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THE DEFINITION OF TERRORISM IN INTERNATIONAL AND NATIONAL LAW: ANALYSIS AND LEGAL CONTENT



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The article is devoted the concept of terrorism in international and Kazakhstan law. The article proposes to consider terrorism as a multidimensional phenomenon rather than just single act of violence. We can also consider terrorism as multi leveled. For instance, formulation of ideology, preparation and recruitment of people, financing, defining the aim can be done on one level. Also the influence of foreign states can be identified on this level. Terrorism also includes a multitude of acts. One must consider the subject of the act, the object of the act, and the motive of the act. As a result some scholars make a distinction between terrorism and terrorist acts. The aim of acts of terrorism is to form negative attitude to state or international organization.

The primary connecting link between terrorism and terrorist act is final goal. The final goal of terrorism in this sense is to affect the conduct of state officials or international organizations because they are the “symbols” of power for society and state.

In our view, terrorism has three goals.

1. Final goal – state, international organization.
2. Immediate goal – immediate object of terrorist act.
3. Interim goal – society, population.

Perhaps there is forth goal as personal goals, such as revenge, achieving social justice, impunity, public effect or “fame”.

Thus, in our point of view, terrorism is activities aimed at the preparation, financing, and committing acts of terrorism in the states through which the achieved effects on the actions of officials of States or international organizations (or harmed international relations and the rule of law) in the interests of the subject of terrorism.

Key words: *International Law; Terrorism; International Terrorism; Countering Terrorism.*

Халықаралық және ұлттық құқықтағы халықаралық терроризм ұғымы: талдау және құқықтық мазмұны

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Мақала халықаралық және қазақстандық құқықта терроризм ұғымын қарауға арналған. Осыған орай терроризмді зорлық-зомбылықтың бір актісін жасау тұрғысынан емес, ал күрделі көпжоспарлы құбылыс ретінде қарау ұсынылады. Атап айтқанда, терроризмнің ішінде бірнеше деңгейді (жоспарды) бөліп шығаруға болады, олардың әрқайсысында өз мақсаттары, себептері, субъектілері, объектілері мен тиісінше әрекеттер қатар жүруі мүмкін.

Әрбір деңгейге террористік сипаттағы қылмыстардың өз жиынтығы тән. Мысалы, олардың біреуінде идеологияның қалыптасуы, адамдарды даярлау мен тарту, террористік топты ұйымдастыру, қаржыландыру, мақсаттарды айқындау және т.б. болып жатады. Осы деңгейде сол немесе өзге мемлекеттің аумағында теракт жасауға мүдделі шетел мемлекеттердің әсері байқалуы мүмкін. Оның басқашакөрінісі террористік актіні жасау болып табылады.

Осыған байланысты ұғымның құрамында осы феноменге кіретін бірнеше дәйекті және бір-бірімен байланысты мақсатты бөліп шығару қажет. Біздің көзқарасымыз бойынша, терроризм үш мақсатқа қол жеткізуді көздейді:

1. Соңғы мақсат – мемлекет, халықаралық ұйым.
2. Тікелей мақсат – терактінің тікелей объектісі.
3. Аралық мақсат – қоғам, халық.

Төртінші мақсат та болуы мүмкін – бұл мысалы, кек алу, әлеуметтік әділдікке, жазасыздық жағдайға, көпшілікке ықпал етуге немесе «даңққа» қол жеткізу сияқты жеке мақсаттар.

Осылайша, терроризм – терроризм субъектісінің мүддесіндегі мемлекеттердің немесе халықаралық ұйымдардың лауазымды адамдары әрекеттеріне ықпал етуге көмектесетін (не халықаралық қатынастарға және құқықтық тәртіпке зиян келтіретін) мемлекеттерде терактілерді даярлауға, қаржыландыруға және жасауға бағытталған қызмет. Бұл жағдайда теракт халықаралық, сол сияқты ұлттық құқық шеңберінде зорлық-зомбылықтың нақты түрі ретінде бағаланатын болады, бұл ретте ол жеке және дербес қылмыс ретінде болады, яғни оны терроризмнің қаруы немесе құралы ретінде тану қажет.

Түйін сөздер: халықаралық құқық, терроризм, халықаралық терроризм, терроризмге қарсы күрес.

