
ҚЫЛМЫСТЫҚ ҚҰҚЫҚ ЖӘНЕ КРИМИНОЛОГИЯ

УГОЛОВНОЕ ПРАВО И КРИМИНОЛОГИЯ

CRIMINAL LAW AND CRIMINOLOGY

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Legal nature of terrorism and extremism

This article examines the legal problems of combating terrorism and extremism in the current legislation and ways to solve them. The terrorist threat is aimed at violating public security, intimidating the population or influencing the state bodies of the Republic of Kazakhstan, foreign states or international organizations. One of the fundamental conditions conducive to the existence and development of the terrorist movement is the promotion of terrorism and public calls for the commission of acts of terrorism, which are based, in most cases, on the ideas of religious extremism. To prevent the propaganda of terrorism, it is also effective to develop mechanisms for influencing the media and public authorities when identifying these sources.

Keywords: terrorism, extremism, public calls for the commission of acts of terrorism, legal nature, criminal responsibility, state security policy, counter-terrorism, Unconventional religious movement, the antiterrorist center of the KNB, the Islamic State of Iran and Libya.

Today, the state policy that provides national and international security is aimed at countering terrorism as one of the global threats of modernity.

Terrorism as a crime was first fixed in the Criminal Code of the Republic of Kazakhstan of July 16, 1997 in Article 233 «Terrorism».

The objective side of this crime is the following:

1. An explosion, arson and other actions that create the danger of loss of life, causing significant property damage or other socially dangerous consequences.
2. Actions are carried out to violate public safety, to intimidate the population, to influence the decision-making of various state bodies of the Republic of Kazakhstan, a foreign state or an international organization.
3. The war is provoked or international relations are complicated [1].
4. There is a threat of committing all these actions for the same purposes.

The following actions can be attributed to the obligatory objective signs of terrorism:

- there is a danger of death of people;
- significant property damage is caused;
- there are other socially dangerous consequences;
- there is a threat of committing these actions.

Terrorist crimes include crimes that pursue terroristic goals [2].

It is possible to carry such actions to terrorist activity:

- Weapons of mass destruction, radioactive materials are used, mass poisonings are committed, epidemics and epizootics spread, as well as other actions that may lead to massive loss of life;
- By negligence, the death of a person or other grave consequences is punished. The criminal responsibility for these crimes is imprisonment for 10 to 15 years.

The terrorist threat is aimed at violating public security, intimidating the population or influencing the state bodies of the Republic of Kazakhstan, foreign states or international organizations.

A mandatory feature of the subjective side of terrorism is the goal, which is:

- violation of public safety;
- intimidation of the population (creating a climate of fear in the society, panic, anxiety for its future);
- influencing decision-making by the authorities (releasing persons in custody, withdrawing troops from a certain territory, demanding the resignation of an official of a higher state body, etc., termination of state or other political activities) [3].

One of the fundamental conditions conducive to the existence and development of the terrorist movement is the promotion of terrorism and public calls for the commission of acts of terrorism, which are based, in most cases, on the ideas of religious extremism.

Usually, the propaganda of terrorism, in a broad sense, is expressed in manipulating the religious beliefs of the masses with an emphasis on shortcomings in the socio-economic, political, cultural and spiritual life of society.

The proclamation of such universal values as the intolerance of drunkenness and drug addiction, corruption, free morals and other negative trends in society, as part of the propaganda and agitation of radical ideas, creates favorable conditions for their spreading and rooting among the population of the country.

Propaganda of the ideology of terrorism and public calls for the commission of acts of terrorism is dangerous because it is aimed at a young, growing generation, whose ideology has not yet been formed. At the same time, this kind of propaganda undermines the moral health of youth and erodes a sense of patriotism.

Today there is an insufficient level of anti-terrorist education among young people. In this regard, it is necessary to constantly improve and update the system of spiritual and moral upbringing and development of the younger generation, as well as the forms and methods of implementing this system.

The most effective methods in combating these phenomena are the use of criminal law measures, such as criminal responsibility for the propagation of terrorism and public appeals for the commission of acts of terrorism.

