first Soviet republics of the Soviet Union, which people suffered a lot from violent methods and became victims of State terrorism. For example, everyone knows a peaceful demonstration in Almaty on 17–18 December, 1986 led to the terror and repression. Special Resolution of the the Council of Ministers of the USSR publicly stated 'the existence of Kazakh nationalism', although among the demonstrators were people of other nationalities. 99 people were convicted, 2 were sentenced to death, 83 –different terms of imprisonment. 1,000 employees have been dismissed from the Ministry of Internal Affairs, 309-from the ministries of health and transport, 12- university rectors removed from offices, 122 people of the highest levels of government suffered from persecution and exile. But that by no means ended: until these days for various reasons have not been issued the statistics data on casualties (dead and wounded) of crackdown [4; 343, 344].

The independence of Kazakhstan has set a number of challenges, one of which was to create a legal framework for political and economic reforms. So a qualitatively new stage in the national criminal law development since the date of proclaiming the state sovereignty of Kazakhstan (declaration «On the State Sovereignty of the Kazakh SSR» dated 25 October, 1990) till the present days.

Legal reform program was approved by the President's on February 12, 1994, outlined the main directions of the new right of sovereign Kazakhstan formation including criminal.

The Constitution of the Republic of Kazakhstan in 1995, proclaimed the policy of creating a democratic civil society in which human rights and freedoms are of the supreme value, and their observance and protection of recognized duty of the state. This approach has identified a hierarchy of tasks in criminal law, the construction of the Special Part of the Penal Code, the construction of a number of new offenses.

The Criminal Code of the Republic of Kazakhstan, adopted on 16 July, 1997 entered into force on 1 January, 1998, which was a significant step forward in the fight against terrorism. The responsibility for terrorism in the original wording of the Criminal Code of the Republic of Kazakhstan was provided for in the two regulations — Article 167 and Article 233 of the Criminal Code (acts of terrorism against the state or public figure). It should be noted that Article 167 of the Criminal Code was replaced by Article 52 of the

Criminal Code previously in force of the Kazakh SSR, and Article 233 was novelty for the Criminal Code of the Republic of Kazakhstan.

Further improvement of the criminal legislation related to the Concept of Legal Policy of the Republic of Kazakhstan (the Decree of the President of the Republic of Kazakhstan dated 20 September 2002), according to which a special attention should be given to «... timely introduction of regulations aimed at preventing and combating terrorism...».

Specific manifestations of terrorist activities on the territory of the Republic of Kazakhstan in the period were noted, however, existing level of terrorist activity in the regions situated relatively close to Kazakhstan and on its territory. Terrorist acts, under Article 5 of the Law of the Republic of Kazakhstan «On the national security of the Republic of Kazakhstan» dated June 26, 1998, have been designated among the threats to national security. On July 13, 1999 adopted the Law «On Combating Terrorism,» which defined the legal and organizational basis of the fight against terrorism in the Republic of Kazakhstan, the order of activity of state bodies and organizations, regardless of ownership, as well as the rights, duties and guarantees of citizens in connection with the implementation of the fight against terrorism.

As can be noted, the national anti-terrorism criminal legislation was modernized according to the evolutionary increase of terrorist threats, however, has been exposed by the political authorities with a view to turning it into an instrument of political struggle and repression.

In such cases it is obvious that the increased social danger of individual manifestations of terrorism, the criminal policy of the state was aimed at tightening the responsibility for the terrorist crimes.

Our analysis of the changes and amendments to the criminal law on the fight against terrorism, to determine the following areas to improve it:

- The enhancement of features of «Terrorism» as the basic structure: an explosion, arson or other acts that endanger people's lives, causing significant property damage or other socially dangerous consequences, if these actions were committed with the aim to undermine public security, terrorize the community or influence on the problem-decision made by state bodies of the Republic of Kazakhstan, a foreign state or an international organization, as well as the threat to commit such acts for the same purpose (Law of the Republic of Kazakhstan dated February 19, 2002).

- Partial criminalization (aggravating circumstances) as the component of «Terrorism»:

- The use of firearms; the use or threat of use of weapons of mass destruction, radioactive materials and the use or threat of committing mass poisoning, epidemics or epizootic diseases, as well as other actions capable of causing mass destruction of people (Law of the Republic of Kazakhstan dated February 19, 2002);

- the use of objects such as weapons, explosives or explosive devices that can create a real threat to the life and health of citizens (the Law of the Republic of Kazakhstan dated July 8, 2005);

- Infringement of the person's life by the attack on persons or organizations who is under international protection, hostage-taking, buildings, means of transportation and communication, theft, as well as with the seizure of aircraft or vessel or railway rolling stock (the Law of the Republic of Kazakhstan 10 July 2009);

- the capture of a public transport (the Law of the Republic of Kazakhstan dated December 29, 2010);

- Legislative establishment of terrorist crimes – note 2 of Article 233 of Criminal Code (Law of the Republic of Kazakhstan dated July 10, 2009, with the extension of the crimes in the laws of KR dated November 29, 2011 and 23 April, 2014).