Понятие международного терроризма в международном и национальном праве: анализ и правовое содержание

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Статья посвящена рассмотрению понятия терроризма в международном и казахстанском праве. В статье предлагается рассматривать терроризм не с позиции совершения одиночных актов насилия, а как сложное многоплановое явление. В частности, возможно выделение в терроризме нескольких уровней (планов), где на каждом из них могут сосуществовать свои цели, мотивы, субъекты, объекты и соответственно действия.

Каждому уровню присущ свой набор преступлений террористического характера. Так, например, на одном из них происходит формирование идеологии, подготовка и вербовка людей, организация террористической группы, финансирование, определение целей и т.д. На этом же уровне может также проследиваться влияние иностранных государств, которые заинтересованы в совершении терактов на территории того или иного государства. Другим проявлением является совершение террористического акта.

В связи с этим необходимо в составе понятия выделять несколько последовательных и связанных между собой целей, которые и включаются в данный феномен. На наш взгляд, терроризм преследует достижение трех целей:

1. Конечная цель – государство, международная организация.
2. Непосредственная цель – непосредственный объект теракта.
3. Промежуточная цель – общество, население

Возможно и наличие четвертой цели – это личные цели, такие как, например, месть, достижение социальной справедливости, состояния безнаказанности, публичного эффекта или «славы».

Таким образом, терроризм – деятельность, направленная на подготовку, финансирование и совершение терактов в государствах, посредством которых достигается воздействие на действия должностных лиц государств или международных организаций (либо наносится вред международным отношениям и правопорядку) в интересах субъекта терроризма. Представляется, что теракт в этом случае будет квалифицироваться конкретным видом насилия как в рамках международного, так и национального права, при этом он также выступает отдельным и самостоятельным преступлением, т.е. его следует признавать орудием или средством терроризма.

Ключевые слова: международное право; терроризм; международный терроризм; противодействие терроризму.

Introduction. The issue of terrorism has become today's global and dangerous challenge and gained widespread debate in legal literature. First of all there is no universally accepted definition of "international terrorism". The society mostly defines terrorism at the level of emotion: in mass consciousness terrorism is accepted as atrocity, a threat to the basics of life [1]. The reason for international attention to this question is because the given issue is a threat not only for some states, but for safety of world community. The fact that acts of international terrorism have become a part of our daily reality confirms that [2].

The methodology and level of elaboration of the theme. The main research methods were used methods of system analysis and comparative method in the study of the issues of counter-terrorism. System method allowed to approach the consideration of the concept of terrorism as a complex multi-level phenomenon. The comparative method has allowed: analyzing the various positions of scientists and researchers, considering the norms of International law and Kazakh legislation¹.

The study is based on international and national legal documents and scientific works Kuznetsov A.P., Izosimov S.V., Lazutin L.A., Emelyanov V.P., Epstein V.A. and etc.

1 The Definition of Terrorism in International Law: Analysis and Legal Content

The concept of "international terrorism" was introduced in 70-s [3], and from 1996 the term "terrorism" started to be used in official international-legal documents of United Nations [4]. There are many international documents related to legal assessment of terrorism and measures to combat terrorism. For example 1963 Tokyo Convention on offences and certain other acts committed on board aircraft, 1970 Hague convention for the suppression of unlawful seizure of aircraft, 1971 Montreal convention for the suppression of unlawful acts against the safety of civil aviation, 1991 Convention on marking of plastic explosives for the purpose of detection, 1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents, 1979 Convention against taking of hostages, 1980 Convention on the physical protection of nuclear material, 1988 Convention for the suppression of unlawful acts against the safety of maritime navigation etc. However, it is worth saying that these documents do not propose any

universal definition of "terrorism". Rather they define acts of terrorism only in its own context of regulation.

The lack of a common definition can also be observed in texts of international legal documents of regional character. It may cause some contradictions between the documents when one state is a party to several documents. For instance, Republic of Kazakhstan is a state-party to *Shanghai convention*, adopted in 2001, "*On Combating Terrorism, Separatism and Extremism*", as well as the *Treaty on Cooperation Among the State Members of the Commonwealth of Independent States in Combating Terrorism* (1999).