However, an integrated approach in combating the propaganda of terrorism is that it is necessary to apply criminal law measures in parallel with organizational measures.

The public danger of propaganda of terrorism consists in the fact that when public appeals are made for carrying out terrorist activities, and when terrorism is publicly justified in society, a position is formed that the ideology of terror is permissible, on the basis of which a basis for its dissemination is being prepared.

This crime can be a predicate in relation to a number of crimes against public security. In addition, the socio-political situation in the country is significantly destabilized and public peace is disturbed by the propaganda of terrorism.

Public safety is an object of propaganda of terrorism and includes social relations aimed at preventing or eliminating the threat to life, health and property of people.

The objective side is expressed in:

- public calls for terrorist activities;
- public justification of terrorism.

The antiterrorist center of the KNB RK provides the following data: in the 2016, 57 radicals were convicted for committing crimes of a terrorist and religious extremist nature.

For 2011-2016, 445 citizens of the Republic of Kazakhstan were convicted, who received different terms of imprisonment. That is why it is so important to strengthen measures aimed at countering the radical forces.

Due to its favorable geographical location, Kazakhstan is an attractive region for terrorist organizations.

According to official figures, 400 citizens of the Republic of Kazakhstan are fighting in the ranks of the IGIL. How many people are really - unknown. However, even 400 people are a lot. These 400 people were handled by recruiters so much that they entered the IGIL, they are fighting and are being killed for radical purposes. It is difficult to imagine how many people living in Kazakhstan are covered by radical propaganda.

In this regard, it is necessary to make every effort to prevent the trends associated with the involvement of Kazakhstanis in the terrorist movement. Special attention in this matter is required to be paid to the youth of Kazakhstan.

Everyone has the right to choose in his faith only if it does not threaten others. It is important that the younger generation can distinguish between black and white and understand that crimes against humanity are punished in accordance with the strictness of the law.

In the Republic of Kazakhstan, there are legislative acts regulating the activities of various religious associations. Thus, the propaganda of various religious movements and sects, which are prohibited by law in our country, entails criminal liability.

Therefore, it is necessary to know the essence of traditional religions and be able to distinguish them from unconventional extremist trends.

In Kazakhstan, criminal responsibility for the propagation of terrorism and the call to commit terrorist attacks will come from the age of 14.

Currently, a bill is actively being developed aimed at improving legislative measures in the sphere of countering extremism. This is the draft law «On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Countering Extremism and Terrorism», which involves amending 5 codes and 19 laws. This bill is the result of an analysis of domestic practices and positive international experience with a view to neutralizing the conditions for carrying out terrorist activities.

The Ministry of Internal Affairs makes the following proposals to this bill: to establish administrative supervision over persons who have served a sentence for committing crimes of a terrorist or extremist nature.

The new version of the Criminal Code strengthens criminal responsibility for extremism and terrorism, and the spread of radical ideologies, using the latest technology.

The criminal law of the Republic of Kazakhstan reduced the age of criminal responsibility for the propaganda of terrorism or extremism, as well as for public calls for the commission of acts of terrorism, from 16 to 14 years.

Developed measures aimed at combating the most dangerous encroachments, while covering various ways of regulating public relations, which is a very difficult process.

Terrorism is the most significant threat to the world community. Therefore, countries should work together to develop measures to combat it.

It is necessary to carefully revise the national legislation, which provides for responsibility for the propaganda of terrorism.

In memory of Kazakhstanis, the tragedies that occurred in Aktobe and Almaty in the summer of 2016 will forever remain. Unfortunately, there could be more such sad events. 2016 showed that in our country there is a complicated situation. The problem of a single jihad arose sharply. In 2016 in the Republic of Kazakhstan, 12 terrorist acts were identified and rendered harmless at the initial stage. 182 people received the term precisely under articles of a terrorist orientation. 3 accomplices of international terrorist organizations were convicted, who were engaged in the financing of terrorism in our country. During the special operations, 5 terrorists who are citizens of their country were identified and transferred to foreign authorities. The NSC of the Republic of Kazakhstan rendered a great deal of information support to foreign special agencies, which, through this, detained and brought 14 members of international terrorist organizations to justice.