- The establishment of the imprescriptibility towards terrorist crimers (Law of the Republic of Kazakhstan on April 8, 2010).

- Change the title of the Criminal Code Article 233 «Act of terrorism» (Law of the Republic of Kazakhstan dated January 8, 2013). Acts of terrorism as particular acts of terrorism with specific features can be considered as special cases of intimidation of a limited circle of people [5; 272].

The effective countering acts against terrorism has greatly contributed to the criminalization of Article 233–1 Criminal code (CC) «Advocating terrorism or public incitement to commit an act of terrorism»; Article 233–2 CC « A terrorist group creation, direction and participation»; Article 233–3 CC « Extremism or terrorist activity finance»; Article 166–1 CC «Attempt on the life of the First President of Kazakhstan — Leader of the Nation»; Article 233–4 CC, «Any recruitment or training of armed forces to organize terrorist or extremist activity».

In our view, all of the innovations in the criminal law conform to such priority areas as «... strengthen criminal responsibility for terrorist crimes...» (paragraph 2.8 of the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020, approved by the Decree of the President of the Republic of

Kazakhstan dated August 21, 2009). Within the framework conceptual structure has been defined; criminalization of socially dangerous acts has been fully and partially implemented, the record of terrorist crimes have been made.

However, the criminal situation clearly showed the lack of any comprehensive response to terrorism in various forms of criminal activity, nor on terrorism as a socio-political phenomenon. Acts of terrorism is getting more and more carefully organized and violent, with application of modern technology, weapons, and means of communication. In various parts of the world political and nationalistic radicals that have adopted the methods of terror to achieve their goals, organized an extensive network of underground weapons caches and explosives, providing structures of financial institutions. As a cover for terrorist organizations functioning system of firms, companies, banks and funds.

It is obvious that to combat this dangerous phenomenon is extremely important to coordinate the efforts of all countries at the highest level, creating a network of international organizations on the development of its common international legal concepts, the exact legal characterization of this type of crime.

In accordance with the policy documents of the country carried out the criminal legislation reformation through the correction of the penal and criminal procedure legislation. The new Criminal Code of the Republic of Kazakhstan adopted on July 3, 2014, entered into force on 1 January 2015. Among the novelties of the new criminal law paragraphs 30–31 Article 3 of the Criminal Code should be noted that reveals the concept of a terrorist group and provides a list of terrorist crimes; the composition of separatist activities have been criminalized; the authorized publication of extremist materials in the media; other rules have been left unchanged.

Thus, the historical and legal analysis on establishment of rules governing liability for an act of terrorism has shown that the improvement of the domestic criminal law is aimed at bringing criminal law into line with the current realities, the expansion of the legal safeguards for the protection of public security from criminal encroachments. The current criminal legislation of Kazakhstan allows us to fully ensure the public security protection taking into account the qualifications of an act of terrorism, and the full range of circumstances which can be a subject to legal assessment.

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### Қазақстан Республикасының заңнамасы бойынша террорлық акт үшін қылмыстық жауапкершілік: тарихи-құқықтық шолу

Мақала Қазақстан аумағында қолданысқа ие болған нормативтік актілердегі террорлық акт құрамының құқық реттелу ерекшеліктерін қарастыруға арналған. Авторлармен кеңестік кезеңдегі қылмыстық заңдары (1922 жылғы және 1926 жылғы РСФСР Қылмыстық кодекстері, 1959 жылғы ҚазССР Қылмыстық кодексі) мен қазіргі кезеңдегі қазақстандық заңдарды қарастырылған (1997 жылғы және 2014 жылғы Қазақстан Республикасының Қылмыстық кодекстері). Авторлар Қазақстан Республикасының Қылмыстық кодексіне енгізілген өзгерістер мен толықтыруларға талдау жасай отырып, соңғы жылдардағы заңнамадағы жаңашылдықтың теориялық негізін көрсетті.

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## Уголовная ответственность за акт терроризма по законодательству Республики Казахстан: историко-правовой обзор

Статья посвящена особенностям регламентации состава акта терроризма в нормативно-правовых актах, действовавших на территории Казахстана. Рассмотрены уголовные законы советского периода (Уголовный кодекс РСФСР 1922 г., Уголовный кодекс РСФСР 1926 г., Уголовный кодекс КазССР 1959 г.) и современного казахстанского законодательства (Уголовный кодекс Республики Казахстан 1997 г. и Уголовный кодекс Республики Казахстан 2014 г.). Анализ изменений и дополнений, внесенных в Уголовный кодекс Республики Казахстан, показывает теоретическое обоснование законодательных новелл последних лет.

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