The definition of terrorism is different in those two documents. For example, in *Shanghai Convention* terrorism is defined as "a) any deed recognized as a crime in one of the treaties listed in the Annex to the present Convention (hereinafter referred to as Annex), and as it is defined in this treaty;

b) any other deed aimed at causing death of any civil person or of any other person not taking active part in hostilities in the situation of an armed conflict, or causing him a serious bodily injury, and causing a considerable material damage to any material object, as well as the organization, the planning of such a deed, assistance in its commitment, incitement to it, when the purpose of such deed due to its character or nature, consists in intimidation of the population, breaching the public security or forcing state authorities or an international organization to commit any action or refrain from its commitment, and that are subject to criminal prosecution in accordance with the national legislation of the Parties"².

In the *Treaty on Cooperation Among the State Members of the Commonwealth of Independent States in Combating Terrorism* from 4th June 1999, the notion of "terrorism" has different meaning, such as: "an illegal act punishable under criminal law committed for the purpose of undermining public safety, influencing decision-making by the authorities or terrorizing the population, and taking the form of:

- violence or the threat of violence against natural or juridical persons;
- destroying (damaging) or threatening to destroy property and other material objects so as to endanger people's lives;
- causing substantial harm to property or

¹ In this article, we did not aim to consider the international and national court practice.

² Republic of Kazakhstan, Law on Ratification of Shanghai Convention on Countering Terrorism, Separatism and Extremism No. 316 (2002).

the occurrence of other consequences dangerous to society;

- threatening the life of a statesman or public figure for the purpose of putting an end to his State or other public activity or in revenge for such activity;
- attacking a representative of a foreign State or an internationally protected staff member of an international organization, as well as the business premises or vehicles of internationally protected persons;
- other acts classified as terrorist under the national legislation of the Parties or under universally recognized international legal instruments aimed at combating terrorism.³

These conflicting definitions of terrorism demonstrate the necessity for of universally recognized definition of "terrorism". Such a definition will provide an answer for the resolution of existing problems as well as affect significantly the process of its implementation into national legislation.

There is a new definition of "terrorism" under Kazakhstan's *Counter-Terrorism Act*, which was adopted on July 13, 1999⁴. According to amendments, "terrorism" is an ideology of threat and practice of influencing the decision-making process of state authorities, local governments (or municipal bodies), or international organizations by committing or threatening to commit violent or criminal acts related to intimidation of the population and aiming to injure persons, society and state"⁵.

Nevertheless, the given definition of terrorism is quite broad and includes various criminal acts, which causes ambiguity in practical interpretation. Thus, it is quite problematic to understand the meaning of "practice of influencing" in this case. Other than that, the notion of "terrorism" in context has no link with the notion of "act of terrorism". Therefore, according to the given definition, we can accept as terrorism everything, as every crime may cause fear among the people, injure persons, society and state.

By analyzing norms of this Law, attention should be paid to the difference between "terrorism" and "acts of terrorism". Thus, an

"act of terrorism" is perpetration or threat to commit exposure, arson or other acts which threaten to cause loss of life, significant damage to property, or other socially dangerous consequences and are implemented with a view to violating public security, intimidating the population, or exercising coercion upon the adoption of decisions by state authorities of the Republic of Kazakhstan, by foreign states or international organizations, as well as attempts on the lives of statesmen or public figures perpetrated with a view of ending their state or other political activity or out of revenge for such activity"⁶.

This broad notion of lawmaking must distinguish acts of terrorism from other criminal offences. However, once we look into the content, we notice that notions such as "violation of public security", or "attempts on the lives of people" can be qualified as terrorist acts, because each crime aims at violating public security or endangering the lives of people.

The objects of "terrorism" and "act of terrorism" are different. Hence, in "terrorism" the object is state organs, local governments or international organizations, and in the "act of terrorism", instead of local governments the objects are foreign states. These contradictions, undoubtedly, affect the adoption of a universally accepted definition and its following interpretation.

According to legal scholars, defining and combating terrorism, but also clarifying its distinctive features is some of the most complicated problems of the legal world today [2, p. 419]. Objectively, terrorism is a complicated multidimensional phenomenon infringing legally protected areas of human activity. Legal scholars state that there are so many different definitions because of the complexity of this phenomenon, various understandings of national security policy by many countries, divergence in ideas of forms of terrorism and reluctance of some states to have a strict formula of terrorism in order to hide their connections with terrorist acts⁷. An aggravating factor in the international debate on terrorism is that it takes place at the junction of politics

³ Republic of Kazakhstan, Law on Ratification of the Treaty About Cooperation of CIS State-Parties in Combating Terrorism No. 93 (2000).