45 citizens of our republic were deported and extradited for participation in armed conflicts in Iraq, Syria and Afghanistan, 33 people returned independently. 33 of them, for participation in terrorist activities were brought to criminal liability. During this period, during 5 years, 445 people were convicted who committed criminal offenses of a terrorist and religious extremist nature.

Since early 2016, 25 people have been convicted, and about 50 people have been detained in pre-trial detention centers. The complexity of this operational situation is underlined by several factors. First of all, there is the emergence of armed conflict in countries such as Syria and Iraq, which entailed the activation of terrorism and extremism in the Middle East. The number of extremist terrorists is increasing with new militants from 80 countries. Here the direct threat is the participation in the terrorist acts of people with Kazakh citizenship. This problem is solved by adopting appropriate measures that do not require urgent, both by our country and the entire world community as a whole. According to data provided by the NSC of the Republic of Kazakhstan, during the last 5 years, 559 militants with Kazakh citizenship were prevented from leaving the zones of terrorist activity [4].

The useful and necessary work is carried out by the republican rehabilitation center - «Akniyet», which activities include preventive methods of influencing people who have radical religious views serving their sentences in correctional institutions.

«Akniyet» center together with the General Prosecutor's Office issued a methodical guide - «100 questions and answers on religion», which found its application in the institutions of the penal system.

In addition, the Ministry of Religion has developed a methodical manual «Preventing Persecution and Rehabilitation of Persons Affected by Radical Ideology», this publication is intended for all regions and is used for preventive purposes.

At the same time, theologians of the centers for the study of religious problems and local rehabilitation centers, which exist in every region of the country and operate under the regional departments for religious affairs, make an enormous contribution to solve this problem. Their activity consists in carrying out explanatory and rehabilitation work with convicts.

The Internet network should be subject to interstate protection, as more often than not, websites that call for terrorism and distribute such information are located in the domain zone of other countries, therefore national legislative measures in this case are absolutely ineffective.

The prepared system of measures should protect citizens from negative information-psychological influences.

First of all, these events concern the younger generation of our country, which is most vulnerable to negative influence on the part of terrorist figures.

One of the main anti-propagandistic functions should be carried out at the expense of public, cultural and other humanitarian resources.

Nursultan Nazarbayev in his message of 2017 voiced as one of the top priorities the fight against cybercrime. He instructed the government and the National Security Committee to create a system called «Cybershield of Kazakhstan». In his message, he indicated the amounts that are planned to be spent on combating cybercrime and terrorism. So, 7.4 billion tenge is proposed to be directed to fight against cybercrime. 17.4 billion - to resist religious extremism, terrorism and ensure economic security, 242.9 million tenge - to carry out activities to prevent the propaganda of religious extremism.

In the world practice, the idea of cybersecurity is implemented in different ways. This can be a firewall blocking unwanted sites, as a result of which users can only use certain resources. In the US there are large, expensive systems that analyze, monitor system and communication status, can predict some events.

A special task of the cybershield is to identify direct spreaders of terrorism in the information space. In addition, you must block this information on the Internet. The most effective work will be the use of the Internet in order to place in it the revealing information. To prevent the propaganda of terrorism, it is also effective to develop mechanisms for influencing the media and public authorities when identifying these sources.

References

- 1 Закон Республики Казахстан от 13 июля 1999 г. № 416-І «О противодействии терроризму» (с изм. и доп. по состоянию на 28.12.2016 г.). [Электронный ресурс]. — Режим доступа: http://adilet.zan.kz/rus/docs/Z990000416_.
- 2 Закон Республики Казахстан от 18 февраля 2005 г. за № 31 «О противодействии экстремизму» (с изм. и доп. по состоянию на 28.12.2016 г.) // Ведомости Парламента Республики Казахстан. — 2005. — № 5.
- 3 Закон Республики Казахстан от 2 октября 2002 г. №347 «О присоединении Республики Казахстан к Международной конвенции о борьбе с финансированием терроризма» // Ведомости Парламента Республики Казахстан. — 2002. — № 18.
- 4 Официальный сайт Генеральной Прокуратуры Республики Казахстан. [Электронный ресурс]. — Режим доступа: <http://prokuror.gov.kz>.

