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УГОЛОВНОЕ ПРАВО И УГОЛОВНЫЙ ПРОЦЕСС

CRIMINAL LAW AND CRIMINAL PROCEDURE

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Actual issues of countering the financing of terrorism and extremism: a psychological and forensic aspect

The relevance of the study: The relevance of the studied problem is due to the need to consider combating the financing of terrorism, from the psychological and forensic aspects, both in Kazakhstan and at the international level as a whole. The financing of terrorism is a phenomenon that acts as the main platform for the spread of various forms of extremism and terrorism, creates a potential and real danger to economic security, political stability and the integrity of states, including Kazakhstan, its sovereignty and territorial integrity, as an independent state. The purpose of the article: is a psychological and forensic review of the aspects of financing terrorism, and a legal analysis of measures to ensure effective and timely counteraction to the financing of terrorism in Kazakhstan, identifying problematic issues of a psychological, criminalistic and legislative nature. Research Methods: The leading approach to the study of combating the financing of terrorism is the systematic-activity approach and the method of legal analysis of existing national legislation in this area. Results of the study: Psychological and criminalistic aspects and legislative regulation of countering the financing of terrorism and extremism, sanctions as a criminal act, identifying new risks for the financing of terrorism, and their impact on the formation of poliative issues in Kazakhstan, and their effective resolution are presented. Practical relevance: Based on the current national legislation of Kazakhstan, the main elements of the financing of terrorism and extremism were identified, discussion and urgent issues requiring additional legislative settlement were identified, related to both psychological and criminalistic aspects and the imposition of punishment under this criminal law norm, in the aspect of prevention crimes, identified threats and vulnerabilities associated with the financing of terrorism and extremism in Kazakhstan at the present Mr. stage.

Keywords: identification and suppression of financing of terrorism and extremism, psychological and criminalistic issues of financing of terrorism and extremism, measures to counter the financing of terrorism, new risks of financing terrorism and extremism, terrorist organizations and groups, terrorists, exploitation of natural resources, payment products and services used in the field terrorist financing.

Introduction

The successful detection, suppression, disclosure and investigation of various types of crimes is largely determined, on the one hand, by the criminal law classification of crimes, and on the other, by the criminalistic characteristics of criminal offenses. Of particular importance in the criminalistic characteristics of the financing of terrorism are the psychological aspects of the act in question. In this regard, criminal activities related to the financing of terrorism deserve special attention and comprehensive consideration not only from the standpoint of international legal standards and national legislation, but also from the psychological and forensic aspects.

The current legislation of the Republic of Kazakhstan, secures the financing of terrorism, as the provision, collection of money, other property, the right to it, property benefits, as well as donation, exchange, donations, charitable assistance, the provision of information and other services, the provision of financial services to an individual or group persons committed by a person who is consciously aware of a terrorist or extremist nature their activities or the fact that the property provided, information, financial and other services provided will be used to carry out terrorist or extremist activities or to provide a terrorist or extremist group, terrorist or extremist organization, illegal paramilitary group [1].

Materials and methods

In the research process, the following methods were used: the basis is the general scientific dialectic method of cognition of natural objective activity, based on the unity of cognitive, rational and practical activity, as well as a system-activity approach; theoretical (analysis, synthesis, concretization, generalization, analogy, modeling); empirical (study of international experience in countering the financing of terrorism, regulatory documents) a comparative legal analysis method (compare the concepts and processes in the field of countering the financing of terrorism, find out the similarities and differences between them).

Results

The financing of terrorism as a criminal offense has three main aspects of considering it as a criminal phenomenon, namely:

- criminal law aspect;
- financial and economic risks of financing terrorism, as a threat to the financial and economic security of Kazakhstan, as a sovereign state;
- psychological and criminalistic aspects of both the commission and the identification of the financing of terrorism. It should be noted that these aspects are interconnected and interdependent with each other, and make up a certain system of forensic elements of the psychological and forensic characteristics of the financing of terrorism.

The criminal law aspect is the basis for the classification of socially dangerous acts, and therefore includes their qualification characteristics of the object-subject, the objective and subjective aspects of the crime.