⁴ Some amendments were included by the Law on Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan concerning questions of Countering Terrorism, No. 63-V (2013).

⁵ Republic of Kazakhstan, Law on Countering Terrorism (1999).

⁶ Republic of Kazakhstan, Law on Countering Terrorism (1999).

⁷ See Chuganov E. G., *International Legal Standards and Norms in Countering Terrorism*, Russian Investigator (12'2004). p. 39, 44; Kuznetsov A. P. & Izosimov S.V., *Harmonization of Russian and Foreign Criminal-Legal System on Countering International Terrorism: Theoretical and Practical Aspects* (2003). In V. M. Baranov (Eds.), *Russian and European Legal Systems: Correlation and Problems of Harmonization*, Nijni Novgorod. - p. 420.

and law [5]. In any case, the international community is aiming to solve this problem in spite the fact that there is no common approach to this question [2, p. 425].

It is vital to concentrate on some requirements in developing a universal understanding of terrorism which is also important in lawmaking process. One of them is that its formulation must be separate from political speculation and manipulation [2, p. 415].

More than hundred different definitions of terrorism currently exist. However, none of them has unified evaluation of this phenomenon. We demonstrate some of the examples.

One of the first definitions of international terrorism was given in the Framework decision on combating terrorism adopted by the Council of the European Union in 2002. Terrorist acts were classified as “intentional acts, which, given their nature or context, may seriously damage a country or an international organization where committed with the aim of seriously intimidating a population, or unduly compelling a Government or international organization to perform or abstain from performing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization” [6].

The *Dictionary of International Law* defines international terrorism as “the complex of socially dangerous acts on an international level, which causes reasonless loss of lives, disturbance of usual diplomatic state activity and its representatives, as well as transport communication” [7].

V.P. Emelyanov offers a definition of terrorism as “socially dangerous acts or threats which intimidate population or influence directly or indirectly the government’s decision-making process. He also includes in the definition the decisions by governments that benefit the interests of terrorists” [8].

O.V. Damaskin considers terrorism as committing violent crimes, strengthening the power of terrorist groups, eliminating or suppressing political opponents and reinforcing the power base of terrorist groups [9].

V.A. Sidorov uses terrorism as the practice or threat of violence exercised by persons, groups or a government to achieve some political goal [10].

According to U. Latypov, international terrorism is exercising violence and intimidation

by a state or individual aiming to breach international legal law. His definition also includes acts of violence that harm individuals beyond the terrorist’s target [11].

R. Frindler defined terrorism as “violent act(s) or threats that endanger lives, violate criminal legislation of any state, or intimidate or force government, civil society, or individuals. War crimes are not considered as terrorism” [12].

Others consider terrorism in three aspects: 1) as crime; 2) as terrorist groups; 3) as terrorist doctrines. However, terrorism must be recognized first of all as crime, while it defines furthermore which terrorist groups will be involved and which doctrines will be applied⁸.

A. Dolgova defines terrorism as “commitment of socially dangerous acts towards lives and health of people, rights and legal interests of different subjects by forcing them to pass decisions benefiting terrorists.” [13].

Epstein describes terrorism as act of violence or threat to use violence by non-governmental conspiratorial individuals, groups or organizations in peaceful times [14].

As we can see, there are numerous definitions of terrorism, which try to include many different aspects. In the above mentioned definitions, the authors were trying to point out one specific feature of terrorism because the concept is comprehensive. Nevertheless, by analyzing different aspects of terrorism, it is possible to arrive at a deeper understanding and possibly formulate a better definition. Concerning the feature of terrorism as “violence”, it must be noted that any criminal activity can be considered as an act of violence, whether it has an aim to commit an act of terrorism or not.

Nowadays we witness a paradox. The terrorist is prosecuted, but individuals or organizations who sponsor the act of terrorism avoid the responsibility. This is because the application of legal rule is restricted to classification of the terrorism as act of terrorism.

