

---

# ҚЫЛМЫСТЫҚ ПРОЦЕСС ЖӘНЕ КРИМИНАЛИСТИКА УГОЛОВНЫЙ ПРОЦЕСС И КРИМИНАЛИСТИКА

UDC 343.147

L.K.Arenova

*E.A.Buketov Karaganda State University (E-mail: www200762@mail.ru)*

## **Actual production issdaiues religious expertise**

Study on relevant issues of denominational expertise must be considered from the perspective of, criminal and psychological Sciences, due to their importance in the practical and theoretical aspects. This indicates the determination of the place of faith and religion in a secular society, their influence on the formation and change of human behavior in society, criminal characteristics of crimes of the terrorist and religious extremist their dominant elements where the appointment and production expertise denominational are dominant, because determines that the examination with the national denominational objects list of banned religious organizations.

*Key words:* denominational expertise, this indicates the determination of the place of faith and religion in a secular society, human behavior in society, criminal characteristics of crimes of the terrorist and religious extremist, their dominant elements where the appointment and production expertise denominational are dominant, because determines that the examination with the national denominational objects list of banned religious organizations.

Research of topical issues of production of religious examination, it is necessary to consider from positions, criminalistic and psychological sciences in connection with their importance in practical and theoretical aspects. It indicates definition of a place of belief and religious views in secular society, their influence on formation and change of behavior of the person in society, the criminalistic characteristic of crimes of a terrorist and religious and extremist orientation of their dominating elements where appointment and production of theological examination are dominating since defines compliance of objects of theological examination with the national list of the forbidden religious organizations.

Study on relevant issues of denominational expertise must be considered from the perspective of criminal and psychological sciences due to their importance in the practical and theoretical aspects. This indicates the determination of the place of faith and religion in a secular society, their influence on the formation and change of human behavior in society, criminal characteristics of crimes of the terrorist and religious extremist their dominant elements where the appointment and production expertise denominational are dominant, because determines that the examination with the national denominational objects list of banned religious organizations.

Theological examination, its appointment and production as process reveals from practical and theoretical positions certain questions of a readiness not only concepts of such examination as a whole, but also its legal status as type of examination, degree of a readiness of concrete recommendations about its appointment and production structure of experts and to their powers and also concerning object of research — the mechanism of recognition of materials, subjects of religious appointment extremist.

Now the questions connected with appointment and production of theological examination are rather debatable and difficult not only from positions of practical execution, but also more a theoretical readiness of the concept of theological examination and the organizational and administrative beginnings in respect of determination of its legal status, subjects of research and determination of compliance of possible objects of theological examination only to the national list of the forbidden religious organizations that considerably limits the tasks set for theological examination.

The religion as need of human life in modern society from the guarantor of spiritual development and pledge of preservation of traditional values, culture, traditions and the right even more often began to be transformed to the tool and motives of the crimes capable to destroy state and society foundations. For example, in September, 2007 the staff of Committee of national security of Kazakhstan elicited the facts of alienation of property of parishioners of Presbyterian Church «Grace» in Karaganda, and also illegal storage of strong psychotropic medicines in the molal building. In this regard criminal case according to Art. 177 of the Criminal code of Kazakhstan (fraud) are brought [1].

In November, 2011 the Saryarkinsky regional court of Astana sentenced six members of the forbidden international extremist party to imprisonment for the terms from four to seven years.

On materials of criminal case it was established that participants of a cell of the forbidden international extremist party planned to arrange some acts of terrorism and to deprive of fellow citizens of secular tenor of life having replaced the republic with the Caliphate. The organizer of a cell a few years ago, having visited Kazan (Tatarstan) where endured a serious brainwash in terrorist group and having returned to RK, I began criminal activity with recruitment of assistants. To the rental apartment under pretexts of household character different people were invited. The comer approved «Islam it well and the Christianity is bad women it is necessary to oblige to wear hijabs and men of a skullcap».

Besides, the idea of exclusiveness a superiority and inferiority of citizens on a religious sign racial accessory and even language was proclaimed. New adherents supplied with the forbidden literature in the Kazakh and Russian languages showed to listeners of video with the terrorists killed with federal armies in the Caucasus".

Also it is reported that intends conversations that «is time to lift revolt were carried out and to arrange jihad and to disorganize police officers to blow up first of all buildings of law enforcement agencies» [1].