The risks of identifying the financing of terrorism have as their goal the immediate and effective adoption of measures to counter this criminal act, which is consistent not only with national legislation, but also with the International Convention for the Suppression of the Financing of Terrorism, adopted in 1999, with the standards of the Group for the Development of Financial Anti-Money Laundering Measures (FATF), as accepted international standards in the field under consideration, given the flexibility of criminalization goals in the national laws of various countries. This is due to the fact that the financing of terrorism is a phenomenon that is developing quite quickly in terms of new financial transformations and the regular emergence of new financial developments, including means of payment, crypto currencies, money transfer systems and values.

In our opinion, effective countering the financing of terrorism also lies in understanding the emergence and spread of various forms of terrorist organizations, their financial and information management systems, that is, the activities adopted by terrorist organizations in the formation, planning and implementation of the budget and intelligence activities of an international scale.

Thus, there is a need for law enforcement, special and other competent authorities to develop legislatively established strategic and tactical measures to counter the financing of terrorism.

It should be noted, from the point of view of the criminal legislation of Kazakhstan, the qualification of the financing of terrorism and its derivatives (for example, the formation of an illegal paramilitary formation, etc.), as a criminal offense, refers to any person who is knowingly aware of, provides and / or collects money, property, rights or benefits to it, including a barter, donation, charity, information, financial and other services, to an individual or group of persons, or to a legal entity.

In addition, in the current legislation of Kazakhstan, the disposition of Article 258 of the Criminal Code of the Republic of Kazakhstan does not indicate a sufficiently significant element for qualifying the financing of terrorism, namely, various assets as controlled resources for obtaining economic and financial benefits.

This disposition is related to the fact that the aspects of financing terrorism, and various forms of its implementation, have gained a fairly wide international scale, reimbursement of the costs of terrorist opera-

tions, also related to the conduct of hostilities in the Middle East and terrorist attacks in Europe and America, and the growth of activity of single terrorists not members of terrorist organizations.

The money provided, including in the form of donations and / or charitable assistance, as well as other property or services, are spent to a greater extent on the organizational, technical and educational direction of militants and terrorists, and the act of terrorism itself, as the final stage, acts as the consequences of the financing of terrorism.

The risks of terrorist financing arising from the timely and effective adoption of measures to counter the criminal act in question. In the broadest sense, terrorism refers to all the diverse methods of combating the use of various forms of violence and intimidation, which are manifested in various types of criminal activity.

In domestic and foreign literature, various classifications of the forms and types of modern terrorism as a multifaceted phenomenon with a rather complex configuration are given, where the financial component of such criminal structures occupies a special place.

Terrorism, and the extremist ideology preceding it, can manifest itself in the form of organizational-group and individual character, which at present has undergone certain structural changes due to technological advances in the financial sector (cryptocurrencies, prepaid cards, payment services via the Internet, etc.).

In particular, such changes relate to the structure, size and spatial characteristics of the organizational and group composition of terrorists, which naturally affects the management of financial resources, as well as the movement and use of funds and other assets.

However, the basic needs of terrorist groups, organizations and single terrorists remained unchanged, namely the need for the material and technical basis of their activities. This factor identifies the main tool to counter the financing of terrorism, namely the deprivation of the financial base and resource support for this type of criminal activity.

In order to identify and suppress the financing of terrorism, and generally counteract such activities, it is necessary to determine its risks, vulnerabilities and consequences.

All terrorist organizations, groups and small cells, and their network, differ not only in structure and ideological motives, but also in opportunities, including the production of recruitment and recruiting into their ranks.

In this sense, the most significant is the availability of financial capabilities to support terrorist activities, namely the recruitment and promotion of their ideas, training and preparation of militants, technical equipment, including communications, terrorist operations and attacks, as well as the most expensive item — the constant supply of life support items terrorists and cash payments.

Terrorist organizations whose needs are aimed at capturing, holding and controlling territories are especially dependent on stable financial support. Terrorist organizations and groups are sustainable structures that receive, move, store and use financial resources and other material means to achieve terrorist goals.