It would be appropriate to consider terrorism as a multidimensional phenomenon rather than just single act of violence. We can also consider terrorism as multi leveled. For instance, formulation of ideology, preparation and recruitment of people, financing, defining the aim can be done on one level. Also the influence of foreign states can be identified on this level. Terrorism also includes a multitude

⁸ See Trunov I. L., *Developing Legal Grounds for Counterterrorist War*, 12 *Legal World* (59-62); Kuznetsov A. P. & Izosimov S.V., *Harmonization of Russian and Foreign Criminal-Legal System on Countering International Terrorism: Theoretical and Practical Aspects* (2003). In V. M. Baranov (Eds.), *Russian and European Legal Systems: Correlation and Problems of Harmonization*, Nijni Novgorod. - p.420

of acts. One must consider the subject of the act, the object of the act, and the motive of the act. As a result some scholars make a distinction between terrorism and terrorist acts. The aim of acts of terrorism is to form negative attitude to state or international organization.

The primary connecting link between terrorism and terrorist act is final goal. The final goal of terrorism in this sense is to affect the conduct of state officials or international organizations because they are the “symbols” of power for society and state.

The analysis of most terrorist acts reveals the following goals in their content:

1. Final goal – state, international organization (*influencing the actions and etc*).
2. Immediate goal – object of terrorist act.
3. Interim goal – society, population (*intimidation, creating an atmosphere of «fear» and etc*).

Perhaps there is forth goal as personal goals, such as revenge, achieving social justice, impunity, public effect or “fame”.

Thus, in our point of view, ***terrorism is activity aimed at the preparation, financing, and committing acts of terrorism in the states through which the achieved effects on the actions of officials of States or international organizations (or harmed international relations and the rule of law) in the interests of the subject of terrorism.*** It seems that the act of terrorism in this case would be classified as a specific form of violence in the framework of international and national law, while it also acts as a separate and independent offense, i.e. it should be recognized as a tool or means of terrorism. Looking at terrorism from this position it is advisable to include in its membership a sign of how the commission of a terrorist act as an independent crime of international and national law. In this case, it becomes possible and a different composition of subjects as well as in acts of terrorism - only individuals, and terrorism - individuals, terrorist organizations, States and others.

With this in mind, it would be appropriate to also change the scheme of interaction between international law and national legislation in the fight against terrorism. At present, international law acting likes unifying element that determines the legal qualification of acts of terrorism and national law in this regard assumes a major role in the fight against terrorism. International law, in addition to the unifying role that could take on the role in establishing the international legal responsibility of States,

which are to be involved in terrorism can affect the policy of another state. Accordingly, the existence of these levels can cause and different responsibilities. For example, if the state is involved in activities aimed at committing terrorist acts on the territory of another state, it will be possible to attract the international legal responsibility, if individuals commit a terrorist act, they are subject to criminal liability under national law. *Since individuals - executors of a terrorist act, are criminally responsible under national law, they are under the jurisdiction of national courts. However, in order to attract the subject of terrorism responsible is required the establishment of a special international tribunal, or empowerment relevant competence of the International Criminal Court.*

Thus it is becoming increasingly necessary to establish a unified definition of terrorism, so that states can cooperate in combating the problem. In this context, it requires further conceptual working the contents of terrorism, and its specific features in order to develop a unified and consistent understanding of its practice.

II National Legislation in Countering Terrorism: Current State and Problems

Currently Kazakhstan has become a party to basic universal international-legal acts regulating questions of combating international terrorism. Accession to previously-mentioned legal documents requires incorporating these norms into the national legislation in order to provide legal regulation of government activities in combating international terrorism. Let us consider some aspects related to implementation of particular conventional rules into Kazakh legislation.

In *article 15, paragraph 2 of the Constitution of the Republic of Kazakhstan*, considers the seriousness of terroristic crimes and regards the death penalty as an exceptional punishment for terroristic crimes which have resulted in death casualties⁹. Besides, there is no definition of “terroristic crimes” in the legislation of Kazakhstan, nor any criterion of this crime, which causes serious problems. Today, the list of crimes that are considered as terroristic, according to legislators, is elaborated within the framework of criminal legislation reform.

The Kazakh Act № 416 of 13th of July 1999 “On Countering Terrorism”, focuses on the competence of state bodies to combat

⁹ *The Constitution of the Republic of Kazakhstan, (1995) “Law” Database of Min. of Just. Of the Rep. of Kazakhstan.*

terrorism and cooperate with other state bodies. Besides, the given act provides a legal basis for preventing and suppressing terrorist activities. The preventive measures are related to a complex of legal, economic, social, organizational, educational, propagandistic and other measures provided by state and local bodies. These bodies conduct research to discover the reasons underlying terrorism. However, the given Act does not provide detailed set of regulations about the state organ functions.