According to the expert opinion in actions condemned there are the incentive designs directed on violent change of the constitutional system signs of excitement of race and religious hatred statements of negative and estimated character in relation to other nations contain.

The analysis of the expert-political scientist testifies that the withdrawn forbidden materials have no relation to Islam and its canons were treated in a wrong way.

On May 17, 2011 as a result of bomb explosion in the building of KNB department of the Aktyubinsk area three persons suffered the suicide bomber died on the spot [1].

It should be noted that manifestation of interest to the religious sphere from society, I increased now enough. First of all, it is caused, the social and economic and political changes which have happened in the last decades in the Republic Kazakhstan which significantly affected a moral and psychological condition of society.

Interest to religious activity, the freedom of worship meaning interest by various religious trends and cults of nonconventional nature of expansion in the territory of CIS countries for the purpose of a set of adherents that entailed strengthening of religious activity in society increased. It promoted sharp increase in growth of religious associations including a destructive orientation there were many religious centers, mystical cults, in particular Islamic sense arisen on the basis of Islam.

The adherent [from lat.adeptus — reached] is treated in two definitions, as let into secrets of any doctrine, a religious cult, sect, and as the jealous adherent of any doctrine. [2; 308]

According to the National center of culture and religions at ADR as of January 1, 2012 in Kazakhstan work 4479 religious public associations, including 2756 — Muslim, 1256 — Protestant, 303 — orthodox, 87 — Catholic, 27 — Judaic, 5 — Buddhist. Nonconventional religious faiths is over 2 000 [3].

Many nonconventional religious organizations of various confessional orientation, Protestant and evangelical (Adventists of the Seventh Day, Grace, Jehovah's Witnesses), east religions (Bakhai, Societies of consciousness of Krishna, Aum Sinrike), scientific cults (Scientology, Dianetics, New age), Satanists and a youth counterculture, Islamic type (Al-Qaeda, Alya Ayat, Ata жол, Brothers Muslims, Boz Gurd, Hizb-ut-Tahrir al-islami, the Taliban, Jamia of Mujahideens of Central Asia), appeared in recent years not only in the Republic of Kazakhstan, but the former Soviet Union countries, as a rule, use such forms of activity which not only violate the rights of the personality, but have signs of concrete criminal actions and destructive.

Now the national list of the forbidden in Kazakhstan terrorist and extremist structures included 15 organizations among which only «Aum Senrike» treats east religion and the others of an Islamic orientation.

However, threat of distribution of nonconventional religious and cult ideas is noted not only from the above religious structures which activity, carries, obviously, destructive character, but also the religious organizations which aren't entering the national list though concerning which are available not only materials

of checks of law enforcement agencies, but also the brought criminal cases on various criminal manifestations.

As a rule, activity of the nonconventional religious organizations is connected with physical and psychological abuse over the personality and does irreparable harm to mental and physical health of the person and also poses serious threat of national state security of the state.

Activity of the nonconventional religious organizations has latent character, including on distribution of professed ideas by means of printing editions, audio recordings and the video records illustrating dogma and practice corresponding to it including church services, religious practices, ceremonies and pilgrimage, audio-and video records theological and is religious — the educational contents (except animation, fiction (art) films), containing grants on religion training, and also materials and literature of the religious contents, subjects of religious appointment.

However, the religion as spiritual need the ideological component of the state is the fixed constitutional law on a freedom of worship and is legislatively given opportunity for activity of the religious organizations, including, nonconventional character. It defines not only relevance and the social importance of research of the phenomena of manifestation of religion and its influence on society, but also generates a number of complex problems regarding permitted and forbidden in similar activity that formed the basis for emergence of such action as theological examination.

Theological examination, its appointment and production as process of state regulation in the sphere of religious activity and its territorial divisions allows to reveal from practical and theoretical positions certain problem questions of a readiness not only the concept of theological examination as a whole, but also its legal status as type of examination, degree of a readiness of concrete recommendations about its appointment and production, structure of experts and to their powers, and also concerning object of research — the mechanism of recognition of materials, subjects of religious appointment extremist.