The above requires skillful management of incoming finances and ensuring the security of the financial structure within a terrorist organization, and therefore located on the safe territory of other states.

This factor determines the difficulties for law enforcement and other competent authorities to carry out an operational audit and ensure a sufficient evidence base.

It should be noted that the methods of obtaining and moving funds through Hawala, self-financing, committing criminal offenses of a mercenary-violent nature and the transportation of cash are quite common and known in the scientific literature and practice.

At present, more modern methods and forms of terrorist financing have been established, which determine the problematic circumstances associated with the arrival and movement of foreign fighters, fundraising through Internet resources and other communication applications, the creation of payment products and payment services, and the use of natural resources.

The modernized risks and threats represent the most real threat to the economic security of Kazakhstan, which is caused, on the one hand, by insufficient scientific and theoretical research, and, on the other hand, by practical difficulties in the operational monitoring of these circumstances.

The arrival and displacement of foreign fighters acts as one of the main threats. This is due to the scale of this phenomenon, and the increase in the number of such individuals. Moreover, foreign fighters are not only trained persons for conducting aggressive hostilities, but also act as the main way to provide material support to terrorist groups and cells for financing terrorism.

At present, in the Republic of Kazakhstan, a form of financing of terrorism is quite common, which consists in the fact that through family, family ties, legitimately received money is transferred to persons participating in armed groups and military operations, which, of course, falls under the financing of terrorism

and is subject to criminal liability. In addition, the threat in the form of foreign fighters consists in the creation and support of recruitment networks, with their further transfer to war zones, as well as the transfer of cash through transportation, the use of ATMs to withdraw cash and money transfer service providers.

The main problem in this case is the information disagreement of law enforcement and special bodies with financial intelligence units, in order to prevent the illegal disclosure of information subject to classification. The collection of money and other funds through Internet resources, communication applications (social networks, mobile applications) is the most affordable, providing some anonymity and is characterized by a quick spread over time, but collecting sufficiently large amounts of cash, which creates a difficulty in timely response from law enforcement and special authorities, and acts as a vulnerability to the information security of the state. The main problem in Kazakhstan related to the use of Internet resources is the difficulty in actually identifying the perpetrators of terrorist financing and the evidence base, as fundraising occurs for false reasons (for example, helping sick children, restoring shrines, etc.)

It must be emphasized that the variety of methods of financing terrorism is being modernized and improved taking into account modern technological changes, which negatively affects their identification and timely suppression.

In this regard, the latest payment products and services pose a serious threat to the economic security of the state, its vulnerability.

In modern Kazakhstan, one of the vulnerabilities is new payment methods, due to their scale, namely the international distribution of prepaid cards, crypto currencies, and online payment systems.

The rapid development and spread in this area, increased functionality and a high degree of use, creates difficulties in operational tracking not only in combating the financing of terrorism, but also in general the legalization of proceeds from crime.

Currently, the Republic of Kazakhstan is one of the leaders in the oil and gas and mining sectors, as well as the third largest country in the world in terms of reserves of uranium and copper ores.

The state's rich natural resources may become the main reason for encroachment by any terrorist organizations, with the aim of the possible capture, control and retention of the territory (or part of it), that is, a potential threat to the sovereignty and integrity of the state.

Given these circumstances, the state through competent (including special and law enforcement) authorities must ensure effective control in the extraction and sale of natural resources of Kazakhstan. Interim measures on the part of the state should be based on an urgent prompt response to an attempt to such a threat, toughening existing legislation in this part, as well as considering the issue of nationalization of the oil and gas and mining sectors.

In addition, a special role in ensuring effective control in the extraction and sale of natural resources of Kazakhstan, as well as their processing, is played by the activities of the prosecutor's office in the field of environmental safety, as a control and oversight body [4; 73].

In this regard, supervision of the application of environmental legislation is currently of great difficulty in connection with the application of a significant number of legislative and regulatory acts in recent years, it would be relevant and appropriate to develop appropriate recommendations for use in the practical activities of prosecution authorities in their implementation of prosecutorial supervision

The psychological and forensic aspect is the most important, as it acts as a synthesizing element between the criminal law aspect and the aspect of the financial and economic risks of terrorist financing.