In 2013 the *Act of the Republic of Kazakhstan "On Countering Terrorism"* was revised in order to reform antiterrorist legislation and empower state bodies in combating terrorism. Besides, a norm on the empowerment of Armed Forces of Republic of Kazakhstan in using weapons and military equipment was added. Hence, *Article 14-2* indicates, that in case an aircraft does not react to the radio commands of ground based control to stop violating the rules on the use of airspace of the Republic of Kazakhstan and radio, ignores the visual signals to intercept aircraft or refuses to obey radio commands and visual signals without explaining the reasons, the Armed Forces of the Republic of Kazakhstan can use weapons and military equipment to suppress the flight and force them to land. When an aircraft refuses to land and there is a real danger for death or technological disaster, the weapons and war equipment is used to destroy this aircraft. Also, this Act provides that when there is adequate information proving that the aircraft is used to commit a terrorist attack, the Armed Forces of Republic of Kazakhstan uses weapons and military equipment to destroy it. In this regard, the formulation as "all measures to land this aircraft must be exhausted" is too broad and may be subjectively interpreted. Thus, it is doubtful and subjective to decide when exactly the moment will be exhausted. Besides, there are ethical, moral and psychological difficulties in determining this norm. Therefore, it is essential to consider this norm thoroughly.

The Armed Forces of Republic of Kazakhstan have the same authority over internal waters, territorial sea, continental shelf of Kazakhstan and in ensuring the security of navigation.

Concerning the legal basis of cooperation of the Republic of Kazakhstan with other countries and international organizations, Article 6 of the given act determines that state bodies of Kazakhstan cooperate with international foreign law enforcement authorities in

countering terrorism. The legal basis for this kind of cooperation is national legislation and international treaties. Moreover, they have the authority to conduct search operations in the territory of foreign states. International treaties ratified by Republic of Kazakhstan serve as a legal basis for this activity. One of the courses of international cooperation is pursuing persons who are involved in terrorist activities regardless of the place of their perpetration, by the request of competent organs. This provision is provided in art.6 of the Act "On Countering Terrorism."

In general, the question of cooperation of the Republic of Kazakhstan with foreign states and international organizations is reflected in norms of this Act; however, they refer to provisions of international treaties. Thus, priorities of cooperation with third states and international organizations are not established in national legislation.

Tendencies in developing antiterrorist legislation in Kazakhstan affected the legislation in the field of national security as well. Specifically, the new *Law "On National Security of Republic of Kazakhstan"* was adopted on January 6, 2012 (№ 527-IV). Earlier terrorist acts were considered on the national level as one of the threats to national security. According to the previous *Law "On National Security"* dated back to 1998, "Threats to national security of the Republic of Kazakhstan are intelligence, terrorism, sabotage directed to the detriment of the national security of Kazakhstan and the activities of special services and organizations of foreign countries, as well as individuals"¹⁰. Although terrorism was considered as national threat, this formulation caused disagreements in enforcement practice, because different threats were combined, and special services, organizations of foreign countries and individuals were recognized as subjects of terrorism. Taking this into account, the new 2012 *Law of the Republic of Kazakhstan "On National Security"* removed this conflict of norms and precisely defined it in *paragraph 1 Article 6*, by referring to "terrorism, extremism, separatism and other forms" of threats to national security¹¹.

One of the novelties of this law is including a norm on responsibility in Article 21 for recruitment of citizens, representatives of political parties and other associations to terrorism, as well as the use of the existing religious and political differences. Provisions of this article also prohibit the admission to the

¹⁰ Republic of Kazakhstan, Law on National Security (1998) "Law" Database of Min. of Just. Of the Rep. of Kazakhstan.

¹¹ Republic of Kazakhstan, Law on National Security (2012) "Law" Database of Min. of Just. Of the Rep. of Kazakhstan.



country of foreign citizens and stateless persons convicted of a committing a crime.

Article 15 identifies the system of bodies responsible for countering terrorism:

- National security agencies – special state organs subordinated to the President of the Republic of Kazakhstan;
- Ministry of Defense – central executive organ supporting the defensive capacity of the state, including permanent military alertness and complete readiness for action of Armed Forces, fulfilling intelligence.
- Authorized financial institutions – central executive body providing financial monitoring and taking measures on countering legalization of income received illegally and financing terrorism....¹²

Article 23 stipulates that the “head of the operational headquarter passes decision for owners of networks and connecting operators on suspension of provisions of services to individuals and natural persons and (or) to limit use of networks”¹³. This norm limits functions of connecting operators and does not regulate national security questions. Thus these norms regulate issues beyond the content of the Law “On National Security” and must be contained in specific laws, regulating activities of special bodies and connecting operators.