Production religious examination carried out in order to establish compliance with the constituent documents and other documents religious and spiritual (religious) educational programs information materials of religious content and religious objects to the current legislation in the state [4]. However, at the present stage in the Republic of Kazakhstan, as well in other CIS countries, religious expertise has no definite legal status are not included in the list of forensic examination which is rather doubtful in its production and the appointment of persons of competence in accordance with legislative expert research requirements. Currently, in the Republic of Kazakhstan religious expertise does not have the legal status that has no established rules of law provisions of its subjects, as well as the totality of their rights and responsibilities. Also religious expertise is not included in the official list of forensic examinations in the Republic of Kazakhstan is not one of the types of forensic examinations, which significantly differs from other types of forensic (eg, mental health, forensic, handwriting, etc.). It profanes it characterizes as dilettantism which significantly reduces the severity of the findings to a greater extent for those interested in passing the examination of religious organizations that serve such structures cause for disputes not only in court but also in the media. This factor will prevent the achievement of objectives of the criminal process and makes it impossible to establish the truth in criminal cases without the use of objective findings of expert studies. Involvement of NGOs and scholars to conduct religious examination also lacked a theoretically nor legal nor practical basis that violates the principles of the production of any kind of expertise and the more theological.

Involvement in the production of religious expertise of public associations, which are public, is unacceptable. This is due to the fact that the composition of public associations includes contingent expressing their civic stance and not sufficiently versed in matters of special knowledge required for expert assessment on matters of religion, religious outlook, various articles of faith religious structures as well as consideration of the human factor as subjective beginning. Typically, associations are not professional or community groups and therefore not having the necessary scientific competence for the formal evaluation of submissions. Possible uses knowledge of theologians is also doubtful since regardless of religious affiliation theologians expressed own personal spiritual point of view that may be different from the official position directly denominations such as the official opinion of the Russian Orthodox Church, the Roman Catholic and Greek-Roman Church or Spiritual Administration of Muslims. In this sense, one must also consider that the specific religious groups, so-called traditional, culture-, world religions, in accordance with applicable law can not be the only actors involved in conducting religious expertise. Otherwise, it is a manifestation of human rights and freedoms in the activities of other religious faiths and denominations, which are inherently non-traditional. Empowering participation in the various kinds of Religious Studies confessions, is a violation of the principle of objectivity. Moreover, in accordance with the constitutional rules RK separation of reli-

gion and state and religious groups may not participate in public affairs and expert activities carried out by public authorities. For the purpose of objective complete and comprehensive research facilities religious expertise more efficiently and effectively conduct religious examination charging independent experts of the number of scientists in various fields, namely, theologians, psychologists, lawyers and other professionals depending on the issues raised are employees of higher educational institutions and research institutes. Official explanation of religious norms concepts individual Christian or a Muslim cleric this is not the official position of the Church or of the Spiritual Administration of Muslims. In this regard it is necessary to attract only the formal structures of the clergy culture-faiths who can objectively justified to express an official position on the object represents. In addition, religious expertise should be officially recognized as one of the types of forensic examination to formal recognition of the legal status and exclusion of erroneous research object and therefore a member of the state expert institutions such as the Center for Forensic. In this sense, attracting scholars and researchers of higher education institution, research institutes in various fields is also quite effective not only in the development and definition of the concepts religious expertise, but also in the research plan. The whole process of action in accordance with the legislation of Kazakhstan for the production of an expert study comes from established principles, where the most significant in terms of practical and theoretical acts completeness and objectivity, independence, scientific validity, competence, versatility, professional ethics. Opinion is obtained evidence which showed the presence or absence of evidence of interest in the resolution of an issue that later became the basis for deciding whom it may concern. Religious expertise is sufficient for effective process of identification, detection and investigation of crimes related to the activities of non-traditional religions, denominations and cults, including terrorism-related, which is a specific feature that distinguishes it from other kinds of expertise. However, the greatest impact the objectivity and religious expertise reaches when carried out in combination with other types of expertise namely forensic psycho-physiological processes and human forensic psychiatric examination.

Objects of religious examination in accordance with the current legislation of the Republic of Kazakhstan is a constituent and other documents of religious organizations including religious materials and religious objects. It should be noted that the objects religious examination in the first place must be identified with a particular religious movement as it meets the requirements of completeness of the study, and also contributes to the control of the religious situation in the state, detection and prevention training and committing socially dangerous acts. Submissions to explore different and by the actual production rules religious expertise. These include founding documents submitted for registration and re-registration of religious associations; religious documents; and religious education programs; informational materials of religious content; — religious objects [4].