This is due to the fact that one of the main elements of the criminalistic characteristics of crimes is the motive and method of their commission.

These concepts of motive and method of committing crimes, in turn, are interconnected, and have their own psychological nature.

From the standpoint of psychological science, a motive is, on the one hand, an incentive to activity related to the satisfaction of the needs of the subject, as well as a set of external or internal conditions that cause the activity of the subject and determine its direction, that is, creating the motivation of the person [3].

On the other hand, a motive can act as a material or ideal object, the achievement of which is the meaning of any activity, that is, an inducing and determining choice of the direction of activity for which it is carried out.

At the same time, the motive acts for the personality, including the criminal one, in the form of specific experiences, expressed both by positive emotions from the expectation of achieving an object, and negative, associated with the incompleteness of the existing situation.

In this case, awareness of the motive, that is, the inclusion of these experiences in a personal cultural, value-oriented system, requires special actions.

Traditionally, there are distinguished features of the nature and functions of motives in the regulation of the behavior of the subject, namely, the stimulating and guiding function of the motive, the determination of personality behavior by unconscious motives and their hierarchical steps, the desire for balance and tension as mechanisms for the manifestation of motive dynamics (psychoanalysis, behaviorism, dynamic psychology, psychology topological, ethnology, humanistic psychology, etc.).

In addition, the general mechanism for the manifestation of motive can be considered as the realization of needs, as an active activity. This forms the object into motives, therefore, the dominant regularity of the development of the motive is manifested through the reorganization and distribution of certain actions transforming objective reality into the outside world.

It should be noted that the person's source of development of motives is an endless process of social and personal production of material and spiritual values. The indicated potential and real motives act as values, interests and ideals that can acquire a certain personal desire and be realized in a real motive of behavior, and, accordingly, in a specific action.

The function of controlling behavior is provided by motives through the mechanism of editing the emotional component of individual behavior. Emotions of a person determine the meaning of events, and in cases of inconsistency of meaning, the motive transforms the existing general and private orientation or motivation in the actions of the person.

The dynamics of the motive in specific situations, including criminal ones, is caused by situational activity, leading to the formulation of super tasks by a certain personality, which leads to the formation of new motives for activity.

As indicated earlier, in terms of theoretical analysis, the motive has a hierarchical, motivational structure, where a line of development is seen from the need to the motive that defines the goal, and is realized in action.

In practical activities, this process is characterized by the opposite effect, that is, in certain actions new motives and needs are formed, and in the theory of activity, the mechanism of motive formation, called the mechanism of motive shift to the goal, is noted.

The above fully corresponds to what we noted earlier, where the method of committing a crime, as a form of activity implemented in the actions of a specific person or a certain social group, related by common goals and interests, is aimed at developing financial schemes for financing terrorism.

Discussions

A separate consideration is required by the definition specified in Article 258 of the Criminal Code of the Republic of Kazakhstan, «Financing of Terrorism», that a person «was consciously aware of the terrorist or extremist nature of their activities, or that the property provided, information, financial and other services rendered would be used to carry out terrorist or extremist activities or support of a terrorist or extremist group, terrorist or extremist organization, illegal paramilitary formation» [1].

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

In turn, Resolution 17 of UNSC Resolution 2253 adopted in 2015 establishes that FATF Recommendation 5 relates to the financing of terrorism for any purpose with an unlawful intention and awareness of its actions, which emphasizes a wider context of acts than in the national legislation of the Republic of Kazakhstan [2].

In practice, namely regarding the qualification of a crime in the process of investigation and sentencing by a court, the conditions and conditions are created for avoiding the criminal liability of the guilty person due to the fact that the disposition of Art. 258 of the Criminal Code of the Republic of Kazakhstan «Financing of Terrorism» do not define criminal activity in the broad sense, and is rather narrow in interpretation. In addition, art. 258 of the Criminal Code of the Republic of Kazakhstan and other international standards and sources of law, the term «awareness».