Қ.З. Тоқубаев

Терроризм мен экстремизмнің құқықтық сипаты

Мақалада қазіргі заңнамадағы терроризммен және экстремизммен күрестің құқықтық мәселелері және оларды шешу жолдары қарастырылған. Террористік қоғамдық қауіпсіздікті бұзуды, Қазақстан Республикасының мемлекеттік органдары, шетелдік үкіметтер немесе халықаралық ұйымдар қорқытуды көздейді. Террористік қозғалысты дамытудың негізгі шарттарының бірі діни экстремизм идеяларына негізінен негізделген ланкестік актілер жасауға терроризм және қоғамдық айдап насихаттау болып табылады. Осы бұқаралық ақпараттық құралдар көздерін анықтау бұқаралық ақпараттық құралдар әсерінен және мемлекеттік органдардың дамыту үшін тиімді тетіктері ретінде террористік насихаттау алдын алу үшін өте тиімді болып табылады.

Кілт сөздер: терроризм, экстремизм, терроризм актісін жасауға жариялы түрде шақыру, құқықтық табиғат, қылмыстық жауапкершілік, қауіпсіздікті қамтамасыз ету бойынша мемлекеттік саясат, терроризмге қарсы әрекет, діни қозғалыс, ҚР ҰҚК Антитеррорлық орталығы, Иран мен Ливия Ислам мемлекеті.

К.З. Токубаев

О правовой природе терроризма и экстремизма

В статье рассматриваются правовые проблемы борьбы с терроризмом и экстремизмом в современном законодательстве и пути их решения. Террористическая угроза преследует цель — нарушить общественную безопасность, устрашить население либо оказать воздействие на государственные органы Республики Казахстан, иностранные государства либо международные организации. Одно из основополагающих условий, способствующих существованию и развитию террористического движения, заключается в пропаганде терроризма и публичных призывах к совершению актов терроризма, в основе которых чаще всего лежат идеи религиозного экстремизма. Подчеркнуто, что для предотвращения пропаганды терроризма также эффективна разработка механизмов воздействия средств массовой информации и органов государственной власти при выявлении указанных источников.

Ключевые слова: терроризм, экстремизм, публичные призывы к совершению актов терроризма, правовая природа, уголовная ответственность, государственная политика по обеспечению безопасности, противодействие терроризму, нетрадиционное религиозное течение, Антитеррористический центр КНБ РК, исламские государства Ирана и Ливии.

References

1. Zakon Respubliki Kazakhstan ot 13 iulia 1999 h. № 416-I «O protivodeistvii terrorizmu» [The Law of the Republic of Kazakhstan No. 416-I of July 13, 1999 «On Counteracting Terrorism»]. *adilet.zan.kz*. Retrieved from http://adilet.zan.kz/rus/docs/Z990000416_ [in Russian].
2. Zakon Respubliki Kazakhstan ot 18 fevralia 2005 h. za №31 «O protivodeistvii ekstremizmu» [The Law of the Republic of Kazakhstan dated February 18, 2005, No. 31 «On Counteraction to Extremism»]. (2005). *Vedomosti Parlamenta Respubliki Kazakhstan – Statement of the Parliament of the Republic of Kazakhstan*, 5 [in Russian].
3. Zakon Respubliki Kazakhstan ot 2 oktiabria 2002 h. №347 «O prisoedinenii Respubliki Kazakhstan k Mezhdunarodnoi konventsii o borbe s finansirovaniem terrorizma» [Law of the Republic of Kazakhstan dated October 2, 2002 No. 347 «On the Accession of the Republic of Kazakhstan to the International Convention for the Suppression of the Financing of Terrorism»]. (2002). *Vedomosti Parlamenta Respubliki Kazakhstan – Statement of the Parliament of the Republic of Kazakhstan*, 18 [in Russian].
4. Ofitsialnyi sait Generalnoi Prokuratury Respubliki Kazakhstan [Official website of the General Prosecutor's Office of the Republic of Kazakhstan]. *prokuror.gov.kz*. Retrieved from <http://prokuror.gov.kz> [in Russian].