These objects for example, theoretical or practical religious literature Publishing production items of religious significance religious cult destination depending on the religious affiliation — objects of religious symbols and paraphernalia including all varieties of crosses, Panagia, medallions, memorials, awards and medals religious organizations, substances and items needed for the sermons and religious rituals, temple decoration objects and architectural elements of the temple, sacred objects, objects of worship, clothing and headgear for religious purposes, special auxiliary items required for the storage, installation, operation and movement items submitted for religious examination is fairly general and not to specify that can greatly complicate their interpretation and meaning in religious cult activity. Thus all objects religious examination can be divided into different groups and subgroups such as Items for religious space the locations of worship praying (for example, Muslims — five daily prayer reading) items required in the administration of worship and prayer, as well as rituals and ceremonies Support Services items on worship and exaltation of prayer; Publishing materials (book production, guidelines, manuals, etc.), audio and video. Typically, these objects attributable to Religious Studies differ comprehensive and informative about their true purpose. Given that the activities of non-traditional religions, denominations and cults is mostly latent character and being in possession and materials will also be wearing a hidden disguised character usually under the guise of scientific literature and psychological tests. Special place in this regard occupy unconventional Protestant and evangelical religious organizations («Grace Church», «Jehovah's Witnesses», «Seventh-day Adventists», «New Life», etc.) and scientific cults («Scientology», «Dianetics») that typical selfish motive in their activities under the mask and portray ideas and religious sermons, for example, a fairly common theme common spiritual family universal love and forgiveness, non-material values, personality, love for humanity and worth of the human person in the world, etc. A significant amount of non-traditional religious groups belong to Protestant, evangelical Presbyterian and nontraditional religious groups whose activities and existence is not forbidden by the current legislation of the Republic of Kazakhstan, which makes the contradiction be-

tween their activities about which criminal proceedings are instituted and free access to publishing editions of religious associations. For example, the National Security Committee of Kazakhstan revealed facts that the alienation of property congregation of the Presbyterian Church «Grace» in Karaganda, in connection with the criminal case under Article 177 of the Criminal Code (fraud), as well as illegal possession of potent psychotropic drugs in the prayer house. Also, the materials were found containing propaganda signs exclusivity and superiority of one over the other creeds, incite sectarian strife. Also, September 7, 2007, 14 pastors hunger strike protesting against them excitation of criminal case and conducted a search of the building of the church and in the homes of its ministers. Three ministers of the church: archbishop, his sister and administrator — are suspected of committing a crime under Article 165 of the Criminal Code (treason). The reason for checking the Presbyterian Church began to transfer large sums of money to her private businessman who is suspected of treason and is currently in remand prison in Alma-Ata [1]. It should be noted that the above example, like many other similar criminal facts lead to the conclusion that considering the activities of non-traditional religious communities in this aspect of the question determines the mismatch in the national list of prohibited Kazakhstan terrorist and extremist structures and distributed materials, including literature, Audi \ video materials. Inconsistency in this case between not a banned organization and literary publications, video and audio contained in sermons and general activities of such non-traditional religious structures.

This factor is particularly characteristic in relation to the Protestant and evangelical non-traditional religious organizations, Eastern religions and scientific cults whose activities are signs of extremism namely the use of their religious practices based on non religious ideas can cause life-threatening health ( particularly mental health ) ,morality rights and freedoms of man and citizen as well as a threat to security of the state and society as a whole that is legally defined as religious extremism. In this regard religious expertise should be carried out not only in respect of non-traditional materials and objects of religious organizations under the ban and a national list but also in terms of already registered passing another re- engaged in religious activity and regardless of sectarian religious or religious affiliation. This is due to the fact that religious organizations carry out their activities in accordance with the registration (eg as Grace Church, Jehovah's Witnesses, etc.) are signs of the illegality of their actions. Ensuring the examination made by the authorized body, which acts Agency for Religious Affairs of the Ministry of Culture of the Republic of Kazakhstan the functions and powers which are in interfaith harmony ensuring citizens' rights to freedom of religion and interaction with religious associations. Deciding on the appointment and conduct religious examination of the Justice Department initiated areas at registration or re-registration of religious associations or in order to establish compliance with the constituent documents and other documents religious and spiritual (religious) educational programs information materials of religious content and religious items legislation Republic of Kazakhstan.