In the context of Art. 258 of the Criminal Code of the Republic of Kazakhstan, a person who is consciously aware of the terrorist or extremist nature of the activity, but despite this is engaged in the financing of terrorism, implies that such a person has an illegal intention or purpose.

Moreover, this article, contrary to the standards of the FATF and the International Convention for the Suppression of the Financing of Terrorism, does not indicate such a significant qualification element as the illegality of intent. Although it is an illegal intention, the pursuit of a criminal goal involves the provision or collection of money, property, benefits and rights to it, donations, charitable assistance, and the provision of information and financial services.

In this regard, it is advisable to consider the purpose of the term «awareness» for a more accurate understanding of the alleged action. Awareness is a psychological phenomenon inherent in a person, and is defined as a subjective state, while in which a person understands, is aware of something in the surrounding reality. The term has different meanings from awareness of stimuli in the physical world, to awareness of one's internal «I» and its impact on human behavior [3].

We suppose that pathological fear and attraction to death distinguish a criminal person whose activity is aimed to committing socially dangerous acts of terrorist, religious-extremist orientation, from other types of personality of a criminal on a number of essential features, namely:

- demonstration of death, which may cause in human society the same jelly as the basic instinct of self-preservation and panic.

- as a kind of ideological type of criminals such a person shifts personal, subjective responsibility not to internal but to external causes related to social aspects and associated with interests of religion, politics, nation, ethnos, etc. This in turn, determines the nature of terrorism, religious extremism and separatism in general, for example, act of terrorism committed for religious reasons of prevalence of one religion over another, terrorism political or nationalistic, etc. [4; 105].

In relation to legal phenomena, the terrorist financing entity must fully understand the consequences of his actions, which is possible from a certain age, and understand and be aware of the consequences of his criminal actions. In accordance with Clause 2, Article 15 of the Criminal Code of the Republic of Kazakhstan, criminal liability for committing terrorist financing comes from the age of 14.

In this regard, a rather problematic question arises regarding the 14-year-old age of a person as a subject of criminal liability under the current legislation of Kazakhstan for the financing of terrorism.

It should be noted that the age of 14 years is quite complicated in biological, psychological and socio-legal senses. A feature of the considered age category is the factor that it is during this period that the moral and social attitudes of the person are laid.

From a legal perspective, this age is characterized by a limitation in legal capacity, in accordance with paragraph 1 of article 17 of the Civil Code of the Republic of Kazakhstan. «The ability of a citizen to acquire and exercise civil rights through his actions, create civil obligations for himself and fulfill them (civil legal capacity) arises in full with coming of age, that is, after reaching the age of eighteen» [5].

In our opinion, it is advisable legislatively review the age of criminal responsibility for financing terrorism. This is due to age-related characteristics of minor subjects, for which it is quite difficult, psychologically, legally and intellectually, to realize the real consequences of their actions.

Conclusions

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

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Терроризм мен экстремизмді қаржыландыруға қарсы іс-қимылдың өзекті мәселелері: психологиялық-криминалистикалық аспект