The *Criminal code of Republic of Kazakhstan* is a mechanism preventing and condemning terrorism (art. 255, 256, 257, 258

of *Criminal Code and others*), which threatens the state national security¹⁴.

One of the important ways for states to counter terrorism is to adopt measures on financing terrorism. *An International Convention for the Suppression of the Financing of Terrorism* is one of the main documents in this respect. In this regard, on 28 August, 2009 the Republic of Kazakhstan has adopted a Law “On Combating Laundering of Criminal Proceeds and Terrorism Financing”.

The given Law defines the procedure of financing terrorism as provision or collection of funds and (or) other property or rendering of financial services by terrorists (or) to terrorist organizations for carrying out of their terrorist activity¹⁵. However, the reformation of the antiterrorist legislation in 2013 has changed this definition. Hence, financing terrorism is provision and collection of funds or property, or property rights, also donation, exchange, charitable assistance, sponsorship, other information services given to natural or legal persons with the intention that they should be used or in the knowledge that they are to be used in order to carry out a terrorist attack¹⁶. According to the drafters of the amendments and supplements to the Law, the given definition more or less conforms with the *CIS Agreement on Countering the Legalization (Laundering) of Criminal Assets and Financing of Terrorism* adopted on October 5, 2007 and ratified by the Republic of Kazakhstan in 2011.

The new Law includes institute of “financial monitoring” and defines it as a set of measures on collecting and analyzing data on transactions with money and (or) other property arriving from the financial monitoring entities. Besides, it also defines the subjects of financial monitoring, their rights and obligations. The effectiveness of the mechanism depends on the proper execution of the subjects of the requirements of this Law.

Furthermore, there is a special procedure

¹² Republic of Kazakhstan, Law on National Security (2012) “Law” Database of Min. of Just. of the Rep. of Kazakhstan.

¹³ Id.

¹⁴ Republic of Kazakhstan, The Criminal Code (2014), “Law” Database of Min. of Just. of the Rep. of Kazakhstan.

¹⁵ Republic of Kazakhstan, Law “On Combating Laundering of Criminal Proceeds and Terrorism Financing, “Law” Database of Min. of Just. of the Rep. of Kazakhstan (2009).¹⁶ File on Project of Law of the Republic of Kazakhstan on Supplements and Amendments to Some Legislative Acts of the Republic of Kazakhstan on Countering Terrorism (2012) <http://www.medialaw.asia/posts/22-08-2012/64459.html>

¹⁶ File on Project of Law of the Republic of Kazakhstan on Supplements and Amendments to Some Legislative Acts of the Republic of Kazakhstan on Countering Terrorism (2012) <http://www.medialaw.asia/posts/22-08-2012/64459.html>

according to which subjects of financial monitoring shall immediately inform the authorized bodies on such suspicious transactions prior to their commitment. Notifications of suspicious transactions which cannot be suspended shall be submitted by the entities of financial monitoring to the authorized body not later than three hours after their commitment or within twenty four hours from the moment of revealing of such transactions. Having received a notice of suspicious transaction, the authorized body, within twenty four hours of receiving the notice shall make a decision on suspension of suspicious transaction commitment for the term up to three calendar days. Should there be any grounds to believe that a transaction with money (or) other property is connected with laundering of illegally obtained incomes, and (or) financing of terrorism, the authorized body, not later than five hours from the moment of notice reception on suspicious transaction,

shall send information to law enforcement bodies in accordance with their competence for making appropriate decision. From the moment of information receipt, appropriate law enforcement bodies shall, within forty eight hours, be obliged to make appropriate decision and to inform the authorized body thereon¹⁷.

However, the norm on extradition of persons committing crime is not covered by the current legislation. It is necessary to adopt a unified legislative act regulating extradition of persons.

Thus development of an effective mechanism of countering international terrorism in our country first of all must be fulfilled within the process of ongoing development of national legislation. To do this international legal aspects of terrorism must be analyzed thoroughly. States should effectively coordinate their activities on development of common legal basis in order to increase the effectiveness of international cooperation in countering terrorism [15].

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