Conducting religious expertise provided by the authorized body namely the Agency for Religious Affairs and its implementation rests with the experts of the Expert Council of Development Studies of the religious situation in the above agency belonging to the Ministry of Culture of the Republic of Kazakhstan. At the same time the production of expertise could be drawn from government agencies religious scholars lawyers and other professionals in the field of freedom of conscience. However, decision on conducting religious expertise Department of Justice and supported by the Agency for Religious Affairs and holding the Expert Council as a division of one of the subordinate structures of the Ministry of Culture is in doubt .Primarily, this is due to the fact that religion as a component of national life should be controlled by the government and the resolution of issues in the whole religion should exercise judicial power and the above mentioned powers, you must pass the Supreme Court of the RK or regional courts authority to determine the mechanism for the recognition of objects religious expertise not inconsistent with the law of the state (including extremist). Thus, the above position for the religious expertise to the following conclusions. First, religious expertise is one type of forensics, as it has to the research problem and defined the terms of its subjects and accordingly, to be determined its legal status . In addition, religious expertise has specific features that identify prevent and counteract crimes related to the activities of non-traditional religions, denominations and cults. Secondly, the need to implement religious expertise with regard to its specific characteristics is what it should have officially secured legal status forensics and held exclusively with independent experts that is disinterested knowledgeable persons — scientists respective issues raised profile and namely theologians, lawyers, linguists, psychologists and other persons, to be comprehensive, which completely eliminates the participation of public associations. Theologians religious organizations can be encouraged to participate in Religious Studies just as professionals in the profile, due to the need arises and on certain issues relating to the industry in theology. In addition, religious expertise should be carried out, not only in relation to objects

(objects of constituent documents, documents of religious content, religious education programs, information materials) for the first time with the registration as a religious association, but also religious associations, re-passing, regardless of religious or cult affiliation. Third, religion, as a component of national life should not only be controlled by the government agencies, but also by the regulatory mechanisms, the power to define objects that are not inconsistent with the law of the state (including extremist) should be transferred to the Supreme Court of the Republic of Kazakhstan or regional courts.

#### References

- 1 По материалам официального сайта [www.knb.kz](http://www.knb.kz)
- 2 Словарь иностранных слов. Изд. 13. — М.: Рус. яз., 1986. — С. 308.
- 3 Данные национального центра культуры и религии агентства по делам религий МК РК // [www.normativ.kz](http://www.normativ.kz)
- 4 Постановление Правительства Республики Казахстан от 7 февраля 2012 года № 2091 «Об утверждении Правил проведения религиоведческой экспертизы и о признании утратившими силу некоторых решений Правительства Республики Казахстан» // [www.kazpravda.softdeco.net](http://www.kazpravda.softdeco.net)

Л.К.Аренова

### Діни сараптама: өндірістің көкейкесті сұрағы

Мақалада ең өзекті мәселе болып табылатын діни сараптама сұрағын зерттеуді психологиялық-криминалистикалық тұрғыдан ғана емес, сондай-ақ оны теориялық, көп жағдайда тәжірибелік тұрғыдан қарастырған жөн. Бұл көзқарас зайырлы мемлекетке сенім мен діни көзқарастардың ықпал ету дәрежесін, сонымен қатар әлеуметтік ортадағы адамның мінез-құлқы өзгеріске ұшырап қалыптасуын, себебі бұлар діни-экстремистік және лаңкестік бағытта жасалған қылмыстардың басты өлшемдері болып есептелгендіктен, анықтауға мүмкіндік береді. Бұл тұрғыда діни сараптаманы тағайындау мен өндіріске алу негізгі болып табылады.

Л.К.Аренова

### Религиоведческая экспертиза: актуальные вопросы производства

В статье отмечено, что исследование вопросов религиоведческой экспертизы целесообразно рассматривать с психолого-криминалистических позиций в связи не только с их теоретическими аспектами, но и, в большей степени, с их практической значимостью. Доказано, что данное положение позволяет определить степень влияния религиозных воззрений и веры на светское общество, а также на формирование и изменение поведения человека в социальной среде. Назначение и производство религиоведческой экспертизы доминирующих элементов психолого-криминалистической характеристики преступлений террористической и религиозно-экстремистской направленности являются основными, так как определяют соответствие ее объектов национальному перечню запрещенных религиозных объединений.

#### References

- 1 According to the official site [www.knb.kz](http://www.knb.kz)
- 2 Dictionary of foreign words. Edition of 13, Moscow «Russian Language» in 1986, p. 308.
- 3 According to the National Centre for Culture and religion Agency for Religious Affairs Republic of Karelia.
- 4 Resolution of the Government of the Republic of Kazakhstan dated February 7, 2012 № 2091 «On Approval of the Rules of the religious examination and invalidation of certain decisions of the Government of the Republic of Kazakhstan».