Зерттеліп отырған мәселенің өзектілігі Қазақстанда да, жалпы халықаралық деңгейде де терроризмді қаржыландыруға қарсы іс-қимылдың психологиялық-криминалистикалық аспектілері тұрғысынан қарастырылу қажеттілігімен байланысты. Терроризмді қаржыландыру — бұл экстремизм мен терроризмнің әртүрлі нысандарын таратудың негізгі алаңы болып табылатын, тәуелсіз мемлекет ретіндегі экономикалық қауіпсіздікке, саяси тұрақтылық пен мемлекеттердің тұтастығына, оның егемендігі мен аумақтық тұтастығына әлеуетті және нақты қауіп тудыратын құбылыс. Мақаланың мақсаты: терроризмді қаржыландыру аспектілеріне психологиялық-криминалистикалық шолу жасау, Қазақстандағы терроризмді қаржыландыруға тиімді және уақытылы қарсы тұруды қамтамасыз ету шараларын құқықтық талдау, психологиялық, криминалистикалық және заңнамалық сипаттағы мәселелік сұрақтарды анықтау. Зерттеу әдістері: терроризмді қаржыландыруға қарсы іс-әрекетті зерттеудің жетекші тәсілі жүйелік-іс-әрекеттік тәсіл және осы саладағы қолданыстағы ұлттық заңнаманы құқықтық талдау әдісі болып табылады. Зерттеу нәтижелері: Терроризм мен экстремизмді қаржыландыруға қарсы іс-қимылдың психологиялық-криминалистикалық аспектілері, заңнамалық реттеу, қылмыстық іс-әрекет ретіндегі санкциялар, терроризмді қаржыландырудың жаңа қауіп-қатерлері және олардың Қазақстандағы саяси мәселелердің қалыптасуына тигізетін әсері және олардың тиімді шешімдері көрсетілген. Тәжірибелік маңыздылығы: Қазақстанның қолданыстағы ұлттық заңнамасына сүйене отырып, терроризм мен экстремизмді қаржыландырудың негізгі элементтері анықталған, психологиялық-криминалистикалық аспектілермен қатар, сондай-ақ осы қылмыстық-құқықтық норма бойынша жаза тағайындаумен байланысты талқылау мен қосымша заңнамалық реттеуді талап ететін өзекті мәселелер анықталған. Қазіргі кезеңде Қазақстанда қылмыстың алдын-алу аспектісінде терроризм мен экстремизмді қаржыландырумен байланысты қауіптер мен осалдықтар анықталған.

Кілт сөздер: терроризм мен экстремизмді қаржыландыруды анықтау және жолын кесу, терроризм мен экстремизмді қаржыландырудың психологиялық-криминалистикалық мәселелері, терроризмді қаржыландыруға қарсы іс-қимыл шаралары, терроризм мен экстремизмді қаржыландырудың жаңа қауіптері, террористік ұйымдар мен топтар, террористер, табиғи ресурстарды пайдалану, терроризмді қаржыландыру саласында пайдаланылатын төлем өнімдері мен қызметтер.

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Актуальные вопросы противодействия финансированию терроризму и экстремизму: психолого-криминалистический аспект

Актуальность исследуемой проблемы обусловлена необходимостью рассмотрения противодействия финансированию терроризма с психолого-криминалистических аспектов, как в Казахстане, так и на международном уровне. Финансирование терроризма — явление, которое выступает основной платформой для распространения различных форм экстремизма и терроризма, создает потенциальную и реальную опасность для экономической безопасности, политической стабильности и целостности государств, в том числе и Казахстана, его суверенитета и территориальной целостности, как независимого государства. Цель статьи заключается в психолого-криминалистическом рассмотрении аспектов финансирования терроризма и правовом анализе мер, обеспечивающих эффективное и своевременное противодействие финансированию терроризма в Казахстане, выявлению проблемных вопросов психолого-криминалистического и законодательного характера. Ведущим подходом к исследованию вопросов противодействия финансированию терроризма являются системно-деятельностный подход и метод правового анализа действующего национального законодательства в рассматриваемой сфере. Представлены психолого-криминалистические аспекты и законодательная регламентация противодействия финансированию терроризма и экстремизма, санкции как к криминальному деянию, выявление новых рисков по финансированию терроризма и их влияние на формирование полиативных вопросов в Казахстане, а также их эффективное разрешение. На основе действующего национального законодательства Казахстана авторами выявлены основные элементы финансирования терроризма и экстремизма, определены дискуссионные и требующие дополнительного законодательного урегулирования актуальные вопросы, связанные как с психолого-криминалистическими аспектами, так и назначением наказания по данной уголовно-правовой норме. В аспекте предупреждения преступлений определены угрозы и уязвимость, связанные с финансированием терроризма и экстремизма в Казахстане на современном этапе.

Ключевые слова: выявление и пресечение финансирования терроризма и экстремизма, психолого-криминалистические вопросы финансирования терроризма и экстремизма, меры противодействия фи-

нансированию терроризма, новые риски финансирования терроризма и экстремизма, террористические организации и группы, террористы, эксплуатация природных ресурсов, платежные продукты и услуги, используемые в сфере финансирования терроризма.

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